

COA Opinion: Express terms of an insurance policy will trump the collateral estoppel doctrine

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In *Dawson v. Farm Bureau Mutual Insurance Co. of Michigan*, No. 296790, the Court of Appeals held that Farm Bureau's policy provision, that it would not be bound by any judgment for purposes of underinsured coverage unless it gave written consent, must be enforced. As a result, the injured motorist could not collaterally estop Farm Bureau—which was not a party to the first lawsuit—from re-litigating liability and damages in a subsequent lawsuit against Farm Bureau to recover underinsured benefits. The Court was careful to note that underinsured motorist coverage is not required by Michigan's no-fault act; the terms are governed strictly by the contract, not by statute.

In this no-fault case, plaintiff was the passenger in the back seat of a vehicle when the driver struck a bridge abutment, ejecting plaintiff from his seat and through the windshield of the car. Plaintiff initially sued the driver and Farm Bureau but then dismissed Farm Bureau because a clause in the policy required the insured to first exhaust all other available judgments or settlements. After a 29-minute trial in which liability and damages were hardly contested, plaintiff won a \$100,000 verdict against the driver. His insurer paid the first \$20,000, as that was the policy limit. Finding the driver uncollectible, plaintiff sued Farm Bureau for underinsured benefits. The trial court entered a judgment for \$80,000 against Farm Bureau, after holding that Farm Bureau was collaterally estopped from re-litigating liability and damages in the auto accident.

The Court of Appeals reversed, holding that the trial court erred in failing to enforce the unambiguous terms of Farm Bureau's insurance policy. The policy specifically stated that Farm Bureau "will not be bound by any judgments for damages or settlements made without [Farm Bureau's] written consent." The Court rejected the notion that a court may refuse to enforce a contract if it was deemed unreasonable with an acute statement that will no doubt find its way into many a legal brief in the years to come: "It is not the province of the judiciary to rewrite contracts to conform to the court's liking, but instead to enforce contracts as written and agreed to by the parties."