

David Smith v. Farmers Insurance Exchange and Assigned Claims Facility;
Michigan District Court (60th District); Docket No. 88-1440-GC; Judge
William J. Cole; October 13, 1988.

In this untranscribed bench opinion, Judge Cole decided a question of first impression: In a motorcycle collision, where there is no no-fault policy within the priorities set forth in Section 3114(5), are we then thrown back on the general priority provisions of Section 3114(1) (whereby the injured person's own insurer pays), or is the Assigned Claims Facility responsible for securing no-fault benefits?

The plaintiff was a passenger on a motorcycle which collided with a motor vehicle. Neither the owner and driver of the motor vehicle, nor the owner and driver of the motorcycle had no-fault coverage. The injured motorcycle passenger did, however, have a no-fault policy from Farmers on another motor vehicle he owned.

Judge Cole construed the first phrase of Section 3114(1) ("except as provided in subsections . . . (5)") to mean that Section 3114(1) controls priority, except when there is a policy within the priority provisions set forth in Section 3114(5). Since there was no policy within the priority provisions of Section 3114(5), the general priority provisions of Section 3114(1) controlled, under which the injured passenger's own insurer (Farmer's) was liable for no-fault benefits.

The Court therefore denied Farmers' Motion for Summary Disposition, and granted Summary Disposition for the plaintiff against Farmers.