

# Standing, Rescission Coverage Update

June 1, 2017

## Michigan, California Coverage Cases

*The e-POST*

### Standing – Michigan

#### **Covenant Med. Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.**

--- N.W.2d. ---, 2017 WL 2303337 (Mich. May 23, 2017)

The Michigan Supreme Court ruled that a medical provider “does not possess a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits under the no-fault act.” The insured was injured in a motor vehicle accident and was subsequently treated by Covenant Medical Center (Covenant), a healthcare provider. Covenant sent the insured's no-fault insurer the bill for the medical services it provided to the insured. Thereafter, the insured filed suit seeking no-fault benefits from his insurer. The insured settled the case against his insurer and “executed a broad release, which encompassed all allowable no-fault expenses.” Covenant subsequently initiated an action against the insurer, seeking payment of its billed medical expenses. The trial court dismissed Covenant's action because Covenant's claim for benefits was derivative of the insured's, which was extinguished by the release. The Michigan Supreme Court affirmed the trial court's decision to dismiss the action, holding that the “no-fault act does not, in any provision, explicitly confer on healthcare providers a direct cause of action against insurers.”

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### Rescission – Ninth Circuit (California Law)

#### **Star Ins. Co. v. Sunwest Metals, Inc.**

--- Fed. Appx. ---, 2017 WL 2198969 (9th Cir. May 18, 2017)

The U.S. Court of Appeals for the Ninth Circuit held that Star Insurance Company (Star) could not rescind an insurance policy based upon misrepresentations by the policyholder, Sunwest Metals, Inc. (Sunwest) because Star failed to investigate information that suggested the existence of such misrepresentations. In its application for insurance, Sunwest represented that nearly all of its revenue came from metals processing. In reality, paper processing comprised the majority of Sunwest's revenue. Under California statutory law, an insurance company waives “its right to rescind the policy if it ignored information that ‘distinctly implied’ misrepresentation of true facts regarding ... [the policyholder's] operations.” There were numerous pieces of evidence over the span of two years that “‘distinctly implied’ the falsity of information in Sunwest's insurance applications and subsequent

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communications with Star[,]” including Sunwest’s website advertisements and several inspections by Star that noted substantial paper processing. Accordingly, the appellate court held that “[t]he district court did not clearly err in finding that Star had before it information that ‘distinctly implied’ material misrepresentations, and that it failed to satisfy its duty to investigate such evidence.” Furthermore, the appellate court noted that “[t]he duty of inquiry requires an insurer to not only ask questions, but also to investigate answers.” In this case, because “Star made inquiries, but then ignored the inadequacy of the answers it received ... Star waived its right to rescind when Sunwest filed a claim.”

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