

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Supreme Court to consider whether “innocent third-party” rule prevents rescission in first-party no-fault cases

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On May 17, 2017, the Michigan Supreme Court granted the Plaintiff’s application for leave to appeal in *Bazzi v Sentinel Ins Co*, __ Mich __; __ NW2d __ (2017) (Docket No. 154442). In *Bazzi* – a case where Secret Wardle represented Sentinel in the trial court and has been co-counsel throughout the appeal – Plaintiff Ali Bazzi sought PIP benefits for injuries he sustained in an automobile accident while driving a vehicle owned by third-party defendant Hala Bazzi (plaintiff’s mother). The vehicle driven by Ali was insured under a commercial automobile policy issued by Sentinel to Mimo Investments, LLC. Sentinel asserted that the policy was fraudulently procured by Hala and third-party defendant Mariam Bazzi (plaintiff’s sister and the resident agent for Mimo Investments) in order to obtain a lower premium because of Ali’s involvement in a prior accident. Sentinel proffered evidence that the vehicle was actually leased to Hala for personal and family use, not for commercial use by Mimo, and, in fact, that Mimo was essentially a shell company, which had no assets or employees and was not otherwise engaged in business activity. Sentinel also alleged fraud in that Hala and Mariam failed to disclose that Ali would be a regular driver of the vehicle.

Sentinel pursued a third-party complaint against Hala and Mariam Bazzi, seeking to rescind the policy on the basis of fraud in the application.

SECRET WARDLE NOTES

Although the Supreme Court has granted leave in *Bazzi*, the Court of Appeals’ published decision, *Bazzi v Sentinel Ins Co*, 315 Mich App 763 (2016), remains precedentially binding unless and until the Supreme Court reverses or otherwise modifies it, per MCR 7.215(C)(2).

Bazzi is in many ways simply an extension of the Supreme Court’s holding in *Titan Ins Co v Hyten*, 491 Mich 547 (2012) which abrogated the “innocent third-party” rule and allowed for rescission in a third-party automobile negligence suit.

In *Titan*, 491 Mich at 572, the Court held that a motor vehicle insurer is not precluded from asserting traditional legal and equitable remedies – such as rescission – to avoid liability under an insurance policy, on the basis of fraud in the application for insurance, even when the fraud was easily ascertainable and the claimant is a third party.

An insurance policy that is rescinded is void *ab initio*. *Id.* at 562–563; *Bazzi*, 315 Mich App at __; slip op at 5.

That action resulted in a default judgment against the Bazzi sisters. Sentinel then moved for summary disposition of Ali's PIP suit (as well as the claims of various intervening providers) because the policy was rescinded on the basis of fraud, and was therefore void *ab initio*. The trial court denied the motion, concluding that Ali had a claim because of the innocent-third-party rule. Sentinel sought interlocutory review from the Court of Appeals, which denied leave. See *Bazzi v Sentinel Ins Co*, 497 Mich 886 (2014). However, when Sentinel (through Secrest Wardle) applied for leave to the appeal to the Supreme Court, the Court "in lieu of granting leave to appeal" remanded to the Court of Appeals "for consideration as on leave granted." *Id.*

On remand, the Court of Appeals majority found that "[r]esolution of this case begins and ultimately ends with our Supreme Court's decision in *Titan*." *Bazzi*, 315 Mich App at __; slip op at 3. "Although *Titan* did not involve a no-fault insurance claim for PIP benefits, we nonetheless are convinced that *Titan* compels the conclusion that there is no innocent third-party rule as to a claim for those benefits." *Id.* "That is, if an insurer is entitled to rescind a no-fault insurance policy based upon a claim of fraud, it is not obligated to pay benefits under that policy even for PIP benefits to a third party innocent of the fraud." *Id.* The *Bazzi* majority further explained:

We now turn to the other question posed in this case, whether the holding in *Titan* extends to mandatory no-fault benefits. We conclude that it does. *Titan* did, in fact, involve optional benefits not mandated by statute. But this was not the basis of the Court's decision. And it makes the rather unremarkable observation that, where insurance benefits are mandated by statute, coverage is governed by that statute. It is also true that "because insurance policies are contracts, common-law defenses may be involved to avoid enforcement of an insurance policy, unless those defenses are prohibited by statute." The Court ultimately holds "that an insurer is not precluded from availing itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, even when the fraud was easily ascertainable and the claimant is a third party." And it does so without qualification regarding whether those benefits are mandated by statute. Thus, if there is a valid policy in force, the statute controls the mandated coverages. **But what coverages are required by law are simply irrelevant where the insurer is entitled to declare the policy void *ab initio*.** The situation would be akin to where the automobile owner had never obtained an insurance policy in the first place; they would have been obligated by law to obtain such coverage, but failed to do so. *Bazzi*, 315 Mich App at __; slip op at 5 (emphasis added).

The Court of Appeals' decision was controversial from the start; one member of the *Bazzi* panel wrote a detailed dissent, and a different panel of the Court of Appeals – also by a 2-1 margin – just a few weeks later suggested that *Bazzi* had been wrongly decided. *SE Mich Surgical Hosp, LLC v Allstate Ins Co*, 316 Mich App 657 (2016). The *SE Mich Surgical* majority asked the rest of the Court of Appeals to convene a "conflict panel" under MCR 7.215(J)(2). While the Court of Appeals never convened that panel, *SE Mich Surgical* did generate its own Supreme Court Application which is now being held in abeyance – along with another application that raises similar issues – until the Supreme Court issues a decision in *Bazzi*. See *SE Mich Surgical Hosp, LLC v Allstate Ins Co*, __ Mich __; __ NW2d __ (2017) (Docket No. 154808); *State Farm Mut Auto Ins v MMRMA*, __ Mich __; __ NW2d __ (2017) (Docket No. 154434).

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