

# Court of Appeals, State of Michigan

## ORDER

Dean Edward Nessen v Eric Daniel Kirk

Docket No. 340902

LC No. 16-014924-NI

Cynthia Diane Stephens  
Presiding Judge

Karen M. Fort Hood

Michael J. Riordan  
Judges

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In lieu of granting the application, the Court orders, pursuant to MCR 7.205(E)(2), that the October 12, 2017 order of the Wayne Circuit Court compelling defendant Secura Supreme Insurance Company to authorize plaintiff's proposed settlement is REVERSED. The trial court erred in ordering Secura to authorize plaintiff's release of defendant Kirk as the release would destroy Secura's right to subrogation. See *Lee v Auto-Owners Ins Co (On Second Remand)*, 218 Mich App 672, 675; 554 NW2d 610 (1996). Moreover, it is immaterial that no consent-to-settlement clause appeared in the subject policy at issue here. See *Flanary v Reserve Ins Co*, 364 Mich 73, 75; 110 NW2d 670 (1961) (reaching the same outcome based on a subrogation clause alone). Under the circumstances, the trial court should have upheld the contract as written. See *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 3, 2018  
Date

  
Chief Clerk