

## Appeals Court Says Insurer Liable for Attorney Fees and Interest for Denying PIP Claim on Unsuccessful Rescission

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On January 27, 2025, the Court of Appeals issued a published decision in *VHS of Michigan v MAIPF*, \_\_\_ Mich App \_\_\_ (2025) (Docket No. 368755), signaling to insurers that a denial of PIP benefits based on fraudulent misrepresentations in the procurement of policies and decisions to rescind those policies does not insulate insurers from liability for attorney fees and penalty interest under the No-Fault Act. This case, which the panel likened more to a priority dispute, seems to show that Michigan appellate courts favor prompt payment of claims to innocent third parties, rather than denying the claim and rescinding the policy without an action in equity to rescind the policy.

The facts of *VHS* involve a combined claim for first-party benefits by a motorcyclist, Mr. Colon, Jr., who was injured when he was struck by a motor vehicle, and his medical provider, VHS/Detroit Medical Center. *VHS v MAIPF*, slip op at 2. The motor vehicle that struck Plaintiff was insured by Ms. Lucas through Falls Lake Insurance Company, but at the time of the accident, the vehicle was being driven by Ms. Benson without permission of the owner. *Id.* Following the accident, Falls Lake denied Plaintiff's claim for benefits

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The No-Fault Act incentivizes prompt resolution of claims. This incentive imposes attorney fees and penalty interest against insurers who unreasonably deny or delay claims, per MCL 500.3142 and 500.3148. See also *Griffin v Trumbull Ins Co*, 509 Mich 484, 501–02 (2024). Michigan appellate courts have carved out three situations in which an insurer's refusal to pay benefits may not be unreasonable, where the denial is a product of: (i) a legitimate question of statutory construction; (ii) constitutional law; or (iii) a bona fide factual uncertainty. See *Moore v Secura Ins*, 482 Mich 507, 520 (2008).

Disputes over attorney fees and penalty interest under sections 3145 and 3148 put the flexibility of these scenarios to the test. Indeed, prior case law shows a lack of flexibility, as disputes amongst the priority of insurers do not justify delaying or denying a claim. See *Bloemsma v Auto Club Ins Ass'n*, 174 Mich App 692, 697 (1989). A recent published decision of the Court of Appeals, *VHS of Michigan, Inc v Michigan Auto Ins Placement Facility*, \_\_\_ Mich App \_\_\_ (2025) (Docket No. 368755), extended this rigid approach when it held that an insurer's denial of a first-party PIP claim based on suspected fraud in the procurement of a policy did not justify its denial of an innocent third-party's claim, and found the insurer liable for attorney fees and penalty interest.

under Ms. Lucas' policy<sup>1</sup> and rescinded Ms. Lucas' policy based on misrepresentations in her application as to the garaging location of the vehicle. *Id.*

Since Plaintiff was an innocent third party, the trial court balanced the equities prior to deciding to extend Falls Lake's rescission of Ms. Lucas' policy to Plaintiff. *Id.* The trial court determined that the equities did not favor rescission of the policy, and therefore found Falls Lake to be highest in priority and liable for first-party benefits to Plaintiff. *Id.*, slip op at 2-3. Within 30 days of the trial court's decision, Falls Lake tendered its policy limits (\$250,000) to Plaintiff and VHS, but a dispute over apportionment arose between the respective Plaintiffs. *Id.* Falls Lake then moved for summary disposition claiming that it had satisfied its obligations under the No-Fault Act by paying its policy limits within 30 days of the trial court's decision denying its prior Motion for Summary Disposition as to rescission and priority. *Id.* Plaintiffs opposed the motion and moved for attorney fees and penalty interest. The trial court agreed with Falls Lake that its denial of Plaintiffs' claim for PIP benefits was not unreasonable because, according to Falls Lake, a good faith dispute existed as to the issue of rescission.

On appeal, the Court of Appeals reversed and remanded the case back to the trial court, finding that Falls Lake's denial was unreasonable and that a dispute over whether Falls Lake could rescind Ms. Lucas' policy did not present a question of statutory construction, constitutional law, or a bona fide factual uncertainty, where an insurer's denial may be reasonable. *Id.*, slip op at 5.

The panel relied on an unpublished decision in *Graham v Jackson*, unpublished per curiam opinion of the Court of Appeals, issued June 18, 2020 (Docket No. 346734), where the Court similarly addressed an insurer's denial of an innocent third-party claim for benefits based on alleged fraud in the procurement of the policy, and found that "because the [insurer] was not entitled to rescind the policy, it was not entitled to withhold payment of benefits without incurring possible penalties under the no-fault act." *VHS*, slip op at 4.

Addressing Falls Lake's argument against the Court's prior ruling in *Graham*, the panel stated:

In other words, the fact that Falls Lake *believed* it could rescind the policy did not absolve itself of making payment first and later determining which insurer was ultimately obligated to pay. Accordingly, we reject Falls Lake's argument that it did not fail to pay within 30 days of receiving proof of loss because it paid within 30 days of the trial court's ruling on the issue of rescission. This argument ignores the principle that rescission is a remedy ordered by a court, not unilaterally chosen by an insurance company. This is particularly true here, where an innocent third party, Colon, is the individual affected by Falls Lake's decision. [*Id.*, slip op 4-5.]

Here, the panel unanimously agreed that Falls Lake's rescission did not present an issue of statutory construction, constitutional law, or question of fact concerning the accident. "Simply speaking, there was no question that Colon, an innocent third party, was entitled to PIP benefits from *an insurer*, the only question was *which insurer* would ultimately be responsible. See *Griffin*, 509 Mich at 502-503 ('The statutory scheme adopted by the Legislature thus strongly incentivizes insurers to pay first and seek reimbursement later when it is clear that a claimant will be entitled to PIP benefits from someone, and it penalizes unreasonable payment delays.')." *Id.*, slip op 5-6.

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<sup>1</sup> As the owner/registrant of the motor vehicle who struck Plaintiff, a motorcyclist, Falls Lake was highest in the order of priority pursuant to MCL 500.3114(5).

This published decision casts very real and legitimate concerns for insurers when analyzing a claim for first-party benefits that may also involve fraudulent misrepresentations by insureds that *may* give rise to an action to rescind the policy. This case also underscores the importance of paying certain first-party claims, and when rescission is warranted, insurers should pursue an action in equity to rescind the policy, and if rescission is extended, seek equitable subrogation for benefits paid to the underlying claimant.

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