

# Michigan Court of Appeals Issues New Precedent Involving Claims of Fraudulent Insurance Acts

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In a unanimous decision, *Gary v Farmers Ins Exchange*, the Michigan Court of Appeals has recently issued new precedent involving claims of fraudulent insurance acts, submitted through the Michigan Automobile Insurance Placement Facility (MAIPF).

The Court was presented with two key issues: (1) whether the anti-fraud provision contained in MCL 500.3173a could be applied to statements made to servicing insurers during litigation, and (2) whether the claimant committed fraud pre-litigation, in misrepresenting that he was employed by a construction company within his Application for PIP Benefits, only to later recant said claims during a deposition. The latter rests on whether or not the claimant knowingly misrepresented his employment – with the intent to defraud the assigned insurer at the time of completing his Application – amidst allegations of memory loss.

On September 7, 2023, the Court ultimately ruled that statements made for the first time during discovery do not form the basis of a fraudulent insurance act under MCL 500.3173a(4). Notably, the Court also concluded that a question of fact existed as to whether the claimant could have knowingly made any misrepresentations where opposing counsel had produced ample records of cognitive deficits and diagnoses from various physicians.

In doing so, the Court deliberated the distinction between an intent to defraud, and a knowing provision of false, material information. Specifically, the Court of Appeals evaluated earlier opinions, such as *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772, 779-780; 910 NW2d 666 (2017), or *Bakeman v Citizens Ins Co of the Midwest*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (2022) (Docket No. 357195) which held that an applicant's mere knowledge "that the statement contains false information concerning a fact or thing material to the claim" is sufficient to establish fraud. *Id.* Slip Op at 4. The *Gary* Court found that neither of these prior cases possessed any evidence to establish cognitive deficits as a result of the accident, and deemed itself "materially distinguishable." While this modification

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may appear slight, the Court's language arguably presents a vague, significant loophole for many fraudulent actors. Michigan insurers and defense counsel alike should now carefully weigh evidence of pre-suit fraud against the claimant's medical history, to assess litigation strategy or the possibility of appeal.

Please contact your Novara lawyer should you have any questions about this recent decision.

Full decision>>