

Defending Against Fraudulent Claims Following Michigan Supreme Court's Ruling in *Meemic*

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In recent years, Michigan courts have issued several decisions affecting a No-Fault insurer's ability to rescind insurance policies obtained through fraud, avoid payment of No-Fault benefits owed under those policies, and avoid payment for fraudulent claims submitted under existing policies.

In fact, insurers have routinely sought and obtained summary disposition for fraudulent claims under the *Bahri* framework, where the insured's fraudulent claims for replacement services voided the policy under a general fraud exclusion contained within the policy. See *Bahri v. IDS Prop Cas Ins Co*, 308 Mich App 420, 864 NW2d 609 (2014).

However, in its recent decision in *Meemic Ins Co v Fortson*, ___ Mich ___; ___ NW2d ___ (2020) (Docket No. 158302), slip op. at 8-9, the Michigan Supreme Court held that an insurer's contractual antifraud provision was invalid and unenforceable to void the entire policy and end PIP benefits for the claim beneficiary because the clause did not relate to the inception of the contract, would not allow for rescission, and was not grounded on the No-Fault Act or common law.

Does this mean that insurers cannot avoid payments to certain claim beneficiaries whose No-Fault benefits arise by operation of statute even when there is evidence of fraud in the procurement of the policy or fraudulent claims submitted under the policy? Not necessarily, but it will certainly be more difficult. Throughout its discussion, the Supreme Court reaffirmed several key principles from earlier decisions that address the interaction between the No-Fault Act, common-law defenses and fraud:

1. The policy and the statutes must be read and construed together because the parties intend to execute a policy that meets statutory requirements. *Id.* at *7 (citing *Rohlman v Hawkeye-Security Ins Co*, 442 Mich. 520, 525 n. 3; 502 NW2d 310 (1993));
2. Common-law defenses such as duress, waiver, estoppel, fraud, or unconscionability remain available against the enforcement of an insurance policy, unless they are prohibited by statute; *Id.* (citing *Titan Ins Co v Hyten*, 491 Mich 547, 554; 817 NW2d 562 (2012); *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23(2005));

3. The No-Fault Act does not preclude an insurer's ability to rescind a policy on the basis of fraud. *Id.* at *13 (citing *Bazzi v. Sentinel Ins Co*, 502 Mich 390, 401; 919 NW2d 20 (2018));
4. Fraud on an insurance application does not give an insurer an absolute right to rescind the policy with respect to third parties. *Id.* at *11 n. 19. (citing *Bazzi, supra* at 411);
5. The No-Fault Act does NOT provide a fraud defense against PIP coverage. *Id.* at *8 n. 10 (citing *Shelton v Auto-Owners Ins Co*, 318 Mich App 648, 655; 899 NW2d 744 (2017));
6. An insurer can reject fraudulent claims and seek attorney fees without rescinding the entire policy. *Id.*;
7. A fraudulent procurement defense may be raised against a claim for mandated coverage. *Id.* at *8 (citing *Bazzi, supra* at 400-01);
8. Under common law, the mere breach of a contract does not entitle the injured party to avoid the contract. *Id.* at *10 (citing *Abbate v Shelden Land Co*, 303 Mich 657, 666; 7 NW2d 97 (1942)); and
9. A "post-procurement" fraud clause that rescinds a contract is valid if it applies to a party's failure to perform a substantial part of the contract or one of its essential terms. *Id.* (Emphasis added) (citing *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 510; 885 NW2d 861 (2016)).

What does this mean for insurers and claimants?

Considering these principles, insurers must carefully review the antifraud provisions and exclusions of coverage in their policies. Michigan's legal precedent has established that policy rescission remains a viable defense for claims where the insured or claimant engaged in fraud during *the inception or procurement* of the policy. See *Titan, supra*. Insurers can also avoid paying benefits to and recover damages from insureds or claimants who submit fraudulent statements for their claims as they perform under the contract. See *Bahri, supra*.

But as discussed earlier, the Supreme Court reaffirmed in *Meemic* that insurers do not have an absolute right to rescind the policy and avoid paying PIP benefits to third parties even when the claimant fraudulently procures the policy or submits fraudulent claims for payment. This is because the No-Fault Act does not provide a fraud defense against PIP coverage and, under this *Meemic* holding, broadly construed antifraud provisions that seek to rescind the policy to avoid payment of mandatory benefits are void and unenforceable.

The questions below can help determine whether rescinding the insurance policy due to fraud at the inception or procurement is viable or whether an action for damages arising out of fraudulent submissions under existing policies is a better option:

DEFENDING AGAINST FRAUDULENT CLAIMS FOLLOWING MICHIGAN SUPREME COURT'S RULING IN *MEEMIC* Cont.

1. Who is the claim beneficiary?
2. What is the claim beneficiary's status under the policy terms? An "insured"? A "resident relative"?
3. Do the claim beneficiary's benefits arise by operation of statute or through the insurance policy provisions?
4. Is the policy's "antifraud" provision broadly defined or limited in scope as to who commits fraud or when the fraud occurs?
5. Did the claim beneficiary act fraudulently in procuring the policy?
6. Did the claim beneficiary submit fraudulent claims for benefits?

Conclusion

For now, claim beneficiaries who are not themselves "insured" or "resident relatives" of an insured – i. e., no-fault claim beneficiaries who were passengers or third parties – and whose No-Fault benefits arise by operation of statute, may continue receiving their benefits even if the insured or claimant engaged in fraudulent conduct during inception or procurement, or during the insurance contract performance after procurement.

If the insurer seeks to rescind the policy due to fraud in the procurement or during performance of the contract, the trial court must balance the equities and exercise its discretion to determine who, out of the "equally innocent" insurer and claim beneficiary, must assume the loss.

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