



## Summary of Glasker-Davis

Adam A. Fadly and Stefania Gismondi

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On August 13, 2020, the Michigan Court of Appeals issued a published decision holding that “a defense premised on an alleged violation of an anti-fraud provision in an insurance policy constitutes an affirmative fraud defense . . . [and] must be stated with particularity . . . [t]hus, it is insufficient simply to state that a plaintiff’s conduct had been fraudulent.” *Glasker-Davis v Meemic Ins Co*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2020) (Docket No. 345238). This holding will have far-reaching effects on how fraud affirmative defenses are pleaded in responsive pleadings, and when they will ultimately be raised after the facts supporting them are sufficiently developed. The case’s facts are summarized as follows:

In *Glasker-Davis*, Plaintiff was injured in a motor vehicle accident and was covered under a policy of insurance with Meemic. Plaintiff made a claim for replacement services or “chores.” Plaintiff submitted forms to Meemic showing that her daughter, Alicia Glasker, cleaned the kitchen, washed dishes, and cooked almost every day from July 1, 2016 through September 30, 2017. Plaintiff filed suit against Meemic alleging that Meemic refused to pay for her household services. Meemic filed an answer that consisted mostly of boilerplate denials; in addition, Meemic filed affirmative defenses with 46 paragraphs, which were mostly boilerplate. Among the affirmative defenses, Meemic stated, “The Plaintiff has given false and/or conflicting information to Defendant, thus are [sic] fraudulent in nature.”

In discovery, Plaintiff testified that she did not keep track of Alicia’s assistance, but rather Alicia kept track of the chores she performed on forms that Plaintiff would review and sign. The Court made note that the “Household Services Statements” appeared to be signed by Alicia, and the handwriting appeared the same on all the forms. Plaintiff testified that Alicia came over twice a week in August of 2017; however Alicia came over on a daily basis when Plaintiff first became “sick.” For at least some portion of 2016, Alicia came over about 3 times per week. Plaintiff relied on the forms to determine when Alicia performed the services.

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### **AUTHORS/ CONTRIBUTORS**

Adam A. Fadly

Stefania Gismondi

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Meemic moved for summary disposition on the basis of the fraud provision in its policy. The relevant portion provided, “entire Policy is void if any insured person has intentionally concealed or misrepresented any material fact or circumstance relating to . . . any claim made under it.” Meemic argued that Plaintiff’s deposition conflicted with the statements submitted. Plaintiff argued that the fraud provision required **intentional** misrepresentations, and there were questions of fact regarding whether Plaintiff intentionally provided conflicting or inaccurate information. Further, Plaintiff argued that Meemic had not properly raised fraud in its affirmative defense because it merely referred to fraud and did not plead it with particularity as required by the Court Rules. The trial court granted Meemic’s motion, however, during the hearing, the parties and the court did not mention Meemic’s waiver of fraud defense.

The Court of Appeals found that Plaintiff preserved the issue of Meemic’s waiver of fraud defense by raising it in the response to the Motion. The Court concluded that affirmative defenses are analogous to pleadings serve the essential same functional purpose.

A Defendant is not required to list ever possible conceivable affirmative defense at the commencement of a case, rather a defendant may and should amend is affirmative defenses on an ongoing basis as supported by the actual evidence discovered. The Court agreed with Plaintiff that even under ordinary notice-pleading requirements, a laundry list of affirmative defenses does not give Plaintiff proper notice of the defense. Furthermore, the defense of fraud requires more detailed allegations under MCR 2.111(F)(3)(a). Under MCR 2.113(B)(1), the circumstances regarding the allegation of fraud or mistake must be stated with particularity. The Court held that Meemic’s affirmative defense did not adequately raise the affirmative defense of fraud. The Court reversed summary disposition and remanded for further proceedings.

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

- Adam Fadly...248.539.9904...afadly@fosterswift.com
- Stefania Gismondi...248.538.6332...sgismondi@fosterswift.com

Or another member of Foster Swift’s No-Fault Litigation Practice Group, including:

- Paul Millenbach...248.539.9908...pmillenbach@fosterswift.com