

Fraud Coverage Update

September 15, 2023

Fraud – Michigan

Gary v. Farmers Ins. Exch.

No. 361880, 2023 WL 5808505 (Mich. Ct. App. Sept. 7, 2023)

The Michigan Court of Appeals reversed a grant of summary judgment to an insurer, holding that the trial court incorrectly found there were no questions of fact as to whether an insured had knowingly made false statements to the insurer in a policy application. In a concurring opinion, one member of the appellate panel opined that in order to sustain a claim of auto insurance fraud, insurers should be required to show that the insured intended to defraud the insurer.

On Jan. 4, 2019, Kevin Gary (Gary) was involved in an auto accident in which he sustained bodily injuries. The driver of the vehicle in which he was a passenger did not have auto insurance, and Gary had no insurance of his own. He, therefore, applied for no-fault insurance benefits with the Michigan Automobile Insurance Placement Facility, which assigned Farmers Insurance Exchange (Farmers) as the No-Fault provider. His application was prepared with the assistance of counsel, which indicated that he was employed at the time of the accident. Later, Gary submitted certain forms to Farmers for benefits under the No-Fault coverage part, including replacement services forms in which his father billed for time assisting Gary in 2019.

Gary filed suit against Farmers for breach of contract. Farmers sought summary disposition of Gary's claim on the basis that he had committed fraudulent insurance acts and was ineligible for No-Fault benefits under the statute. Farmers cited misrepresentations in Gary's application for benefits regarding his work history, as well as misrepresentations in his father's submitted replacement services forms. The trial court granted Farmers' motion, finding that Gary had knowingly made material misrepresentations on the application and in the replacement services forms. Gary appealed the decision.

On appeal, an appellate court panel reversed the trial court's decision, finding that the lower court had improperly found that there were no questions of material fact as to whether Gary knowingly made false statements relating to his claim for no-fault benefits. Specifically, evidence had been proffered that Gary had cognitive deficits that may have caused him to have difficulty with recall and comprehension relating to the forms at issue, which would have explained inconsistencies in his application.

In a concurring opinion, Judge Douglas Shapiro found that insurers should be required to show not only that an insured had knowingly made false statements, but also that such statements were made with intent to defraud the insurer, saying, "it borders on the absurd to conclude the Legislature

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intended that a *fraudulent* insurance act could be committed without a showing of fraudulent intent ... There is no indication that the Legislature intended to deviate from the fundamental common-law rule that fraud requires an intent to defraud.”

By: Stephanie Brochert