

STATE OF MICHIGAN
COURT OF APPEALS

FRANCES YOKUM,

UNPUBLISHED

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

No. 179921

LC No. 93-453250-NI

Defendant-Appellee.

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello, *JJ.

L.P. BORRELLO, J.(Dissenting)

I respectfully dissent. The facts in this case are not in dispute. The defendant is plaintiff's no-fault carrier and hence the primary insurer for the medical expenses. Medicare would not have paid if it had been aware of the existence of the no-fault carrier and its obligation under the no-fault contract of insurance. In any case, Medicare did pay. Plaintiff settled her third-party claim, and Medicare has placed a lien on the proceeds of the settlement in order to reimburse itself for plaintiff's medical expenses. Plaintiff now seeks to have her no-fault carrier pay the medical expenses that it was obligated to pay under the insurance contract so that plaintiff can repay Medicare and obtain her settlement money. Based on those facts, plaintiff most assuredly has standing to sue her no-fault carrier for breach of contract. If defendant is concerned about a double recovery, it can make the check for medical expenses incurred by plaintiff jointly to plaintiff, Medicare and Blue Cross, thus avoiding any claim on behalf of Medicare and/or Blue Cross.

I would reverse and enter summary judgment in favor of plaintiff.

/s/ Leopold P. Borrello

* Circuit judge, sitting on the Court of Appeals by assignment.