



## Summary of Meemic v Fortson

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The Michigan Supreme Court issued a decision on July 29, 2020, which held that an insurer's anti-fraud provision was "invalid and unenforceable" because it is not based on a statutory or unabrogated common law defense. The decision is significant because it affects a carrier's ability to enforce a provision of its own contract with its insured. However, the decision does not appear to prevent carriers from denying fraudulent claims without voiding the policy. Further, it is important to note that this case involves fraud committed by insureds who were not the injured claimants, and the Court's ruling appears to attempt to avoid punishing injured persons for fraud committed by others.

Similarly, this ruling does not apply to fraudulent acts committed by an insured in the procurement of the policy, and it appears insurers may still void policies in those situations. Likewise, the decision does not impact carriers enforcing statutory provisions that allow a denial of an ineligible claim under the Michigan Assigned Claims Plan such as a person presenting false information or a claim supported by fraudulent insurance act as provided by MCL 500.3173a. The facts and rulings of the Court are summarized below:

In *Meemic*, the injured party, Justin Fortson, fell from the hood of a moving vehicle; he suffered serious injuries, including brain damage, which left him in need of constant supervision. His parents, Louise and Richard Fortson, decided to provide him with 24 hour attendant care rather than place him in a brain-injury rehabilitation center. Richard and Louise were named insureds on a policy with Meemic Insurance Company at the time of the accident, and Justin was an "insured person" under the policy as a resident relative pursuant to MCL 500.3114(1). Meemic agreed to pay \$11 per hour for Justin's attendant care and requested monthly bills documenting the actual hours spent providing the care. Meemic paid for attendant care submitted from October 2009 through October 2014. However, an investigation by Meemic revealed that Justin had been in jail for 233 days and in drug rehabilitation for an additional 78 days between September 12, 2012 through July 2014; during this period of time, his parents continued to

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submit claims for attendant care.

Meemic sued Justin and his parents to void the policy pursuant to the antifraud provision so it would no longer be required to pay Justin's claim. Meemic's Complaint alleged breach of contract, fraud, common-law statutory conversion, and unjust enrichment. Meemic's anti-fraud provision provided in pertinent part:

This entire policy is void if any insured person has intentionally concealed or misrepresented any material fact or circumstance relating to:

1. This insurance;
2. The Application for it;
3. Or any claim made under it.

Meemic moved for summary disposition requesting an order that voided the insurance policy under the antifraud provision, terminated any future liability, and required the Fortsons to reimburse Meemic for the fraudulent attendant care submissions. The trial court denied Meemic's motion on the basis of the innocent-third party rule, and then the court later granted the motion on reconsideration after the Court of Appeals held that the innocent-third-party rule was no longer good law in *Bazzi v Sentinel Ins Co*, 315 Mich App 763; 891 NW2d 13 (2016). The Court of Appeals reversed the trial court's decision because *Bazzi* did not apply in this case because the fraud did not occur in the procurement of Meemic's insurance policy.

The Supreme Court only affirmed the result of the Court of Appeals' decision. More specifically, the court concluded that an insurance policy provision that sets forth defenses to mandatory coverage under the no-fault act is only valid and enforceable if it contains statutory defenses or unabrogated common-law defenses, and neither applied in this case. Meemic did not assert a statutory defense. Meemic's common law defense also failed because it was not the type of common law fraud that would permit rescission. Or in other words, Meemic did not rely on any fraudulent misrepresentations in issuing the policy or show that the misrepresentations constituted a failure to perform a substantial part of the contract or an essential term.

If you have any questions, please feel free to contact the authors:

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