

Bahri Effect: After Publication, Michigan Court of Appeals Case Becoming Effective Tool to Combat Fraudulent No-Fault Claims

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The Michigan Court of Appeals recently issued *Bahri v IDS Prop. Cas. Ins. Co.*, 2014 WL 5066518 (Mich. Ct. App. Oct 9, 2014) and upheld the trial court's decision to dismiss the plaintiff's entire no-fault action after it was shown that her claims were fraudulent. The case was approved for publication in December 2014, and while application for leave to appeal was filed in November 2014, it is unclear when, if ever, the same will be granted by the Michigan Supreme Court. In the meantime, *Bahri* has been gaining steam as an effective means to combat fraudulent no-fault claims.

In *Bahri*, the plaintiff was allegedly involved in a motor vehicle accident on Oct. 20, 2011 and subsequently made a claim for no-fault benefits with her insurer IDS after obtaining a policy of insurance just days earlier. The plaintiff submitted invoices to IDS for replacement services from October 2011 through February 2012. Notably, the plaintiff claimed dates of service relating to the motor vehicle accident for the first 20 days of October 2011 *before* the accident. Moreover, surveillance footage obtained by IDS showed the plaintiff on dates she claimed replacement services performed and some of the exact activities for which invoices were submitted, including driving and running errands.

The plaintiff filed suit in Wayne County Circuit Court seeking recovery of PIP and uninsured motorist benefits, and the plaintiff's medical providers also intervened in the suit. IDS moved for summary disposition, arguing that the plaintiff's and intervening the plaintiff's claims triggered the fraud exclusion in the policy. Summary disposition was granted and intervening the plaintiff appealed.

The Michigan Court of Appeals affirmed the holding, finding that the surveillance footage conclusively showed the plaintiff performing services on the exact days she claimed someone else had to perform them for her. The policy language at issue stated that the insurer would "not provide coverage for any insured who had made fraudulent statements ... in connection with any accident or loss for which

coverage is sought ...” The court found that the surveillance evidence contradicted the plaintiff’s claims and that the forms were also inherently false because they were submitted for dates before the accident. The court found that given the overwhelming evidence, reasonable minds could not differ that the plaintiff engaged in fraudulent activity.

Notably, the appellate court rejected the arguments by the intervening the plaintiff that it was not complicit in the fraudulent activity. Rather, the court found that intervening the plaintiff stood in the shoes of the named insured as their claims are derivative.

Application

Interestingly, the appellate court did not address prior case law that discusses the distinction between the ability of an insurance policy to void optional coverage versus that required by statute like the no-fault act. Many from the plaintiff’s bar will also argue that the court improperly acted as a fact finder since The plaintiff still claimed that she needed replacement services in spite of the overwhelming contradicting evidence.

While some trial court judges will inevitably disagree with this holding, in cases where there is glaring and conclusive evidence of fraud by the named insured, this precedent can, and should, be used to move for summary disposition of an entire no-fault claim.

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