

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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***Hyten* Showdown — The Debate Continues as the Michigan Court of Appeals Releases Another Unpublished Opinion as to the Viability of the Innocent Third-Party Rule as it Applies to PIP Benefits**

By Alison M. Quinn

On February 19, 2015, the Michigan Court of Appeals released an unpublished per curiam opinion in the case of *State Farm Mutual Automobile Insurance Company v QBE Insurance Corporation et al.* (Docket Nos. 319709 and 319710). This case concerned an August 12, 2011, motor vehicle/motorcycle accident in the course of a police pursuit. The primary issue in this lawsuit was a priority dispute between three insurance companies: State Farm Mutual Automobile Insurance Company (State Farm), QBE Insurance Corporation (QBE), and Michigan Municipal Risk Management Authority (MMRMA). Pursuant to MCL § 500.3114(5)(a), "[t]he insurer of the owner or registrant of the motor vehicle involved in the accident" would be first in priority for the motorcycle operator's personal protection insurance (PIP) benefits. Of note, however, QBE sought a declaration that it was entitled to a rescission of the policy on the grounds of fraud and therefore not liable for PIP benefits.

At the time of the accident, Officer Anson was driving a Toyota Prius and pursuing William Johnson who was driving a Pontiac Grand Prix. Johnson then ran a red light and collided with Martin Bongers and his motorcycle. The Grand Prix was uninsured but was titled and registered to Whitney Gray, Johnson's girlfriend. QBE insured another vehicle allegedly owned by Gray, State Farm insured Bongers' personal vehicle, and the Toyota Prius was insured with MMRMA. While State Farm and MMRMA disputed whether the Toyota Prius was "involved" in the accident, QBE argued that the vehicle it insured, an Oldsmobile Cutlass, was in fact not registered to Gray nor owned by her and it would not have issued the policy had it known this information. Accordingly, it sought rescission of the policy.

On QBE's motion for summary disposition, the trial court found that Gray owned the Oldsmobile and nonetheless no-fault coverage could not be rescinded with regard to an innocent third-party. QBE appealed to the Michigan Court of Appeals. On appeal, QBE argued that in *Titan Insurance Company v Hyten*, 491 Mich 547 (2012), the Michigan Supreme Court abrogated the "innocent third-party rule." In rejecting this argument, this panel of the Court of Appeals relied upon pre-*Hyten* case law, particularly *Katinsky v Auto Club Insurance Association*, 201 Mich App 167 (1993), for the proposition that an insurer is estopped from asserting fraud and rescinding a contract as it applies to an innocent third-party. In addition, the Court opined that the *Hyten* holding had no bearing on the innocent third-party rule in the context of PIP benefits since the Michigan

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The debate as to whether the Michigan Supreme Court's decision in *Titan Insurance Company v Hyten* abrogated the innocent third-party rule continues. Although the Court of Appeals unpublished opinion in *State Farm* was that the *Hyten* holding has no bearing on the innocent third-party rule in the context of PIP benefits, more Court of Appeals panels have held to the contrary and opined that *Hyten* does apply to PIP claims. At this time, however, a published decision from either the Michigan Court of Appeals or Michigan Supreme Court is needed to conclusively resolve the issue.

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Supreme Court held that the remedy is not available where prohibited by statute and Bongers' entitlement to PIP benefits was statutory and not contractual.

The Court of Appeals in this case narrowly construed *Hyten* as only applying where an insurer reforms its policy to avoid liability for amounts in excess of the statutory minimums with automobile negligence claims. It shows the need for the innocent third-party rule issue to be addressed by a published decision by either the Michigan Court of Appeals or Michigan Supreme Court; as it stands, the unpublished decisions clash. On September 23, 2014, the Michigan Court of Appeals released an unpublished opinion in the matter of *Frost v Progressive Michigan Insurance Company* (Docket No. 316157) wherein Secret Wardle was successful in having the Michigan Court of Appeals determine that *Hyten* allowed an insurer to rescind a policy to deny PIP benefits as it pertains to an innocent third-party. See Secret Wardle's *No-Fault Newslines*, "Death of 'Innocent Third Party' Rule also Applies in PIP cases," dated October 28, 2014. *Frost* is pending on Application for Leave to Appeal to the Michigan Supreme Court.

CONTACT US

Troy
2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

Lansing
6639 Centurion Drive, Ste. 100, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 600, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair
Terry S. Welch

Editor
Linda Willemsen

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