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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Full Disclosure Required: Appellate Court Upholds Policy Rescission for Material Misrepresentation in an Application for Insurance

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SECRET WARDLE NOTES

The plain language of an automobile insurance policy serves as a powerful tool in successfully combating fraud and material misrepresentation in the procurement of a policy. On May 24, 2016, the Michigan Court of Appeals issued a published opinion affirming a decision to rescind an insurance policy in *21st Century Premier Ins. Co. v. Zufelt, et. al.* (Docket No. 32657). The rescission was based upon an insured's failure to disclose a prior motor vehicle accident, which would have made him ineligible for coverage. Although the insured became eligible for coverage at the time his policy was renewed, the Court found this detail irrelevant as the fact of the matter remained – the insured made material misrepresentations in the initial procurement of the policy, which warranted rescission.

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In *21st Century*, Plaintiff issued a policy of insurance to Defendant Barry Zufelt, which required less than six points for eligibility. However, at the time Zufelt procured the policy, he had seven points on his record. In addition, in the application for insurance, Zufelt failed to disclose three of the seven points arising out of a 2012 motor vehicle accident. Although the underwriting department investigated Zufelt's record, the accident did not appear on his record. Accordingly, Plaintiff issued an automobile insurance policy to Defendant Zufelt. Three months after Plaintiff issued the policy, Zufelt's record dropped three points. When Zufelt's policy was renewed, he had only five points on his record.

Defendant Zufelt was involved in a motor vehicle accident in March 2013. Zufelt and the driver of the other vehicle, Daniel Novak, sustained significant injuries in the accident. The Novaks filed suit against the Zufelts for damages arising out of the automobile accident. The Zufelts sought defense and indemnity from Plaintiff under their insurance policy. In addition, Defendant University of Michigan Regents sought over \$600,000 in medical expenses under the Zufelt policy.

Plaintiff filed suit against the Zufelts, Regents, and various providers alleging Barry Zufelt was ineligible to be insured at the time the policy was issued because he made material misrepresentations on his application by specifically omitting the April 2012 motor vehicle accident. Plaintiff sought a judgment declaring that the insurance policy be rescinded and that the Zufelts were not entitled to indemnity for damages awarded or a defense in the underlying suit filed by the Novaks. Plaintiff also sought reimbursement for any benefits paid under the policy.

Plaintiff ultimately moved for summary disposition, arguing that there was no genuine issue of material fact that Barry Zufelt made false statements in obtaining the policy of insurance and, therefore, rescission was proper. More specifically, Plaintiff moved for summary disposition on the basis of fraud, misrepresentation, concealment, and misstatement of a material fact. Plaintiff relied upon Barry Zufelt's response to its request for admissions, in which Zufelt admitted that he did not disclose the 2012 accident in his application for insurance. Further, Plaintiff relied upon its own policy language, which provided, in pertinent part, as follows:

If you knowingly made any false statements or representation concerning a material fact or circumstance to us when applying for this policy or applying for any coverage under this policy, we may void this policy. In addition, we may void this policy if you concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, when applying for this policy.

The trial court granted Plaintiff's dispositive motion, finding that Defendant Zufelt's failure to disclose the 2012 motor vehicle accident in his application for insurance warranted rescission of the policy. In so holding, the trial court relied upon the language of the policy and the application for insurance, as well as Defendant Zufelt's response to request for admissions.

On appeal, the Court affirmed the decision of the trial court, finding that there was no requirement of fraud or intentional misrepresentation in rescinding the policy. Further, the plain terms of the contract did not require a finding of fraud or intentional misstatement, but rather, allowed plaintiff to rescind the contract based on a false statement, misstatement of a material fact, or a failure to disclose information. It is well-settled that an insurer is entitled to rescind a policy ab initio on the basis of a material misrepresentation made in an application for no-fault insurance. Further, rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer. Reliance may exist when the misrepresentation relates to the insurer's guidelines for determining eligibility for coverage.

Significantly, Defendant Regents argued, unsuccessfully, that Zufelt's initial ineligibility was subsequently "cured" when his policy was renewed as his points had dropped by that time. The Court was unimpressed with this argument, finding that the renewal was linked to the initial application and the material terms in the initial contract applied to the renewal. Accordingly, Plaintiff was entitled to rescission based upon the misrepresentations in the initial application even after the renewal of the policy.

Finally, Defendant Regents unsuccessfully argued that the doctrine of equitable estoppel precluded Plaintiff from denying coverage or rescinding the policy. Specifically, Defendant Regents argued that plaintiff sent a renewal declaration and confirmation letter to Defendant Zufelt regarding his policy, which led him to believe that he had no-fault coverage. The Appellate Court found no evidence to support the contention that Plaintiff intentionally or negligently induced Defendant Zufelt to believe facts that it later denied or to support that Zufelt justifiably relied on Plaintiff's representations. Importantly, there was no evidence to support that plaintiff was aware of Zufelt's misrepresentation at the time the policy renewed. Furthermore, because Zufelt made the misrepresentation in obtaining the policy, he could not show justifiable reliance. Accordingly, the doctrine of equitable estoppel did not bar rescission.

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