

## COA Opinion: To deny liability, an insurer must establish that an insured's failure to satisfy a policy's notice requirements resulted in actual prejudice to the insurer.

11. March 2011 By Aaron Lindstrom

In *Defrain v. State Farm Mutual Automobile Insurance Co.*, No. 294505, the Court of Appeals held that the failure of a hit-and-run victim to notify his insurer within 30 days of the accident, as required by his policy, did not relieve the insurer of its liability, because the insurer did not show that it had suffered any actual prejudice as a result of the delayed notification.

William Defrain, who had uninsured motorist coverage from State Farm, was struck by a hit-and-run driver and sustained severe head injuries. Although his policy required him to notify State Farm within 30 days of any hit-and-run accident, he did not notify State Farm until almost 90 days had passed. State Farm denied coverage.

Writing for the panel, Chief Judge Murphy concluded the Michigan Supreme Court's decision in *Koski v. Allstate Ins. Co.*, 456 Mich 439 (1998), governed. *Koski* held that an insurer must establish actual prejudice before it is relieved from contractual liability when an insured fails to comply with a notice provision that constituted a condition precedent to coverage. But while *Koski* squarely applied, the Court of Appeals also had to decide how to resolve a conflict between the Supreme Court's opinion in *Koski* and the Supreme Court's more recent order in *Jackson v. State Farm Mutual Automobile Insurance Co.*, 472 Mich 942 (2005). In its order in *Jackson*, the Supreme Court appeared to reach the opposite conclusion than it had reached in *Koski*: it ordered that State Farm be granted summary disposition for the reason's stated in the Court of Appeals dissent, where the dissent had concluded that prejudice did *not* need to be established. The panel resolved this direct conflict between the Supreme Court's opinion in *Koski* (which required actual prejudice) and the Supreme Court's order in *Jackson* (which did not) by noting that the Supreme Court's opinions are entitled to more weight than the Supreme Court's orders, particularly given that *Jackson* did not address the prior *Koski* decision. Accordingly, because State Farm had not established actual prejudice (it did not even make an argument that it had been prejudiced), the Court affirmed the trial court's denial of State Farm's motion for summary disposition.