



Michigan Court of Appeals Clarifies Application of No-Fault Act's One Year Back Rule to Fraud Claims

Laura J. Garlinghouse

Foster Swift No-Fault E-News

May 15, 2009

In an opinion approved for publication on May 12, 2009, the Court of Appeals held that the one-year back rule applies to a fraud claim if the plaintiff cannot establish reasonable reliance on the insurer's representations. *Johnson v Wausau Ins Co*, Docket No. 281624.

Plaintiff was the caregiver for a child who was injured in a 1983 motor vehicle accident. The insurer paid Plaintiff and a prior caregiver \$20 per day, but the adjuster did not advise the caregivers that attendant care benefits based on an hourly rate were also available. In 2006, Plaintiff sued the insurer for retroactive attendant care benefits under theories of breach of contract and fraud. The trial court held that the one-year back rule precluded recovery.

The Court of Appeals affirmed. The Court recognized that in *Cooper v Auto Club Ins Ass'n*, the Michigan Supreme Court held that fraud actions are not subject to the one-year back rule. However, the *Cooper* court cautioned that insureds should not use fraud allegations to circumvent the one-year back rule. The *Cooper* court noted that to prevail on a fraud claim, insureds must establish that they reasonably relied on an insurer's misrepresentation.

In this case, the Court reasoned that even if the insurer misrepresented the availability of attendant care benefits, Plaintiff could not reasonably have relied on that representation because it did not concern facts that were exclusively within the insurer's control. The Court reasoned that Plaintiff could have consulted with an attorney to verify the adjuster's representations. Plaintiff therefore could not establish fraud, and the one-year back rule applied.

This case is important because it clarifies the parameters of the *Cooper* decision. Plaintiff has filed an application for leave to appeal to the Michigan Supreme Court, but it is not yet known whether the application will be granted.

AUTHORS/ CONTRIBUTORS

Laura J. Genovich

PRACTICE AREAS

Insurance Defense

No-Fault Litigation