

## Be Careful Before You Sign, Read Every Single Line – The Law Assumes You Do, Even If Blind

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In *Ronnie Fields, et al. v National General Insurance Company, et al.*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023, (Docket No. 361959), Plaintiff was hit by a car while riding a bicycle in Flint, Michigan. Plaintiff sustained serious injuries, including multiple broken bones and lacerations, blunt force trauma to the chest and abdomen, and a traumatic brain injury.

Plaintiff submitted two applications for benefits through the Michigan Automobile Insurance Placement Facility (MAIPF). The first application was dated October 4, 2019, and the second was dated November 4, 2019. Upon commencement of litigation, the discovery process revealed that Plaintiff's two applications for benefits were riddled with misrepresentations.

Based on the foregoing, Defendant Nationwide<sup>1</sup> filed a Motion for Summary Disposition under MCR 2.116(C)(10). The trial court granted Nationwide's motion and held that no genuine issue of material fact existed as to whether Plaintiff committed fraud and was thus ineligible for PIP benefits. Specifically, the trial court ruled that Plaintiff violated MCL 500.3173a(4) by knowingly submitting false statements in support of his claim for benefits.

### I. *Williamson v AAA of Mich*

On appeal, Plaintiff first argued that under *Williamson v AAA of Mich*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2022) (Docket No. 357070), any medical records or deposition testimony obtained after litigation was commenced could not be used to defeat Plaintiff's claim for benefits. Specifically, *Williamson*, \_\_\_ Mich App \_\_\_ (Docket No. 357070); slip op at 8, held that "the fraudulent insurance act provision in MCL 500.3173a does not apply to statements made after litigation has ensued."

In this case, Plaintiff's applications did not indicate pre-existing injuries. However, Plaintiff's deposition testimony and medical records showed that between 2012 and 2019, he was treated for complications arising from

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In this unpublished opinion, the Court of Appeals determined (1) Plaintiff's medical records were properly considered as evidence of fraud after the commencement of litigation, not in violation of *Williamson*; (2) Plaintiff's November 4, 2019, application for benefits was a statement of a party opponent under MCR 801(d)(2), and should not be excluded under MRE 803(6) due to a lack of trustworthiness; and (3) there is no intent element in MCL 500.3173a(4).

<sup>1</sup> The MAIPF assigned Plaintiff's claim to Nationwide, and Nationwide was substituted as a Defendant.

a dog bite and for injuries sustained after someone struck him with a baseball bat (including a leg fracture). Additionally, Plaintiff stated that he is legally blind, which was not disclosed on either application.

Relying on *Williamson*, the Court of Appeals held that Plaintiff's deposition testimony would constitute "[f]alse statements made during discovery." As such, the Court held that Plaintiff's deposition testimony could not be considered evidence of fraud under MCL 500.3173a(4).

However, the Court found that the medical records did not fall under *Williamson*'s umbrella and were properly considered by the trial court. The Court of Appeals noted that even though the medical records were obtained by Nationwide during discovery, the information contained in them concerned incidents that occurred well before Plaintiff applied for PIP benefits through the MAIPF.

## **II. Hearsay**

Next, Plaintiff argued the two applications for benefits submitted to the MAIPF must be considered inadmissible hearsay under MRE 801 and 802. The Court of Appeals held that the statements at issue were admissions by a party opponent under MRE 801(d)(2). However, the Court considered whether they should be inadmissible under MRE 803(6) due to a lack of trustworthiness.

As it pertains to the October 4, 2019, application, the Court noted that Plaintiff signed the application within days of sustaining a traumatic brain injury. Based on the same, a question of fact existed as to whether Plaintiff was competent to sign the application and whether he was fully aware of its contents. Therefore, the Court of Appeals held that the trial court erroneously overlooked these issues in granting Nationwide's motion.

As for the November 4, 2019, application for benefits, the Court noted that there was no dispute as to whether Plaintiff was legally blind when he signed the application. As such, Plaintiff presented no evidence, other than the fact of his blindness, to indicate that he did not understand the document he was signing, or that he was unaware of its contents. The Court stated that Plaintiff presented nothing but speculation that the November 4, 2019, application was untrustworthy and should not be admitted. The Court noted that mere speculation does not create a genuine issue of material fact. See *Smith v Globe Life Ins Co*, 460 Mich 446, 457 (1999).

Accordingly, the Court of Appeals held that the November 4, 2019, application for benefits was a statement of a party opponent, pursuant to MCR 801(d)(2), and should not be excluded under MRE 803(6) due to a lack of trustworthiness.

## **III. Intent to Commit Fraud – MCL 500.3173(a)(4)**

Lastly, Plaintiff argued that Defendant Nationwide could not show that Plaintiff intended to commit fraud within the meaning of MCL 500.3173a(4).

Here, the Court of Appeals was not convinced that the trial court correctly concluded that no genuine issue of material fact existed as to whether Plaintiff knew or understood the contents of the October 4, 2019, application. However, as for the November 4, 2019, application, the Court stated that Plaintiff merely argued that he did not know what he was signing because he is blind, and nobody read him the contents of the application. The Court indicated that no Michigan caselaw exists discussing whether legal blindness is sufficient to prove that an individual did not know or understand the contents of a document they were asked to sign. Moreover, under *Bakeman v Citizens Ins Co of the Midwest*, \_\_\_ Mich App \_\_\_ (2022) (Docket No. 357195), a person is presumed to understand the contents of a document even if he or she has never read it.

Under the circumstances, the Court of Appeals held that even if the trial court erred regarding Plaintiff's October 4, 2019, application, it nevertheless reached the correct result regarding the November 4, 2019, application.

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