

DOWN WITH DUNN

On December 23, 2002, the Michigan Court of Appeals issued a shocking decision in the case of *Dunn v DAIE*, 254 Mich App 256, 2002. The *Dunn* decision will fundamentally change the operation of the Michigan No-Fault Law in a way that will cause substantial economic detriment to thousands of Michigan citizens who have health insurance coverage through an employer provided ERISA health plan and coordinated medical coverage through their auto no-fault policy. ***Under the Dunn decision, individuals in this situation may very well end up paying their own hospital and medical bills while their health insurer and no-fault insurer escape without any legal responsibility for the payment of those expenses.*** In other words, even though an accident victim is covered under both health insurance and auto no-fault insurance, the victim may end up with no medical coverage for auto accident injuries.

How did this happen? Even though the issues in the *Dunn* case are somewhat complicated, the Court's decision essentially boils down to two grossly unfair rulings:

1. If an ERISA health plan pays medical expenses for an auto accident victim and that victim subsequently recovers a monetary settlement from the negligent party who caused the accident, the ERISA health plan can force the victim to repay the health plan out of the settlement money even though the settlement was solely for pain and suffering damages and/or loss of future income;
2. If the accident victim is required to repay the ERISA health insurer for health expenses, the victim can no longer compel his or her coordinated no-fault insurer to pay the medical expenses. This second principle changes prior Michigan law which clearly required the no-fault insurer to repay the victim for any medical expenses the victim was required to repay an ERISA health plan. Not anymore. Under the *Dunn* decision, victims in this situation end up paying their own medical expenses even though they have health insurance and no-fault insurance.

The *Dunn* decision announces a rule of law that is absolutely inconsistent with the very essence of the Michigan Auto No-Fault System: *auto accident victims are guaranteed the right to full payment of all accident related medical expenses without regard to fault.* Once that guarantee is eliminated, we no longer have a no-fault system. Therefore, unless something happens to reverse *Dunn*, Michigan will have a new form of no-fault insurance. It will be called "***The Michigan No-Pay System***".



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