

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## Renewal Still Requires Full Disclosure: Failure to Disclose an Additional Driver at Time of Renewal of a No-Fault Policy May Result in Rescission

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In *Tiffany Lynn Dewley and Beaumont Health System v Pioneer State Mutual Insurance Company and Robert Woodyard*, an unpublished opinion per curiam of the Court of Appeals, issued October 25, 2016 (Docket No. 324751), the Court of Appeals dealt with a request by both Dewley (the plaintiff) and Woodyard (the third-party defendant) that the court overturn the trial court's decision to allow Pioneer State to rescind a no-fault policy issued to Woodyard. By doing so, Pioneer State avoided liability for payment of no-fault benefits to Dewley and Beaumont.

Dewley and Woodyard lived together from 2008 until 2013. At some point, Dewley's vehicle became unreliable and Woodyard allowed her to drive his Saturn Vue which was insured by Pioneer. However, Woodyard did not add Dewley as an additional driver residing in the same household. In 2013, Dewley was driving the Saturn Vue, was involved in an accident, and was seriously injured and treated at Beaumont Health System.

After Dewley filed a claim for no-fault benefits, Pioneer learned that she had a bad driving record and would have been ineligible for coverage under the policy if Woodyard would have revealed that she was living in his household. Pioneer denied Dewley's claim and rescinded the policy based on fraud. After a lawsuit was filed, a bench trial was held where the trial court found that there was sufficient evidence of fraud allowing Pioneer to rescind the policy.

First, it was argued that the trial court erred in finding that silent fraud was established. The trial court ruled from the bench that, because Dewley and Woodyard failed to inform Pioneer of her residency and driving of the Saturn Vue, Pioneer was able to establish silent misrepresentation and/or fraud sufficient to rescind the policy.

### SECRET WARDLE NOTES

If the policy requires it, an insured has a duty to review information for accuracy when renewing a no-fault policy. This duty requires disclosure of an additional driver in the household. Failing to disclose the additional driver can be considered silent fraud resulting in rescission of the policy.

This unpublished Court of Appeals decision applied that rule even when the claimant, who was the undisclosed additional driver, was an innocent third-party. The Court also upheld the rescission even when the insurer had not yet returned premiums paid because the claim had gone into litigation and the rescission issue was to be determined in that litigation.

The Court of Appeals upheld the trial court's decision. More specifically, Woodyard conceded that the information regarding his policy was not up to date when it was renewed and that he had failed to inform Pioneer that Dewley was an additional driver in his household. Also, there was no dispute that Dewley would not have been eligible for coverage under Pioneer's underwriting guidelines because of her poor driving record.

In regard to Pioneer's argument that Woodyard had engaged in silent fraud, Woodyard argued that he did not have a duty to disclose information about Dewley to Pioneer. The Court of Appeals disagreed. Based on the terms of the policy, an insured is obligated to review the information provided to Pioneer at the time the application was made and each time the policy was renewed. Evidence showed that Woodyard had made changes to his policy by adding new vehicles but never disclosed that Dewley was an additional driver in his household.

In fact, Woodyard demonstrated an understanding of his obligation when he contacted his insurance agent about his daughter obtaining coverage under her boyfriend's policy. The Court of Appeals did not address whether Pioneer had established active fraud as well because the finding that silent fraud had occurred was sufficient to affirm the trial court's ruling that Pioneer could rescind the policy.

It was also argued that the trial court erred by finding that Dewley, herself, had also committed an act of fraud by failing to disclose to Pioneer her residency and to identify herself as an additional driver of the Saturn Vue. The Court of Appeals agreed that the trial court was wrong to find that Dewley had committed fraud, but concluded that the error was harmless. Since Dewley was not the policyholder she had no legal obligation of disclosure based on the policy language. There was no evidence that Dewley was ever a party to any discussion or inquiry from Pioneer or its agents. Therefore, there was no basis to find that Dewley had a duty to disclose on which a claim for silent fraud may have been based. That being said, the error was harmless because the trial court's ruling was based on Woodyard's silent fraud, not Dewley's.

The Court of Appeals found that Dewley's status as an innocent third-party did not prevent Pioneer from rescinding the policy. The Court relied on *Bazzi v Sentinel Ins Co*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2016) which overruled the innocent third-party rule. The *Bazzi* Court ruled that an insurer is not obligated to pay no-fault benefits to an innocent third-party when the insurer is entitled to rescind the policy based on the insured's fraud.

Lastly, it was argued that Pioneer waived its right to rescind Woodyard's policy because it continued the policy after sending notice of the rescission. Pioneer retained all the premiums and did not add Dewley to the policy. The Court of Appeals pointed out the distinction between rescission and cancellation.

When a policy is canceled, it is terminated as of the cancellation date and is effective to that date. On the other hand, when a policy is rescinded, it is considered void *ab initio* or considered never to have existed. The trial court ruled that Pioneer did not waive its right to rescind since the matter was in litigation and, therefore, it was proper for Pioneer to wait for a declaratory judgment before returning the premiums. The appellants relied on a case, *Burton v Wolverine Mutual Ins Co*, 213 Mich App 514; 540 NW2d 480 (1995), where an insurer elected to cancel a policy and retained the insurance premiums paid to that point after discovering that the insured had misrepresented his driving record on his original application. When another insured was injured, the insurer changed course and decided to rescind the policy instead. The Court of Appeals held that, once an insurer discovers fraud and elects a remedy (cancellation or rescission) for that fraud, it is bound to that relief and cannot change course.

The Court found that this case was different from *Burton* because Pioneer never elected to cancel the policy and, instead, sought rescission as soon as the fraud was discovered. It only withheld refunding premiums because a declaratory action was filed to determine the parties' rights and responsibilities. Therefore, Pioneer's decision to retain the premiums while the case was pending was not inconsistent with its election to seek rescission of the policy.

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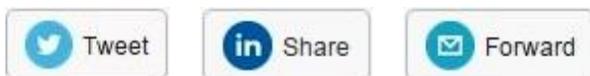
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