

## COA Opinion: In order to bring a claim against a no-fault insurer for statutory attorney's fees, that claimant must have incurred covered expenses

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27. July 2011 By Jason Byrne

Through Judge Gleicher's published opinion in *Karmol v Encompass Property and Casualty Co, No. 298366*, the Court of Appeals unanimously concluded that a plaintiff was not entitled recover statutory attorney fees and interest in a claim against a no-fault insurer where that plaintiff had not incurred any covered expense. In this case, plaintiff's son was injured in an auto accident. Initially, the relevant expenses were covered by plaintiff's ERISA health plan. However, the health plan ultimately sought subrogation from the applicable no-fault insurer. Eventually, based on the clauses in the ERISA Plan and the no-fault policy, in conjunction with applicable law on the priority of payments, the no-fault insurer recognized it was primarily responsible for the expenses and settled with the ERISA plan. In the meantime, plaintiff also brought suit against the no-fault insurer seeking a declaration of responsibility and statutory interest and attorney fees. The insurer moved for summary disposition on the grounds that plaintiff was never obligated to pay any of her son's expenses, and thus was not damaged. The trial court denied the motion, but the Court of Appeals disagreed, finding that as there was no record evidence to suggest that plaintiff was responsible for a single covered expense, her claim against the insurer could not be sustained.