

STATE OF MICHIGAN  
IN THE SUPREME COURT

MEEMIC INSURANCE COMPANY, Supreme Court No. 158302  
Plaintiff/Counter-Defendant/Appellant, Court of Appeals No. 337728

v

LOUISE M. FORTSON, RICHARD A. FORTSON, Individually, and RICHARD A. FORTSON, as Conservator for JUSTIN FORTSON,  
Berrien County Circuit Court  
No. 14-260-CK  
Defendants/Counter-Plaintiffs/Appellees.

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**DEFENDANTS/COUNTER-PLAINTIFFS/APPELLEES' RESPONSE TO PLAINTIFF-  
APPELLANT MEEMIC INSURANCE COMPANY'S BRIEF ON APPEAL**

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II.

MEEMIC IS SEEKING EQUITABLE RELIEF.

III.

AN INSURER CANNOT AVOID COVERAGE FOR PERSONAL INJURY PROTECTION BENEFITS UNDER MICHIGAN'S AUTOMOBILE NO-FAULT ACT PURSUANT TO A FRAUD-EXCLUSION CLAUSE WHICH CONFLICTS WITH A STATUTORY RIGHT TO RECEIVE BENEFITS UNDER MCL 500.3114(1).

IV.

THE COURT OF APPEALS CORRECTLY CONCLUDED THAT AT THE TIME OF THE FRAUD, RICHARD AND LOUISE FORTSON WERE NOT INSURED PERSONS, BUT RATHER, WERE ATTENDANT CARE PROVIDERS, SUCH THAT THEIR FRAUD DID NOT TRIGGER A FRAUD EXCLUSION, THEREFORE, MEEMIC CANNOT USE IT TO DENY JUSTIN FORTSON'S ENTITLEMENT TO NO-FAULT MEDICAL BENEFITS.

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**STATEMENT OF JURISDICTIONAL BASIS**

The Court of Appeals' judgment from which MEEMIC appeals was issued May 29, 2018. A Motion for Reconsideration was denied in an order entered July 12, 2018. This Court has jurisdiction to decide this appeal pursuant to MCR 7.303(B)(1).

**COUNTER-STATEMENT OF QUESTIONS PRESENTED**

I.

DID THE COURT OF APPEALS PROPERLY DISTINGUISH *BAZZI V SENTINEL INS. CO.*, 315 MICH APP 763 (2016); AFF'D IN PART, REV'D IN PART; 502 MICH 390 (2018), IN ITS DETERMINATION THAT THERE ARE NO GROUNDS FOR *AUTOMATIC* RECISION OF THE INSURANCE POLICY?

The Trial Court answered "No".

The Court of Appeals answered "Yes".

Plaintiff/Counter-Defendant/Appellant contends the answer should be "No".

Defendants/Counter-Plaintiffs/Appellees contend the answer should be "Yes".

II.

IS MEEMIC SEEKING EQUITABLE RELIEF?

The Trial Court did not address this issue.

The Court of Appeals answered "Yes".

Plaintiff/Counter-Defendant/Appellant contends the answer should be "No".

Defendants/Counter-Plaintiffs/Appellees contend the answer should be "Yes".

III.

CAN AN INSURER AVOID COVERAGE FOR PERSONAL INJURY PROTECTION BENEFITS UNDER MICHIGAN'S AUTOMOBILE NO-FAULT ACT PURSUANT TO A FRAUD-EXCLUSION CLAUSE WHICH CONFLICTS WITH A STATUTORY RIGHT TO RECEIVE BENEFITS UNDER MCL 500.3114(1)?

The Trial Court did not address this issue.

The Court of Appeals answered "No".

Plaintiff/Counter-Defendant/Appellant contends the answer should be "Yes".

Defendants/Counter-Plaintiffs/Appellees contend the answer should be "No".

v.

IV.

WAS THE COURT OF APPEALS CORRECT IN CONCLUDING THAT AT THE TIME OF THE FRAUD, RICHARD AND LOUISE FORTSON WERE NOT INSURED PERSONS, BUT RATHER, WERE MERELY ATTENDANT CARE PROVIDERS, SUCH THAT THEIR FRAUD DID NOT TRIGGER A FRAUD-EXCLUSION SO MEEMIC CANNOT USE IT TO DENY JUSTIN'S NO-FAULT MEDICAL BENEFITS?

The Trial Court answered "Yes".

The Court of Appeals answered "No".

Plaintiff/Counter-Defendant/Appellant contends the answer should be "Yes".

Defendants/Counter-Plaintiffs/Appellees contend the answer should be "No".

### STATEMENT OF FACTS

On September 18, 2009, Justin Fortson suffered severe brain damage in a motor vehicle accident. He was left with permanent severe traumatic brain injury resulting in a need for constant supervision. His doctors have prescribed 24 hour care, seven days per week. At the time of the accident, MEEMIC Insurance Company provided No-Fault coverage to Justin's parents. (Policy, [App., p. 1a]). MEEMIC does not claim that the policy was obtained fraudulently or that there was any fraud in the procurement of the policy, nor that Justin committed fraud. MEEMIC Insurance Company accepted the application for personal injury protection benefits and paid, as Justin age 19, was a resident relative living with his parents who were the insureds on the MEEMIC policy. (First Amended Complaint, [App., p. 25a]). Justin Fortson was not a named insured on any automobile no-fault insurance policy. Coverage was provided under the contract and pursuant to MCL 500.3114(1). (Policy, [App., p. 1a]). While Justin was hospitalized for his brain injury, MEEMIC Insurance Company offered Richard and Louise Fortson the opportunity to be paid \$12.00 per hour, 24 hours a day, seven days a week, to provide attendant care services to their son Justin, in their home, as opposed to Justin living in a head-injury institution. (Meredith Valko, MEEMIC Adjuster, Deposition Transcript, [App., pp. 88a, 94a]). Richard and Louise were unsuccessful in efficiently supervising their son, as he ran into trouble with the law including involvement with illegal drugs. ( Meredith Valko, MEEMIC Adjuster Deposition Transcript, [App., p. 90a]). MEEMIC terminated insurance coverage for Louise and Richard Fortson on 7-29-10 (prior to the occurrence of the alleged fraud) citing Justin Fortson's driving record as a reason. (Notice of Term, [App., p. 100a]).

Justin Fortson did spend some time in jail and also spent about six weeks in drug rehabilitation during the time period that MEEMIC continued to pay attendant care services to



Richard Fortson based on attendant care service forms that were completed by Justin's mother, Louise Fortson. (Meredith Valko, MEEMIC Adjuster, Deposition Transcript, [App., pp. 88a, 94a]). Richard Fortson never submitted any attendant care service forms, yet he was paid by MEEMIC Insurance Company for caring for Justin 24 hours a day, seven days a week as a result of their son's brain injury. (Meredith Valko, MEEMIC Adjuster, Deposition Transcript, [App., p. 8ba]). Meredith Valko (MEEMIC Adjuster) acknowledged that she did not believe that there was an intent to deceive or commit a fraud on the insurance company by any of the Appellants. (Meredith Valko, MEEMIC Adjuster, Deposition Transcript, [App., pp. 90a, 93a, 96a, 97a]).

On March 13, 2017, the Trial Court brought on for Hearing, Motion for Summary Disposition. It was clear that Judge Donahue was reluctant, but felt compelled to apply case law to this matter resulting in an unjust termination of benefits under Michigan's No-Fault Act. (03/13/2017, Tr., [App., p. 166a]). Judge Donahue recognized a significant distinguishing feature in this case from those cases where fraud was committed by a person applying for a Policy or by the person receiving the benefits. (03/13/2017, Tr., [App., p. 166a]). The Judge expressed his "hope" that the case comes back to him because he agreed that fraud by an attendant care provider was a distinguishing difference that arguably should result in a different outcome than fraud committed by the insured at the application stage. (03/13/2017, Tr., [App., p. 167a]). Judge Donahue recognized the difference in this case from those cases that seemingly abolish the innocent third party rule, and that a different result is warranted. (03/13/2017, Tr., [App., p. 167a]). In fact, in conclusion, Judge Donahue stated that he hoped that the Court would give some instruction and remedy that would address the seemingly unjust result that occurs by strictly applying an abolition of innocent third party doctrine to this case where fraud was not committed at the application stage, and where the fraud was not committed by the individual

entitled to benefits, but instead by the entity that was more accurately termed a "provider". (03/13/2017, Tr., [App., p. 169a]).

MEEMIC filed a Complaint seeking monetary damages together with a declaratory determination that it would void Justin Fortson's coverage in Count III because of the fraud committed by Louise and Richard Fortson. (Amended Complaint, [App., p. 25a]). The Fortsons filed a Counter-Complaint seeking incurred medical expenses, including but not limited to attendant care benefits alleging that MEEMIC had stopped paying all No-Fault medical benefits. (Answer, [App., p. 35a]). The Fortsons also claimed additional damages including fraud, bad faith and declaratory relief. Id.

### PROCEEDINGS IN THE LOWER COURTS

This is a first-party suit arising out of a September 18, 2009 motor vehicle accident in which Justin Fortson was injured. (First Amended Complaint, [App., p. 25a], paragraph 11; Answer to First Amended Complaint, [App., p. 35a], paragraph 11). This case was initiated by MEEMIC seeking monetary damages and to void Justin Fortson's first-party coverage. (First Amended Complaint, Court II and III [App., p. 30a]). The claim by Justin Fortson is for incurred medical expenses and, more importantly, involves Justin Fortson's right to obtain No-Fault insurance benefits in the future. (Counter-Complaint for Personal Injury Protection Benefits,) ([App., p. 45a]),

In the lower court, Justin Fortson's right to No-Fault coverage was not at issue, his eligibility for coverage was created both by contract and by the No-Fault Act. (Policy, [App., p.1a]) There is no allegation that Justin Fortson committed any fraud or misrepresentation, the claim is that healthcare providers committed fraud. (First Amended Complaint, [App., p. 25a]). MEEMIC denied the benefits it believed to be improperly submitted and claimed damages it incurred against Louise and Richard Fortson. *Id.* Justin's ongoing need for medical treatment and care from injuries sustained in the motor vehicle accident are not at issue. *Id.*

On April 19, 2015 MEEMIC filed a Motion for Summary Disposition seeking to void the insurance policy providing no-fault coverage to Justin Fortson. (Motion for Summary Disposition, [App. p. 52a, 53a, paragraphs 8, 10]). The Trial Court denied MEEMIC's motion based upon the "innocent third party doctrine" which precluded voiding Justin's no-fault benefits due to his parents' fraud. (8/17/15 Tr., [App., p.117a]).

After the Court of Appeals decided *Bazzi v Sentinel Insurance Company*, 315 Mich App 763; 891 N.W.2d 13 (2016), *aff'd in part, rev'd in part* at 502 Mich 290; 919 N.W.2d 20 (2018)

MEEMIC filed a Renewed Motion for Summary Disposition (App., p. 119a).

A Response to the Renewed Motion was filed on September 7, 2016 (App., pp. 132a – 149a). The Fortsons' argument included a claim that Bazzi, supra was distinguished from the instant case because in Bazzi there was fraud at the inception of the policy, while the fraud alleged in the instant case involved fraud committed by healthcare providers after the insurance policy was properly obtained. (App., p. 141a -143a). Additionally, the Fortsons also argued that the No-Fault Act does not allow an insured's no-fault benefits to be extinguished because of the conduct of healthcare providers. (App., pp. 143a – 147a).

In a Supplemental Response the Fortsons argued that MEEMIC cancelled the insurance coverage of Louise and Richard Fortson by a correspondence dated July 10, 2010 effective July 29, 2010.

(Supplemental Response, [App., pp. 150a – 156a]; and Notice of Termination, [App., p. 100]).

On March 14, 2017 the Trial Court granted MEEMIC's motion based on the Bazzi, supra. (Transcript of 3/13/17, [App., p. 167a]) and (Order of 3/14/17, [App., p. 170a – 171a]).

The Trial Court's determination was appealed to the Court of Appeals and was reversed and remanded on May 29, 2018. (MEEMIC Insurance Company v Fortson, 324 Mich App 467; 922 N.W.2d 154 (2018). [Appendix p. 172a – 179a]). The Court of Appeals determined:

Affirmed the Trial Court's determination concerning fraud and/or misrepresentation with respect to the claims of Louise and Richard Fortson. Id at p. 173a – 174a.

That the Trial Court erred by finding Bazzi dispositive. Id. at 175a. Bazzi, supra and Titan v Hyten, 491 Mich 547; 817 N.W.2d 562 (2012) are distinguished because each involved fraud in the procurement of the insurance policy, whereas in the instant case the fraud involved arose after the policy was issued and was not

committed by the party being punished. Id at p. 174a – 175a. In Justin Fortson’s case, he was required by MCL 500.3114(1) to seek No-Fault coverage from his parents’ policy through MEEMIC. Because a policy existed at the time coverage was sought by Justin Fortson, the No-Fault Act applied to his claims.

That the fraud-exclusion clause of the insurance contract was invalid as it extended to Justin Fortson’s claim for No-Fault benefits that are required by MCL 500.3114(1) to be sought from his parents’ coverage. Id. at p. 176a. Even if Justin Fortson was not an “insured person” under his parents’ policy he would be statutorily entitled to benefits under their policy with MEEMIC. Id. MEEMIC would be required by the No-Fault Act to provide benefits. Id.

That even if the contract applied, at the time of the fraud claim Louise and Richard Fortson were not insureds as that policy had been canceled by MEEMIC. The Court of Appeals determined that the contract terms did not apply to limit Justin Fortson’s claims based upon the fraud or misrepresentation by Louise and Richard Fortson that occurred after the date of cancellation. Id. at p. 176a – 179a.

Judge Cameron dissented. Id. at p. 18a. He would have held:

That Bazzi, supra applies in the instant case to allow MEEMIC to rescind its policy as it relates to Justin Fortson’s claim for no-fault benefits. Id. at p. 181a.

That the anti-fraud provision applied to Justin Fortson’s claim for benefits because he was defined as an insured under the policy. Id. at p. 181a – 183a.

That the terms of the exclusion provision of the policy applied even after the policy had been cancelled. Id. at 183a – 185a.

This decision has been appealed to this Court.

### STANDARD OF REVIEW

This Court reviews the lower Court's determinations of law and statutory construction de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155; 645 N.W.2d 643 (2002). This Court also reviews interpretations of statutory language de novo. *Twp of Casco v Sec of State*, 472 Mich 566; 701 N.W.2d 102 (2005) and *Heritage Resources, Inc v Caterpillar Financial Services, Corp.*, 284 Mich App 617; 774 N.W.2d 332 (2009). Whether a statute applies in a particular case is also reviewed de novo. *Alex v Wildfong*, 460 Mich 10; 594 N.W.2d 469 (1999) and *Heritage Resources*, supra.

This Court reviews the lower Court's contract interpretation de novo. *Schmalfeldt v North Point Ins Co*, 469 Mich 422; 670 N.W.2d 561 (2003); *Archambo v Lawyer's Title Ins Corp*, 466 Mich 402; 646 N.W.2d 170 (2002).

## ARGUMENT

### I.

DID THE COURT OF APPEALS PROPERLY DISTINGUISH BAZZI V SENTINEL INSURANCE COMPANY, 315 MICH APP 763; 891 N.W.2D 13 (2016), AFF'D IN PART, REV'D IN PART AT 502 MICH 290; 919 N.W.2D 20 (2018), IN ITS DETERMINATION THAT THERE ARE NO GROUNDS FOR *AUTOMATIC* RECISION OF THE INSURANCE POLICY?

In the instant case Justin Fortson was an innocent third party. There is not evidence or allegation that Justin participated or benefited from any fraud alleged to have been committed by Louise in submitting the attendant care services form or on the part of his father Richard in receiving the checks from MEEMIC Insurance Company. (Court of Appeals Opinion, [App., p 174a]). In the present case a valid insurance policy existed before any alleged fraud occurred. This fact is distinguished from the claims made in Bazzi, supra. The claimant in Bazzi committed a fraud at the application stage and in procuring the policy. In Bazzi, the claim by the insurance company was that no policy existed. Similarly, in Titan v Hyten, 491 Mich 547; 817 N.W.2d 562 (2012), involved a claim involving fraud in the application for an insurance policy. In, supra, at page 564. Again, the insurance company's claim was that no policy existed.

This factual basis distinguishes the instant case from Bazzi and Titan Ins Co. In the instant case a valid insurance policy existed providing no fault insurance coverage prior to the claimed fraud. Prior to the alleged fraud, MEEMIC was required by a contract and also by statute to provide no fault insurance benefits for Justin Fortson. (Policy, [App. p. 1a]); MCL 500.3114(1). At the same time, Justin was required to look to MEEMIC for primary coverage under MCL 500.3114(1). He could not seek coverage from other possible insurers or from the Michigan Assigned Claims Plan (hereinafter MACP). In this case Personal Injury Protection benefits are mandated by the Michigan Automobile No Fault Act. (MCL 500.3101 and MCL

500.3105. Justin simply was unable to seek benefits from any other insurance carrier or the MACP due to the passage of time. The time frame for filing for benefits under the MACP had expired (MCL 500.3174). The claimed fraudulent act occurred much later than the required time frame for filing benefits from MACP. The fraudulent act claimed by MEEMIC occurred during 2012. (First Amended Complaint, [App., p. 28a -29a]). In this case a valid insurance policy existed before any alleged fraud occurred. For purposes of determining entitlement to personal injury protection benefits under Michigan's Automobile No Fault Act, the policy remains in effect and the Michigan Automobile No Fault Act controls the mandatory coverage, absent any rescission. (*Bazzi v Sentinel Insurance Company*, 315 Mich App 763; 891 N.W.2d 13 (2016), aff'd in part, rev'd in part at 502 Mich 290; 919 N.W.2d 20 (2018); Affirmed in part, reversed in part, 502 Mich 390 (2018)). Because the policy remained in effect, Justin Fortson was required to seek no fault insurance benefits from his parents' policy (MCL 500.3114(1)).

In the instant case the Court of Appeals properly determined that Plaintiff/Counter-Defendant/Appellant was not entitled to automatic rescission and that the instant case is distinguished from *Bazzi* by its facts. Justin Fortson is an innocent third party. Automatic rescission should not apply to his entitlement to No-Fault Benefits, and the Court of Appeals opinion should be affirmed and this case should be allowed to proceed in the Trial Court. Otherwise, Justin Fortson would be treated more harshly than the claimants who had fraudulently applied for a policy or submitted a claim. The Court of Appeals should be affirmed and this case should be allowed to proceed in the Trial Court.



## II.

## IS MEEMIC SEEKING EQUITABLE RELIEF?

In the instant case, MEEMIC has claimed both monetary damages against the healthcare providers (Louise and Richard Fortson) and also, the right to void Justin Fortson's Michigan Automobile No-Fault benefits based on fraud committed by those healthcare providers. (First Amended Complaint, [App. pp. 25a-34a]). Justin's coverage under the MEEMIC policy became effective September 18, 2009, the day he was injured in a motor vehicle accident. This policy remained in effect, absent of any form of rescission and the statutorily-mandated, Automobile insurance coverage was applicable. MEEMIC sought to void or rescind the policy, and other equitable relief. (First Amended Complaint, [App., p. 26a, p. 31a, and p. 34a]).

At paragraph 47 of MEEMIC's Complaint, MEEMIC requested that the Court make a determination as to whether Defendants' actions voided the policy and also that the Court make determinations, orders and judgments necessary to fully adjudicate the rights of the parties. (First Amended Complaint, [App., pp.31a-32a]). Here, MEEMIC has requested equitable relief. Therefore, MEEMIC is asking the Court to void the policy based on fraud of a medical provider which is committed years after the incident which gives rise to the entitlement to personal injury protection benefits on the part of the injured party.

In Bazzi this Court found that unless a policy is rescinded, the obligations under the contract continue. Thus Justin's claim continues unless rescinded. The claim to void or rescind is equitable in nature and not strictly a matter of right. The claim is to be granted only at the sound discretion of the Trial Court. In Bazzi this Court held that rescission is not automatic by operation of law. 502 Mich at 411. In Bazzi, supra this Court remanded the case to the Trial Court for a determination of the claim of rescission. This Court held that the Trial Court must

determine on a case-by-case basis whether, in its discretion, rescission of Justin Fortson's No-Fault coverage is available as between MEEMIC and Justin. 502 Mich at 411.

The Court of Appeals remanded this case to the Trial Court. The appeal of the Plaintiff/Counter-Defendant/Appellant should be denied and the claims of the parties in this case should be remanded to the Trial Court for determination consistent with this Court's determination in Bazzi.

## III.

## CAN AN INSURER AVOID COVERAGE FOR PERSONAL INJURY PROTECTION BENEFITS UNDER MICHIGAN'S AUTOMOBILE NO-FAULT ACT PURSUANT TO A FRAUD-EXCLUSION CLAUSE WHICH CONFLICTS WITH A STATUTORY RIGHT TO RECEIVE BENEFITS UNDER MCL 500.3114(1)?

It is undisputed that Justin Fortson was injured on September 18, 2009 and at that time was entitled to automobile No-Fault insurance benefits under policy number PAP0632676 issued by MEEMIC. (Policy, [App., p. 1a]). The policy period ran from 7/29/09 through 1/29/10. Id. The named insureds on that policy were Louise Fortson and Richard A. Fortson. It is not disputed that Justin Fortson was entitled to Michigan No-Fault Automobile Personal Injury Protection benefits under that policy as a resident relative of the insureds, and pursuant to MCL 500.3114(1) which sets forth the priority for seeking personal injury protection benefits under the Michigan Automobile No-Fault Act (MCL 500.3101). There is no dispute that Justin Fortson's injuries arose as a result of the operation or use of motor vehicle as a motor vehicle. There is no claim that Justin Fortson committed fraud. Instead, MEEMIC's request for relief rests solely upon the conduct of Louise Forston, for submitting claim forms for time periods that Justin was confined to jail or drug-rehabilitation or hospitalization, and, upon the conduct of Richard Fortson, to whom all attendant care benefits were paid. (First Amended Complaint, [App., pp. 25a-34a and Meredith Valko, Deposition Transcript, [App., pp. 93a, 96a, 97a]).

Louise Fortson's alleged fraudulent actions did not occur until September 2012. (First Amended Complaint, [App., p. 28a]). MEEMIC Insurance Company cancelled Louise and Richard Fortson's policy on July 29, 2010 by way of Notice of Termination or Declination of Insurance (Notice of Termination, [App., p. 100a]). The only claim pending at that time was Justin's claim for No-Fault benefits. Louise and Richard Fortson had no pending claims and

therefore are not "Claimants" under the policy. There is no allegation that the July 29, 2010 cancellation of the policy had any impact on Justin Fortson's entitlement to personal injury protection benefits. (First Amended Complaint [App., p. 25a]). In fact, the policy language itself limits the impact of such a cancellation by affirmatively indicating "Cancellation will not affect any claim that originated prior to the date of cancellation." (Policy, [App., p. 23a]). There can be no dispute that Louise and Richard Fortson were not and are not "Claimants" as pertains to personal injury protection benefits that their son Justin is entitled to under the Michigan Automobile No-Fault Act, and must be more accurately termed "medical providers". See Covenant Med Ctr, Inc. v State Farm Mut Auto Ins Co, 500 Mich 191; 895 N.W.2d 490 (2017) and MCL 500.3112.

In the instant case, the law of contract has significant application. See, Eghotz v Creech, 365 Mich 527; 133 N.W.2d 815 (1962). The contract should be viewed and interpreted in favor of the insured. See, Fresard v Michigan Millers Ins Co, 414 Mich 686; 327 N.W.2d 286 (1982). In reviewing the contract language, a Court must attempt to determine the intent of the parties and effectuate that intent. See, Auto Owners v Churchman, 440 Mich 560; 489 N.W.2d 431 (1992); and Auto Club Group Ins Co v Marzonie, 447 Mich 624; 527 N.W.2d 750 (1994). If the language is clear and unambiguous, the terms should be applied as written. See, Churchman, supra at 567. The entire policy must be read as a whole in order to determine what provisions actually mean. Id; and Boyd v General Motors Acceptance Corp, 162 Mich App 446; 413 N.W.2d 683 (1987); Parrish v Paul Revere Life Ins Co, 103 Mich App 95; 302 N.W.2d 332 (1981). Exclusionary clauses in insurance policies are strictly construed in favor of the insured. See, Churchman, supra at 566-567. Any question regarding the application of policy language is construed against the insurer who drafted the contract under review. See, State Farm Mut

*Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25; 549 N.W.2d 345 (1996); and *Raska v Farm Bureau*, 412 Mich 355; reh den 412 Mich 119 (1982); 314 N.W.2d 440 (1982).

In reviewing the insurance contract, the Court must apply the terms set forth in the contract. It is important to remember that ambiguity is defined broadly. See, *Marzonie*, supra, 447 Mich at 631; and *Cavalier Mfg Co v Employers Ins of Wausau*, 222 Mich App 89; 564 N.W.2d 68 (1997). Ambiguous terms of the insurance policy should be construed in favor of the insured. See, *Frankenmuth Mut Ins v Masters*, 460 Mich 105; 595 N.W.2d 32 (1999).

The insurance contract at issue contains provisions referring to an insured's concealment or fraud. (Policy, [App., p. 24a]). This provision reads as follows:

22. CONCEALMENT OR FRAUD

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

- A. This insurance;
- B. The Application for it;
- C. Or any claim made under it.

This provision references "any Insured person". In the instant case only Justin Fortson was an insured person after July 29, 2010 and there is no argument that he acted to conceal or committed any fraudulent act. In the instant case MEEMIC's claim is that healthcare provider Louise Fortson misrepresented the amount of time she spent providing attendant care to Justin Fortson. Louise Fortson was not an insured with MEEMIC after July 29, 2010. Louise Fortson was not an insured at the time she allegedly committed fraud or made misrepresentations. MEEMIC itself acted to terminate policy number PAP0632676 by way of Notice of Termination Or Declination Of Insurance mailed June 14, 2010. (Notice of Termination, [App., p. 100a]). By the terms of the notice itself the insurance coverage under the policy was ended by MEEMIC.

According to MEEMIC, Louise Fortson and Richard Fortson were not insureds after July 29, 2010. It was MEEMIC that cancelled Louise and Richard Fortson's insurance effective July 29, 2010. This was long before the alleged fraud. Reading the cancellation provision as written, it applies solely to insured persons.

*Bazzi*, supra involved an insurance policy that was procured by fraud. In this case the insurance at issue was in effect at the time of the accident and coverage questions did not arise until after 2012. MEEMIC acted to terminate the coverage of Louise and Richard Fortson on July 29, 2010 long before the alleged fraud took place after 2012. The claimed fraud was committed by a healthcare provider and not an insured. By the language of the contract at issue and by way of the notice of termination, Louise and Richard Fortson were not insureds at the time the alleged misconduct took place. The Court of Appeals' determination of this issue was correct and should be affirmed.

## IV.

WAS THE COURT OF APPEALS CORRECT IN CONCLUDING THAT AT THE TIME OF THE FRAUD, RICHARD AND LOUISE FORTSON WERE NOT INSURED PERSONS, BUT RATHER, WERE MERELY ATTENDANT CARE PROVIDERS, SUCH THAT THEIR FRAUD DID NOT TRIGGER A FRAUD-EXCLUSION SO MEEMIC CANNOT USE IT TO DENY JUSTIN'S NO-FAULT MEDICAL BENEFITS?

The Michigan No-Fault Insurance Act should be construed liberally as it is remedial in nature. *Putkamer v TransAmerica Ins Corp of Amer*, 454 Mich 626; 563 N.W.2d 683 (1997). This rule of construction is intended to apply to payment of benefits to injured parties who were intended to benefit from the adoption of the No-Fault Legislation. The Act should be broadly construed to effectuate coverage. *McMullen v Motors Ins Corp*, 203 Mich App 102; 512 N.W.2d 38 (1993) The Act provides that an insurer is liable to pay benefits for accidental bodily injury arising from the operation, ownership or use of a motor vehicle as a motor vehicle. See, *Douglas v Allstate*, 492 Mich 241; 821 N.W.2d 472 (2012); and MCL 500.3105. Personal Protection Insurance is a mandatory coverage required by MCL 500.3101(1) and are provided regardless of fault. MCL 500.3114(1) establishes the priority of insurers responsible to pay Personal Protection Insurance Benefits. MCL 500.3107(1)(a) establishes medical benefits that an insurer must provide within the mandatorily required insurance coverage. Only Justin Fortson claims medical benefits that Plaintiff/Counter-Defendant wishes to avoid. MCL 500.3112 provides in part that:

Personal protection insurance benefits are payable to or for the benefit of an injured person...

See also, *Covenant Med Ctr, Inc. v State Farm Mut Auto Ins Co*, 500 Mich 191 (2017). The healthcare providers do not have an individual claim and are not claimants to the coverage at

issue. Contractual provisions in an insurance policy that conflict with the statute are invalid. Corwin v. Daimler Chrysler Ins Co., 296 Mich. App. 242; 819 N.W.2d 68 (2012).

In the instant case no payments were made to Justin Fortson, but were paid directly to Richard Fortson for the benefit of Justin Fortson based on requests made by Louise Fortson. Nor were any payments made to Louise Fortson. MEEMIC has claimed in this case its right to recover monetary damages from Louise and/or Richard Fortson because of their alleged fraud. (First Amended Complaint, [App., pp. 34a and 75a]). MEEMIC does not argue or offer any proof that Justin Fortson's coverage was not in effect at the time of the accident. Id MEEMIC does not claim that coverage was procured through fraudulent activities. Id The allegations of MEEMIC focus completely on the actions of the health care provider, Louise Fortson, but seek to punish Justin. It is the mandatory medical benefits required by the Michigan No-Fault Act that MEEMIC seeks to bar. MCL 500.3112 requires that Justin's medical benefits are payable to him or on his behalf. Covenant Med Ctr, Inc., supra held that the healthcare provider had no direct claim against the insurer. Richard and Louise Fortson are not claimants in their own name, but rather have a right to payment for services they performed. The statute does not provide language that allows a claim of fraud against Mrs. Fortson, a healthcare provider, to extinguish or limit in any way other medical benefits due to Justin. MEEMIC is free to deny benefits procured by fraud or misrepresentation and allowed a means to seek recovery from the wrongdoers. It has taken these steps in the instant case. MEEMIC does have a remedy for fraud by a healthcare provider.

In the instant case MCL 500.3114(1) provides Personal Protection Insurance to those persons suffering accidental bodily injury and establishes which insurance coverage is to provide the benefits. In this case the coverage for Justin's medical benefits were provided by MEEMIC.



This statutorily establishes coverage, and to extent that the contract at issue attempts to limit the statutorily provided benefits, it is invalid. To the extent that MEEMIC has canceled the insurance policy held by Louise and Richard Fortson, section 3114 (1) applies only to Justin Fortson and does not apply to Louise or Richard Fortson. Louise and Richard Fortson were not injured in the accident and any coverage they had under policy number PAP0632676 was terminated by MEEMIC. Pursuant to the terms of the priority provisions of the Michigan No-Fault Act, the alleged conduct of Louise Fortson cannot terminate Justin Fortson's right to receive medical benefits. The right to receive medical benefits was created at the time of the accident, by the coverage that was in effect through MEEMIC. This coverage continues to provide Justin Fortson with No-Fault benefits while the policy itself has been terminated for Louise and Richard Fortson. Louise and Richard Fortson were not insureds of MEEMIC at any point following July 29, 2010.

RELIEF REQUESTED

Defendants/Counter-Plaintiffs/Appellees' request this Court affirm the Court of Appeals Opinion and allow this matter to continue in the Berrien County Circuit Court.

Dated this 11<sup>th</sup> day of September, 2019.

CHASNIS, DOGGER & GRIERSON, P.C.

BY:/s/Robert J. Chasnis

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