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10-28-14

Death of "Innocent Third Party" Rule also Applies in PIP cases

By Sidney A. Klingler

While a policy of insurance as a general rule may be rescinded for fraud in its procurement, the "innocent third party" rule has long held that "this right to rescind ceases to exist once there is a claim involving an innocent third party." *Hammoud v Metropolitan Property and Cas Ins Co,* 222 Mich App 485, 488; 563 NW2d 716 (1997).

SECREST WARDLE NOTES:

This case affirmatively answers the important question of whether the Supreme Court's abrogation of the "innocent third party" rule in *Titan v Hyten* extends to first party cases. However, caution is appropriate when relying on this case as it is unpublished, and therefore not binding authority. The issue will not be definitively decided until it is addressed by either the Court of Appeals or the Michigan Supreme Court in a published decision.

The Supreme Court in *Titan v Hyten,* 491 Mich 547, 571; 817 NW2d 562 (2012) issued a landmark decision abrogating the "innocent third party" rule and holding that "an insurer is not precluded from availing itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, even when the fraud was easily ascertainable *and the claimant is a third party.*" *Id.* at 571 (emphasis added). In *Titan,* the insurance company had brought a declaratory action seeking a determination that if third parties allegedly injured in an automobile accident with Titan's insured should prevail in their action against the insured for bodily injury, the insurer would not be obligated to indemnify its insured. Thus, the holding of *Titan* was made in the context of a third party action. The significant question left open was whether the "innocent third party" doctrine continued to apply where a claim was made for first party (PIP) benefits, or if *Titan's* abrogation of the innocent third party doctrine also extended to first party cases.

In an unpublished decision, *Frost v Progressive Michigan Ins Co,* the Michigan Court of Appeals recently determined that the holding of *Titan, supra,* applies equally in the first party as in the third party context. In *Frost,* the Plaintiff Kenya Frost initially filed suit against her insurer, Progressive, seeking reimbursement for losses incurred when her car was destroyed. One month after the car was destroyed, Frost's minor daughter, Gervacia Grier, was injured in a motor vehicle accident. Several months later, Progressive rescinded Frost's policy due to fraud in its procurement. Gervacia's claim for PIP benefits was assigned to Citizens Insurance Company of America through the Assigned Claims Facility. In determining whether Citizens or Progressive was liable for Gervacia's PIP benefits, the dispositive question was whether Progressive could void its policy of insurance *ab initio* where an innocent third party, Gervacia Grier, was affected. The trial court relied on the "innocent third party" doctrine to hold that Progressive lost its ability to rescind as to Gervacia once the accident occurred.

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The Court of Appeals found that the trial court had erred. Squarely applying the holding of *Titan* to this first party case and directly quoting from that case, the panel held that "absent statutory provisions to the contrary, 'an insurer is not precluded from availing itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, even when the fraud was easily ascertainable and the claimant is a third party.'" Thus, Gervacia Grier's claim did not bar Progressive from rescinding the policy in this case.

The holding in *Titan* did not fully resolve the case, because the trial court had not expressly ruled as to whether grounds for rescission were established. Therefore, the appellate panel remanded the case to the trial court for further proceedings.

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We welcome your questions and comments.

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