

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## The Dust Begins to Settle on *Bazzi* and the Abrogation of the Innocent Third-Party Doctrine

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In *Oakwood Healthcare Inc., et al v Hartford*, an unpublished opinion *per curiam* issued November 22, 2016 (Docket No. 328162), the claimant was injured in a car accident that occurred in his school parking lot. He was driving a vehicle that was titled and registered in his own name, but insured under a commercial policy issued to a construction company owned by his father. He was neither identified as a business employee nor as a driver of any of the insured vehicles in the application for insurance. Instead, his father signed the application that stated: “I have reported all drivers that are involved in the daily operation of the business and understand that drivers not listed on the policy may or may not be covered in the event of a claim.”

After the accident, the claimant and his medical providers filed suit for non-payment of first-party no-fault benefits. The carrier denied liability for benefits arguing that material misrepresentations were made in the procurement of the policy and that it should be free to rescind the policy. Moreover, the carrier maintained the claimant and his medical providers could not avail themselves to the innocent third-party rule.<sup>1</sup>

The carrier filed a motion for summary disposition, arguing (1) it was entitled to rescind the insurance policy and (2) that rescission was not prohibited by the innocent-third party rule. Primary to this argument was the contention the carrier issued a commercial policy covering a vehicle purportedly being used for business purposes and not a personal no-fault policy covering a higher risk teenage driver.

### SECRET WARDLE NOTES

- Since the recent decision in *Bazzi v Sentinel Ins Co*, \_\_\_ Mich App \_\_\_ (2016), the Court of Appeals has applied its ruling that abrogated the innocent third-party rule
- While this case is unpublished, it provides some insight into the impact that the *Bazzi* ruling will have on future claims involving an “innocent” third-party
- Secret Wardle pursued the appeal on behalf of the insurer in this case

<sup>1</sup> *Titan Ins Co v Hyten*, 491 Mich 547 (2012); See also Secret Wardle No Fault Newslines: [Supreme Court Overrules “Easily Ascertainable” Fraud Rule: Insurer May Assert Defense Of Fraud Even If It Was Easily Ascertainable And Claimant Is Innocent Third Party](#), Klingler, Sidney A. (2012, June 20)

The trial court denied the motion finding that the innocent third-party doctrine generally precluded an insurer from rescinding a policy based on fraud when the claim involved an innocent third-party. The trial court opined that *Hyten*'s recent abrogation of the rule was limited to the factual circumstances surrounding that case and noted that the overwhelming majority of case law does not allow for the rescission of a policy when the benefits are sought by the "innocent" third-party. Shortly thereafter, the parties entered a stipulated order for dismissal and consent judgment predicated upon the outcome of the appeal. At the appellate level, the carrier argued that the trial court erred by denying the dispositive motion due to the abrogation of the innocent third-party rule. The parties agreed that the ruling in *Bazzi v Sentinel Ins Co*<sup>2</sup>, which was pending before the Court of Appeals at the time, would clarify whether the innocent third-party rule applied to no-fault claims.

The Court of Appeals noted the circumstances surrounding procurement of the commercial policy and concluded that the claimant's father misrepresented the ownership, use, and primary driver of the subject vehicle – all of which were central to the decision to insure the vehicle and assess the premium to be charged. The Court agreed with the trial court's initial ruling that these misrepresentations were material and relied upon by the insurer when issuing the commercial policy.

However, the Court took exception with the trial court's rationale regarding the innocent third party rule. The carrier argued that the reasoning in *Hyten* applied equally to first-party no-fault claims because the Michigan No-Fault Act does not prohibit an insurer from seeking to rescind a policy based on fraudulent procurement of same. The Court relied on the recent decision in *Bazzi* to confirm that if an insurer is entitled to rescind a no-fault policy due to fraud, it is not obligated to pay benefits even to a third party whom is innocent of the fraud.<sup>3</sup> As such, the trial court's denial of the dispositive motion was reversed and the carrier was entitled to rescind the policy.

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<sup>2</sup> *Bazzi v Sentinel Ins Co*, \_\_\_ Mich App \_\_\_ (2016); See also Secret Wardle No Fault Newslines: [Innocent Third Party Rule Is Abolished](#), [Titan v Hyten Ins Co Applies to PIP Claims](#), Klingler, Sidney A. (2016, June 15)

<sup>3</sup> In a footnote, the opinion notes the instant claimant was not truly an innocent third party, as he was the owner, registrant, and driver of the vehicle and as such, had an obligation to ensure he had applicable insurance.

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