

Insurers No Longer have to Verify Representations by Potential Insured to Avoid Liability in Instances of Fraud

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The Michigan Supreme Court recently ruled that, effective immediately, insurance providers may seek to avoid liability on the grounds that a policy holder fraudulently submitted a policy application. This is true even when the claimant is a third-party, and the alleged fraud was easily ascertainable by the insurance provider.

In *Titan Insurance Co v Hyten*, the at-fault driver, Hyten, had applied for no-fault insurance but fraudulently failed to disclose her suspended driver's license at the time of application as required. The policy went into effect on Aug. 24, 2007, but Hyten's license was not restored until Sept. 20, 2007. The accident in the above-mentioned case occurred in February 2008.

Upon learning that Hyten did not have a valid license when the policy was issued, Titan sought a judicial declaration to avoid liability should the injured third-party drivers prevail in their lawsuit against Hyten. The trial court denied Titan's request, and the Michigan Court of Appeals upheld the trial court's ruling. In so doing, the appellate court relied on *State Farm Mut. Auto Ins. Co. v Kurylowicz*, a 1976 decision which held that an insurer was not entitled to reform a policy to a third-party's detriment when the fraud committed by the insured was "easily ascertainable."

The Supreme Court in *Titan*, however, overturned *Kurylowicz* and the "easily ascertainable" rule, concluding that an insurer has no duty to investigate or verify the representations of a potential insured. The court opined that there exists no "easily ascertainable" element to a common-law fraud claim, and as such, there exists no basis for treating insurers in Michigan differently than all other parties who enter into contracts when they have been the victims of fraud.

It should be noted, however, that although an insurance carrier may now avail itself of traditional legal or equitable remedies to avoid liability where there is actionable fraud, the remedies available may be limited by statute. For example, MCL § 500.3009(1) provides that policy coverage minimums for all motor vehicle liability insurance policies be \$20,000 per person/\$40,000 per occurrence.

For more information about actionable fraud or if you have questions relative to how this important decision may affect your business, please contact the authors of this Rapid Report or any member of Plunkett Cooney's Transportation or Litigation practice groups.

INSURERS NO LONGER HAVE TO VERIFY REPRESENTATIONS BY POTENTIAL INSURED TO AVOID LIABILITY IN INSTANCES OF FRAUD Cont.

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