

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Willful material misrepresentations by insured constitute fraud: PIP and UM Benefits Denied.

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The Michigan Court of Appeals, in *Mina v Gen Star Indemnity Co*, 218 Mich App 678, 686; 555 NW2d 1 (1996) rev'd in part on other grounds 455 Mich 866 (1997), explained the defense of fraud or false swearing:

The insurer's defense of "false swearing" is an allegation that the insured submitted fraudulent proof of loss. Fraud or false swearing implies something more than mistake of fact or honest misstatements on the part of the insured. It may consist of knowingly and intentionally stating upon oath what is not true, or stating a fact to be true although the declarant does not know if it is true and has no grounds to believe that it is true. In order to prevail, the insurer must prove not only that the swearing was false, but also that it was done knowingly, willfully, and with intent to defraud. Fraud cannot be established from the mere fact that the loss was less than was claimed in the preliminary proofs furnished to the insurer.

Mina v Gen Star Indemnity Co further stated the required elements for establishing the defense:

To void a policy because the insured has willfully misrepresented a material fact, an insurer must show that (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. A statement is material if it is reasonably relevant to the insurer's investigation of a claim. *Id.* at 686

In an unpublished decision, *Nazhat Babri and Dr. Labeed Nouri and Dr. Nazih Iskander v IDS Property Casualty Insurance Company*, the Michigan Court of Appeals held that the fraud exclusion in the defendant-insurer's policy applied, precluding the plaintiff-insured's claim for PIP benefit and UM benefits. Further, the intervening plaintiffs-treating physicians' claims for PIP benefits were similarly barred because the intervening plaintiffs stood in the shoes of the named insured.

In *Babri*, defendant issued a no-fault automobile policy to plaintiff on October 12, 2011. On October 20, 2011, plaintiff was involved in a motor vehicle accident. According to the police report, as plaintiff exited an alley in Detroit, her brakes "failed" and she hit another car. The police report indicated only two cars were involved. However, plaintiff's deposition testimony strayed from the report; plaintiff claimed

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Assuming an insured's policy contains a general fraud exclusion, this case reaffirms the ability of an insurer to void a policy because the insured willfully misrepresented a material fact. The Court held that the fraud exclusion in the defendant-insurer's policy applied, precluding the plaintiff-insured's claim for PIP benefits and UM benefits. Further, the intervening plaintiffs-treating physicians' claims for PIP benefits were similarly barred because the intervening plaintiffs stood in the shoes of the named insured. However, caution is appropriate when relying on this case as it is unpublished, and therefore not binding authority.

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a third car was involved. Plaintiff sought PIP and uninsured motorist benefits from defendant. Intervening plaintiffs, doctors who treated plaintiff, intervened to receive PIP benefits payable to plaintiff for medical services they provide after the accident.

Plaintiff submitted to defendant “Household Services Statements” which indicated that multiple replacement services were provided daily to plaintiff from October 2011 through February 29, 2012. Specifically, the October Household Service Statement indicated that plaintiff received replacement services for the entire month of October. Defendant produced surveillance evidence depicting plaintiff performing activities inconsistent with her claimed limitations. Plaintiff was observed bending, lifting, carrying objects, running errands, and driving on the dates she specifically claimed she needed help with such tasks.

Defendant filed a motion for summary disposition, arguing that pursuant to the terms of the policy, PIP benefits and uninsured motorist benefits were precluded because of plaintiff’s fraudulent representations. The motion also argued that because intervening plaintiffs stood in the shoes of plaintiff, they were not entitled to receive PIP benefits. In regard to uninsured motorist benefits, defendant argued that because the phantom third vehicle did not strike plaintiff’s vehicle, the plain language of the policy precluded the payment of uninsured motorist benefits.

Defendant’s no-fault policy contained a general fraud exclusion, which provided:

We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

The Court of Appeals found that the trial court did not error. The Court found no genuine issue of material fact regarding plaintiff’s fraud. Defendant’s evidence belied plaintiff’s assertion that she required replacement services, and directly and specifically contradicted representation made in the replacement services statements. Simply stated, Plaintiff made fraudulent representations for purposes of recovering PIP benefits. Because plaintiff’s claim for PIP benefits were precluded, intervening plaintiffs’ claim for PIP benefits were barred, as they stand in the shoes of plaintiff.

As to the UM benefits claim, the policy language required “some sort of physical contact with the insured.” Plaintiff admitted that she made no direct or indirect contact with the third vehicle during the accident. Therefore, the uninsured motorist provision of the policy would not apply. Furthermore, based on plaintiff’s fraudulent representations, coverage was not applicable under the general fraud exclusion of the policy.

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