

COA Opinion: In an insured's claim for damages caused by an uninsured motorist, the insurer is not entitled to summary judgment based on the insured's violation of her contract's requirement that she join all tortfeasors unless it can demonstrate prejudice from the violation

1. October 2010 By Jeanne Long

In *Bradley v. State Farm Mutual Insurance Co.*, No. 292716, the Court of Appeals held that although an insured motorist had violated the plain language of her insurance contract by failing to join all tortfeasors in her action against her insurance company to recover damages caused by an uninsured driver, the insurance company was required to show prejudice to itself stemming from her violation before it could be entitled to summary judgment.

Plaintiff was injured when she was struck by an uninsured driver that was driving an insured individual's automobile. Plaintiff initially sued both the driver and the owner of the automobile for the injuries she sustained in the accident. The court dismissed the owner from the suit because the owner's insurance policy expressly excluded the driver from coverage. The court ultimately entered a default judgment against the uninsured driver for \$50,000.

In *Bradley*, Plaintiff then sued Defendant, her insurance company, claiming that she was entitled to recover from Defendant \$25,000 under an uninsured motorist provision of her insurance contract. The trial court held that the contract unambiguously required Plaintiff to join all tortfeasors in order to recover under the uninsured motorist provision, which she had not done. The trial court concluded that her violation of the contract precluded recovery against Defendant.

The Court of Appeals reversed. It held that although Plaintiff had failed to join all tortfeasors as required by the unambiguous language of her insurance contract, Defendant had not shown prejudice to itself stemming from the violation. The Court therefore held that Defendant was not entitled to summary judgment. The Court noted that Defendant's interests were not prejudiced because Defendant could still protect its subrogation rights against the driver and litigate its position. Analogizing the joinder provision to a notice provision in an insurance contract, the Court held that an insurance company seeking summary judgment based on the insured's failure to join a contractually required party must demonstrate prejudice stemming from the failure before it can succeed.

In a [strong dissent](#), Judge Hoekstra would hold that the contract provision, which is not mandated by the no-fault act, should be construed as written and that Defendant should be entitled to summary judgment without showing prejudice from Plaintiff's failure to comply with the contract. The potentially broad application of the majority's

holding to insurance-contract interpretation in Michigan (particularly its novel application of prejudice as a defense to a contract action), the fact that this is a published decision, and the strength of Judge Hoekstra's dissenting opinion all suggest that this case may warrant further review in the Michigan Supreme Court.