MISREPRESENTATIONS IN APPLICATIONS FOR INSURANCE

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December 2016

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I. INTRODUCTION

This outline discusses the general rules applicable to cases involving misrepresentations made in applications for insurance.

II. GENERAL RULE

The general rule is that a material misrepresentation or omission made in an application for insurance will void the insurer's obligations under the policy. *Handbook on Insurance Coverage Disputes*, §3.01(a):

> *See, e.g., Metropolitan Life Ins. Co. v Fugate,* 313 F2d 788 (5th Cir. 1963); *Dennis v William Penn Life Assurance Co. of America,* 714 F Supp 1580, 1582 (W.D. Okla. 1989); *Viviano v Travelers Ins. Co.,* 533 F Supp 1, 6 (E.D. La. 1981); *Hatch v. Woodmen Accident & Life* Co., 88 111. App. 3d 36, 409 NE2d 540, 543 (2d Dist. 1980); *Nationwide Mut. Ins. Co. v. Conley,* 156 W. Va. 391, 194 SE2d 170 (1972); *Unger v. Metropolitan Life Ins.* Co., 103 111. App. 2d 150, 242 NE2d 907 (3d Dist. 1968); *Gardner v. North State Mut. Life Ins.* Co., 163 N.C. 367, 79 SE 806 (1913). *See generally 12A* Appleman, *Insurance Law and Practice* §§7276, 7291-305 (1981). It has thus been held that a material misrepresentation in an insurance application permits the insurer to invalidate the policy and to avoid responsibility for losses claimed thereunder. *See Pedersen v. Chrysler Life Ins. Co.,* 677 F Supp 472, 474 (N.D. Miss 1988) ('[i]f a party applying for insurance makes a misstatement of a material fact in the application, the insurer is entitled to declare the policy issued in reliance thereon void *ab initio.'); INA Underwriters Ins. Co. v. D.H. Forde & Co.*, 630 F Supp 76, 77 (W.D.N.Y. 1985) (misrepresentations in the policy application render the policy void *ab initio); Shapiro v. American Home Assur.* Co., 584 F Supp 1245, 1252 (D. Mass. 1984) (false statement in application that 'misrepresented the risk incurred' by the insurer relieved insurer of all liability under the policy).

Michigan appellate courts long have recognized this rule.

In *Gen American Life Insurance Co. v Woiciechowski*, 314 Mich 275, 281 (1946), the Michigan Supreme Court stated the general rule:

> A false representation in an application for insurance which materially affects the acceptance of the risk entitles the insurer to cancellation as a matter of law. *Krajewski v Western & Southern Life Ins. Co.,* 241 Mich 396.

In *Wiedmayer v Midland Mutual Insurance*, 414 Mich 369, 375-76 (1982), the Michigan Supreme Court followed *Woiciechowski* and further clarified the rule:

> Moreover, in *General American Life Ins Co v Woiciechowski*, 314 Mich 275, 281; 22 NW2d 371 (1946), we stated:
>
> > "A false representation in an application for insurance which materially affects the acceptance of the risk entitles the insurer to cancellation *as a matter of law*." (Emphasis supplied.)
>
> The fact that the insurance policy did not affirmatively provide for cancellation under such circumstances does not operate as a bar to the insurer's ability to void the policy in the face of fraud. Common law has always permitted the avoidance of a contract procured by means of fraud. *New York Life Ins Co v Buchberg*, 249 Mich 317; 228 NW 770 (1930).
>
> In *Government Employees Ins Co v Chavis*, 254 SC 507, 516-517; 176 SE2d 131 (1970), the South Carolina Supreme Court upheld the right of an insurer to rescind an automobile liability policy because of fraudulent statements made in the procuring of it, although the insurer had not secured the right to do so in the policy. In doing so, the Court observed:
>
> > "We know of no authority which requires the insurer to reserve the right to rescind its policy for fraud or material misrepresentation."
>
> We agree with the South Carolina Supreme Court.

In *United Security v Insurance Commissioner*, 133 Mich App 38, 41 (1984), the Court of Appeals held:

> In *Keys v Pace*, 358 Mich 74; 99 NW2d 547 (1959), the Court recognized that an insurance company may rescind a policy *ab initio* for an intentional misrepresentation of a material fact on the application.

In *Titan Ins Co v Hyten*, 491 Mich 547 (2012), the Supreme Court explained that insurance policies are contracts that are subject to the same contract construction principles as apply to any other species of contract. *Id*. at 554. "[B]ecause insurance policies are contracts, common-law defenses may be invoked to avoid enforcement of an insurance policy, unless those defenses are prohibited by statute." *Id*. The Court explained that Michigan contract law allowed for traditional defenses to enforcement of a contract, including fraudulent misrepresentation, innocent misrepresentation, silent fraud or fraudulent concealment. *Id*. at 555. The Court

explained that the legal and equitable remedies available for such fraud include "grounds to retroactively avoid contractual obligations through traditional legal and equitable remedies such as cancellation, rescission, or reformation" unless the right is restricted by statute. *Id*. at 558. The Court rejected the argument that the Michigan Financial Responsibility laws applied to all auto liability insurance policies to restrict the right to rescind the policy for fraud. The Court also rejected the rule that had been established in Michigan that an insurer could not rescind a policy if the misrepresentation was "easily ascertainable." *Id*. at 565-567. The Court stated:

> [I]t is well settled in Michigan that fraud in the application for an insurance policy may allow the blameless contracting party to avoid its contractual obligations through the application of traditional legal and equitable remedies. . . . [W]e reaffirm the principles set forth in *Keys* and hold 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 570-571.]

A. RATIONALE FOR THE RULE

The rationale for the rule is the equitable notion that an insurer, in making underwriting decisions and in setting premiums has the right to rely on the information provided by the insured as true. 12A Appleman, Insurance Law & Practice §7292. According to well-settled contract law, when a contracting party's assent to a contract is induced by another's fraudulent or material misrepresentation upon which there is justifiable reliance, the contract is voidable. Restatement 2d of Contracts §306(1). *Handbook on Insurance Coverage Disputes* §3.01[e].

In *Cunningham v Citizens Insurance Co.,* 133 Mich App 471 (1984), the Court of Appeals held that it would be unfair to the insurer to permit false and fraudulent applications:

> To permit a false and fraudulent application to bind an insurance company will result in protective measures being taken by the insurance industry. If plaintiff's argument is accepted, one can readily foresee the day when agents will no longer be allowed to issue binders by the companies they represent. One who applies for insurance will have to wait until final acceptance and approval is received from the home office. This may take weeks. We do not believe that those who obey the law and are honest in their dealings should be forced to suffer adverse consequences because of a few wrongdoers' fraudulent acts. Public policy protects those who do right; the courts need not be overly solicitous of those persons who attempt to perpetrate fraud in their contractual relationships. [*Cunningham,* 133 Mich App at 478.]

B. THE REPRESENTATION MUST BE MATERIAL.

The general rule requires that the fact misstated or omitted is deemed "material" if it could reasonably be considered as affecting the insurer's decision to enter into the contract, or its evaluation of the degree or character of the risk, or its calculation of the premium to be charged. *Handbook on Insurance Coverage Disputes* §3.01[d].

Thus, if the misstatement or omission is not material to the risk insured and has been made in good faith, courts will usually permit the insured to recover under the policy. 12A Appleman Insurance Law & Practice §7293.

In *Oade v Jackson National Life Insurance Co.*, 465 Mich 244 (2001), the Michigan Supreme Court dealt with issues involving a life insurance policy and MCL 500.2218. MCL 500.2218 deals with false statements made in applications for disability insurance. It provides, in part:

> The falsity of any statement in the application for any disability insurance policy covered by Chapter 34 of this code [MCL 500.3400 *et seq.*] may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.
>
> (1) No misrepresentation shall void any contract of insurance or defeat recovery thereunder unless the misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make the contract.
>
> * * *
>
> (3) In determining the question of materiality, evidence of the practice of the insurer which made the contract with respect to the acceptance or rejection of similar risk shall be admissible. . . .

In *Oade*, the decedent completed an application for a “preferred” life insurance policy. The application obligated the decedent to provide the insurer with updated health information between the time the original application was completed and the date the policy was issued. On the application, plaintiff denied having experienced chest pains or being hospitalized, both of which were true at the time. However, between the application date and the date the policy was issued, he went to the hospital emergency room because he experienced chest pains. He failed to provide this information to the insurer. On January 4, 1994, the insurer approved a “standard” life insurance policy to the decedent, not a “preferred” policy, as the decedent had expected. The decedent paid the policy premium and the policy was delivered on January 6, 1994. The decedent died on September 1, 1994 from a sudden heart attack. The insurer refused to pay on the policy because of the decedent’s failure to provide it with updated information. *Oade*, 465 Mich at 247-249.

The plaintiffs, the named beneficiaries, sued the insurer for its refusal to pay. The Circuit

Court held that the insurance policy never took effect because the decedent failed to communicate the "material changes" to the insurer in writing. The Court of Appeals reversed on the basis of MCL 500.2218(1), finding that the decedent's misrepresentation was not "material", because the insurer would have issued a policy anyway had the decedent provided updated information, albeit a different policy at a higher rate.

The Supreme Court reversed, citing its earlier decision in *Keys v Pace*, 358 Mich 74, 82 (1959):

> Our decision in *Keys v Pace*, 358 Mich 74, 82; 99 NW2d 547 (1959), made clear that a fact or representation in an application is 'material' where communication of it would have had the effect of 'substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium.' *Keys*, in turn, is consistent with the plain language of MCL § 500.2218(1), which defines materiality in terms of the insurer's refusal 'to make *the* contract' (emphasis added), not 'a' contract. [*Oade,* 465 Mich at 254.]

The Supreme Court noted that the undisputed evidence established that the correct information would have led the insurer to charge an increased premium "hence a different contract." *Id*. The court thus ordered summary disposition in favor of the insurer. Thus, the test is whether the insurer, if it had known the truth, would have refused to enter ***the*** contract it executed, not just ***any*** contract of insurance. *Id.* at 254.

In reaching its decision, the Michigan Supreme Court reversed the Court of Appeals decision in *Zulcosky v Farm Bureau Life Ins Co of Michigan*, 206 Mich App 95 (1994). *Zulcosky* had ruled that a change in facts is "material" only where the correct information would cause the insurer to reject the application altogether. The Supreme Court made clear that this is not the case because MCL 500.2218 defines materiality in terms of the insurer's refusal to make the same contract as issued without the misrepresentation. *Oade*, 465 Mich at 253-254.

In *Keys v Pace*, 358 Mich 74 (1959), the applicant for automobile insurance gave a false answer to the question whether his license had been revoked, suspended or refused within the past three years. The Supreme Court cited several quotes from 29 Am Jur Insurance including:

> The generally accepted test for determining the materiality of a fact or matter as to which a representation is made to the insurer by the applicant for insurance is to be found in the answer to the question whether reasonably careful and intelligent underwriters would have regarded the fact or matter, communicated at the time of effecting the insurance, as ***substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium***. [*Keys,* 358 Mich at 82 (Emphasis supplied) (citation omitted).]

This is the quote which is cited by the Supreme Court in *Oade*. *Oade* dealt with the application of MCL 500.2218. But it relied on *Keys* as a correct statement of the law regarding the determination of a material misrepresentation. *Keys* did not deal with MCL 500.2218. Therefore, *Keys* is the controlling authority for the definition of a material misrepresentation in cases other than those dealing with MCL 500.2218. *Keys* indicated that a misrepresentation is material when it would bring about a rejection of the risk "***or the charging of an increased premium***." *Keys*, 358 Mich at 82 (emphasis added).

The United States Court of Appeals for the Sixth Circuit concluded that this was the law when applying Michigan law. *Old Line Life Ins Co of America v Garcia*, 411 F3d 605 (CA 6, 2005). "Michigan law permits rescission of an insurance policy when the insured makes a material misrepresentation in the application for insurance. A misrepresentation is material if the insurer would have charged a higher premium or not accepted the risk had it known the true facts." *Id.* at 611 (citation omitted).

In *Auto Club Ins Ass'n v Juncaj*, 2002 WL 1804030 (Mich Ct App Docket No. 231298, Aug 6, 2002), the defendant Juncaj submitted an application for automobile liability insurance. After the policy was issued, the defendant's daughter while operating one of the insured's vehicles was involved in an accident. After the accident, the insurer rescinded the policy on the ground that Juncaj had made material misrepresentations by giving a St. Clair Shores address when he lived in Hamtramck, and by failing to include his daughter on the policy as a principal driver of the van. The court held that if the insured makes a material misrepresentation in an application for insurance, the insurer is entitled to rescind the policy and declare it void *ab initio*. The court found that there was no evidence that had the insurer been timely informed that the daughter was driving or that the insured had moved to Hamtramck, it would have determined that he was not eligible for coverage. Thus, the court determined that rescission was not justified. The Court of Appeals further rejected the argument that *Oade v Jackson National Life, supra*, justified rescission on the basis that the misrepresentation would have resulted in charging a higher premium. However, the court's reasoning on this issue is somewhat suspect. The court held first that the *Oade* case dealt with MCL 500.2218, which is specifically applicable to life insurance and thus did not apply to the current case. It is correct that the statute only applies to life and disability insurance, but the statutory language was previously being used to ***limit*** the ability to rescind not create it. The court further stated that nothing in *Oade* indicated that the holding in *Lake States v Wilson*, 231 Mich App 327, 331 (1998), was no longer viable. The holding in *Wilson* stated:

> Rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer. Reliance ***may*** exist when the -misrepresentation relates to the insurer's guidelines for determining eligibility for coverage. [*Id*.,(emphasis added).]

Thus, the holding did not indicate that reliance ***only*** existed when the misrepresentation related to guidelines for determining coverage but it indicated that reliance ***may*** exist in this situation. Further, in her concurring statement to the order denying leave to appeal in *Juncaj*, Justice Kelly noted that the Court of Appeals really did not address the materiality issue because

it found no misrepresentation at all. *Auto Club Ins Ass'n v Juncaj*, 468 Mich 923 (2003) (Kelly, J., concurring). Thus, this supports the conclusion that the Court of Appeals discussion of the material misrepresentation issue was nothing more than dictum. Subsequent courts have not followed *Juncaj* on this issue. They have followed the binding precedent contained in *Keys.*

In *Wojciechowski v Franklin Life Ins Co*, 2002 WL 1803918 (Mich Ct App Docket No. 228683, Aug 6, 2002), the plaintiff applied for group credit life insurance in connection with the purchase of a car. In the application, she falsely indicated that she had not been diagnosed or treated for cancer and degenerative disc and joint disease. After her death, the insurer sought to rescind the policy upon discovering the misrepresentation. Once again, because this was a policy of credit life insurance, the applicable statute was MCL 500.2218(1). The Court of Appeals reversed judgment for the plaintiff and ordered summary disposition in favor of the insurer holding that regardless of the plaintiff's claim that the plaintiff did not know the representations were false, the representations were material and the insurer proved that it relied upon them through an affidavit that it would have denied the application had it known the correct medical history.

In *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9 (1985), the Court stated that recession was appropriate "where such misrepresentation substantially increased the risk of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." But the Court found that the insured did not commit a misrepresentation in that case.

Several subsequent cases have stated that a misrepresentation is material if the insurer would have charged an increased premium. See: *Sterling Heights v United National Ins Co*, 2005 WL 5955829 (ED Mich, February 11, 2005) (liability policy); *Chicago Ins Co v Wiggins*, 2005 WL 2179384 (ED Mich, September 9, 2005) (professional liability policy); *Williams v MEEMIC Ins Co*, 2006 WL 547834 (Mich Ct App Docket No. 265808, March 7, 2006) (auto policy); *Blundy v Secura Ins*, 2008 WL 2596603 (Mich Ct App Docket No. 275462, July 1, 2008) (no fault policy); *Steadfast Ins Co v Prime Title Services, LLC*, 2008 WL 5216021 (WD Mich, December 11, 2008) (escrow agent's error and omission liability policy); *Citizens Ins Co of America v Rippy*, 2009 Mich App Lexis 1936 (Mich Ct App Docket No. 284511, September 17, 2009) (personal injury and property damage umbrella); *Huda v Integon Nat'l Ins Co*, 341 Fed Appx 149 (ED Mich, 2009) (no fault insurance); *AMI Stamping LLC v Ace American Ins Co*, 2016 US Dist Lexis 114400 (ED Mich, August 26, 2016) (equipment coverage endorsement).

Thus, in cases involving application of MCL 500.2218, the Supreme Court has ruled that charging a higher premium or rejecting the risk is sufficient to establish material misrepresentation. For cases to which MCL 500.2218(1) does not apply, the law is stated by *Keys*, which also provides that a misrepresentation is material if it would have resulted in a higher premium or rejecting the risk.

1. Cases in which the courts found that the misrepresentations were material.

Numerous cases have found a material misrepresentation. Examples include:

(1) *Cunningham v Citizens Ins Co*, 133 Mich App 471 (1984), where the applicant in

applying for a no fault policy denied that he had been convicted of any drunk driving offense within the last five years when he had been so convicted.

(2) *Auto-Owners Ins Co v Michigan Comm'r of Ins*, 141 Mich App 776 (1985), where the applicant failed to disclose speeding tickets and that her license had been suspended.

(3) *Farmers Ins Exch v Anderson*, 206 Mich App 214 (1994), where the applicant, Joyce Anderson, represented that she would be the primary driver, and failed to indicate that her son, Dillon, whose driver's license had been revoked, would be the primary driver.

(4) *Auto-Owners Ins Co v Johnson*, 209 Mich App 61 (1995), where the insured represented that he had not been involved in any accident and had not been convicted or paid a fine for a moving violation in the last three years when he had been involved in an accident the day he made the application in which two occupants of the vehicle he struck were killed.

(5) *Lash v Allstate Ins Co*, 210 Mich App 98 (1995), where the applicant for a no fault policy denied he had traffic citations over the last three years when he had a citation for operating a motor vehicle while impaired.

(6) *Massachusetts Cas Ins Co v Love*, 1996 WL 426530 (E.D. Mich, Jan. 10, 1996), where the applicant, a chiropractor, seeking a disability insurance policy, misrepresented his earnings on his application.

(7) *Zeer v Lake States Ins Co*, 1996 WL 33362126 (Mich Ct App Docket No. 182102, Aug. 2, 1996), where the insured listed only himself and his wife as household drivers and checked "no" regarding moving violations, when the record revealed that there were other drivers, all of whom except one, had incurred moving violations in the last three years.

(8) *American Fellowship Mut Ins Co v Bojaj*, 1996 WL 33347491 (Mich Ct App Docket No. 185156, Dec 30, 1996), where the insured failed to disclose on the application that her son was a resident of the household.

(9) *Hammoud v Metropolitan Prop & Cas Ins Co*, 222 Mich App 485 (1997), where under "Driver Information" and "All Residents Not Previously Indicated" there was no mention of the plaintiff who was the owner of the vehicle and a resident of the household.

(10) *Lakes State Ins Co. v Wilson*, 231 Mich App 327 (1998), where the insured listed only herself as a "Resident and driver" when there were five persons living in the household, including the injured claimant.

(11) *State Farm Mut Auto Ins Co v Wilson*, 2005 WL 356292 (Mich Ct App Docket No. 250735, Feb 15, 2005), where the insured misrepresented information on her insurance application that there were no other drivers in the household, including an uninsurable driver with a lengthy history of traffic offenses who later was involved in an accident. The court permitted the insurer to reform the policy based on misrepresentation and fact that insurer could not easily ascertain that the other driver resided in the household.

(12) *Farm Bureau Ins Co v Auto Owners Ins Co*, 2005 WL 1224701 (Mich Ct App Docket No. 253914, May 24, 2005), where insurer properly rescinded policy because the insured falsely had represented that the property was titled in his name and that he had not been past due on the mortgage or taxes within the preceding five years.

(13) *Rodgers v North American Ins Co*, 2005 WL 1683548 (Mich Ct App Docket No. 251926, July 19, 2005), where insured failed to mention his bone spur on his left heel or his osteoarthritis in response to the disability application's question of whether he had been treated for any "condition/disease/disorder of the bones," and the insurer was entitled to rescind the policy based on misrepresentation.

(14) *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126 (2006), where the insured did not disclose his smoking habit on a life insurance policy, although he died in a car accident. The court held that the material misrepresentation warranted rescission of the policy.

(15) *Wheaton v Geico Gen'l Ins Co*, 2006 WL 740080 (Mich Ct App Docket No. 265338, March 23, 2006), where insured either misrepresented the location of his vehicle on his auto policy application or misrepresented his extent of coverage on his claim for benefits and, either way, the insurer was permitted to rescind auto policy.

(16) *Auto Club Ins v Grandberry*, 2006 WL 1360405 (Mich Ct App Docket No. 265597, May 18, 2006), where the court held that a misrepresentation as to the insured's address would be a material fact in an application for insurance, but held there was a question of fact whether there was a misrepresentation.

(17) *Key v Great West Life & Annuity Ins Co*, 2006 WL 2000756 (Mich Ct App Docket No. 267682, July 18, 2006), where the insured failed to reveal that he had received treatment for diabetes during the ten years before he applied for insurance; insurer would not have issued policy had it known true information and rescission allowed.

(18) *NCMIC Ins Co v Dailey*, 2006 WL 2035597 (Mich Ct App Docket No. 267801, July 20, 2006), where the insurer could rescind legal malpractice policy because attorney (through his agent) had materially misrepresented items on the application; insurer had to refund policy premiums.

(19) *Home Owners Ins Co v Reed*, 2006 WL 2708669 (Mich Ct App Docket No. 261688, Sept. 21, 2006), a widow planned to purchase a vehicle from her nephew Reed for her husband and added the vehicle to her policy. When her husband passed away before the sale was complete, Reed continued to drive the vehicle. The court held that insurer could rescind the automobile insurance policy where there was no intention under widow's policy that Reed would be covered. The fact that the misrepresentation was unintentional or related to a future occurrence was irrelevant.

(20) *Vernor's Dollar Discount, Inc v Fremont Mut Ins Co*, 2008 WL 541146 (Mich Ct App Docket No. 276541, February 28, 2008), where the sole shareholder of the applicant

corporation failed to list a prior fire occurring at her prior incarnation of the business. The Court of Appeals concluded that the shareholder did not take the corporation's separate existence seriously or observe any corporate formalities. Therefore, the court concluded that the shareholder wrongfully used the corporation's separate existence to obtain insurance without having to disclose her prior history with fire losses. The court concluded that the history of fire loss was a material misrepresentation.

(21) *Manier v MIC Gen Ins Corp*, 281 Mich App 485 (2008), where the court found a material misrepresentation when the insured misrepresented the location of where her son lived and garaged the insured vehicle. The Court of Appeals rejected the insured's argument that the insurer could have easily ascertained the true location of the vehicle and the insured's residence. The court noted that there was no duty to investigate or to perform further research regarding the insured's residence. The court also upheld a household exclusion containing a stepdown provision that reduced coverage to the minimum required by MCL 257.520(b)(2).

(22) *Citizens Ins Co of America v Rippy*, 2009 Mich App Lexis 1936 (Mich Ct App Docket No. 284511, September 17, 2009), where the insureds misrepresented the members of their household by failing to disclose their mother living in a room above the garage when filing a renewal questionnaire for umbrella insurance. Even though the renewal questionnaire was not signed, the Court concluded: "Because plaintiff would have charged a higher premium for umbrella coverage if it had known that Rippy was a member of the household, the misrepresentation was material. See id. Thus, the trial court did not err when it allowed plaintiff to rescind the contract, declared it void ab initio, and granted plaintiff's motion for summary disposition." *Id*.

(23) *Huda v Integon Nat'l Ins Co*, 341 Fed Appx 149 (ED Mich, 2009), where the insured failed to disclose his driving age son in the application for no fault insurance. The Court found a material misrepresentation despite the fact that he claimed that he did not see all of the pages of the application he signed.

(24) *Hansen v Metro Prop & Cas Ins Co*, 2011 US Dist Lexis 3778 (ED Mich, January 14, 2011), where the applicant failed to disclose another owner of the property he was insuring and failed to disclose that this other owner had a pervious fire loss. The Court concluded that the misrepresentation was material even if unintentional because it related to a policy provision prohibiting concealment and false statements.

(25) *Thomas v Victory Gen Ins Co*, 2011 Mich App Lexis 1373 (Mich Ct App Docket No. 298243, July 21, 2011), where the insured failed to report the actual owner of the insured vehicle.

(26) *Hatcher v Nationwide Prop & Cas Ins Co*, 34 F Supp3d 704 (ED Mich, 2014), where the insured failed to disclose that her property taxes were delinquent by two or more years in her oral application for home owner's insurance. The Court noted Michigan law made an homeowner ineligible for coverage if property taxes are delinquent by two or more hears

(27) *Auto-Owners Ins Co v Motan*, 2015 Mich App Lexis 1659 (Mich Ct App Docket

No. 321059), where the insured failed to disclose that previous policies had been canceled or not renewed and failed to list prior claims. The Court found the misrepresentations material. The Court found the rescission appropriate despite the fact that the insurer decided to cancel after learning of one misrepresentation because the insurer only learned of other misrepresentations after the loss. The Court found that the insurer only waived the right to rescind the policy as to the one misrepresentation that it learned of before the loss.

(28) *21st Century Premier Ins Co v Zufelt*, 2016 Mich App Lexis 1052 (Mich Ct App Docket No. 325657), where the insured failed to disclose an accident that made him ineligible for coverage. The Court ruled that the insurer did not have to prove a fraudulent intent because the language of the policy allowed for rescission based on a false statement.

(29) *Bazzi v Sentinel Ins Co*, Mich App (Mich Ct App Docket No. 320518, June 14, 2016), where the insured misrepresented that the vehicle was leased for business use rather than personal use and the business was a shell not actually doing business. The Court rejected the argument that the insured party was still entitled to no fault benefits because he was not part of the misrepresentation, rejecting the so called "innocent third party rule" that had previously existed in Michigan.

(30) *AMI Stamping LLC v Ace American Ins Co*, 2016 US Dist Lexis 114400 (ED Mich, August 26, 2016), where the insured listed the value of the insured property at $138,100 despite the fact that it had an appraisal of approximately $400,000. The Court found the misrepresentation material because the premium for the coverage was based on the value of the property being insured.

(31) *Electric Stick v Primeone Ins Co*, 2016 Mich App Lexis 1688 (Mich Ct App Docket No. 327421, September 15, 2016), where the insured disclosed only one bankruptcy and no other bankruptcy proceedings and also failed to disclose tax liens. The Court found the misrepresentations material as they would have at least resulted in high premiums if not a rejection of all coverage. The Court also concluded that the failure to disclose the information was silent fraud and innocent misrepresentation, which allowed the insurer to void the policy even if there was no fraudulent intent.

(32) *Oakwood Healthcare v Hartford Ins Co*, 2016 Mich App Lexis 2174 (Mich Ct App Docket No. 328162, November 22, 2016), where a vehicle was insured through a business owned by the father. The son drove the vehicle and had it registered in his name but was not identified as an employee of the business nor as a driver. The Court found the misrepresentation was material and relied on because the insurer would not have insured the vehicle as it was not used 95% of the time for the business. The Court found that the son and his health care provider were not entitled to no fault benefits rejecting the former innocent third party rule.

(33) But see *Fountain v. Amex Assurance Co*, 2004 WL 2451937 (Mich Ct App Docket No. 248294, Nov 2, 2004), where the insured informed the insurer that she had worked at a business "on and off" and a question of fact existed as to whether the insured accurately answered the application because she was working from home.

(34) But see *Buckner v Old Republic Life Ins Co*, 2006 WL 664348 (Mich Ct App Docket No. 262730, March 16, 2006), where the insurer was barred from contesting validity of disability insurance policy on basis that insured's material misrepresentations regarding preexisting medical problems rendered policy void, where the two-year incontestability clause had lapsed.

(35) But see *Williams v Allstate Ins Co*, 2007 WL 284514 (Mich Ct App Docket No. 284514, Feb 1, 2007), where insurer failed to prove material misrepresentations despite the fact that the insured, who was married but had separated and had five children, indicated on her application that she was single, had no dependents, and that there were no other licensed drivers in her household. No evidence was presented that any of insured's children over sixteen were licensed drivers or resided with the insured. There was also no evidence that the insured's husband, who had a suspended license, was a member of her household or had access to her vehicle.

(36) But see *Blundy v Secura Ins*, 2008 WL 2596603 (Mich Ct App Docket No. 275462, July 1, 2008), where the insurer failed to show a material misrepresentation in spite of the fact that the insured misrepresented the fact that he owned the insured vehicle when it was actually owned and registered by his son. The Court of Appeals concluded that the insured did not make a representation in the application with the intent that the defendant would rely on it. The insured was straightforward as to who would be driving the vehicle and the insured's son was available during the application process and was actually paying the insurance premiums. Therefore, the insurance premiums reflected the risk posed by the son being the principal driver. The Court of Appeals stated that there was nothing in the record to support a conclusion that the insured was attempting to take advantage of a multi-vehicle discount or that he was even aware that he was receiving one.

(37) But See *Reid v Michigan Prop & Cas Guarantee Ass'n*¸ 2016 Mich App Lexis 148 (Mich Ct App Docket No. 323673), where the insured failed to list the injured party as living in his home when applying for no fault insurance, but the insurer failed to offer evidence that it would have charged a higher premium had it known of the injured party.

(38) But see *Al-Talaqani V Liberty Mut Gen Ins Co*, 2016 US Dist Lexis 110576 (ED Mich, July 21, 2016), where the insured misrepresented the owner of the vehicle and failed to list a driving age son but the Court found that the insurer was estopped from rescinding the policy after an accident because the insurer had learned of the misrepresentations before the accident and decided to cancel the policy rather than rescind it at that time.

C. IF THERE HAS BEEN A MATERIAL MISREPRESENTATION, THE INSURER MAY VOID OR REFORM THE POLICY.

If there has been a material misrepresentation in the application for insurance, the insurer may consider the policy void from its inception. *Anderson*, 206 Mich App at 218; *Auto-Owners Ins Co*, 141 Mich App at 779-80. "Even under the common law, however, where an insured makes a material misrepresentation in the application for insurance . . . the insurer is entitled to rescind the policy and declare it void ab initio." *American Guarantee & Liability Ins Co v*

Jacques Admiralty Law Firm PC, 121 Fed Appx 573 (6th Cir, 2005).

However, an insurance company may also have the option of reforming the policy in the event of a material misrepresentation. *Lake States Ins Co*, 231 Mich App at 331-332. In *Lake States Ins Co, supra*, the insurance company was permitted to reform the policy to provide for coordinated benefits [instead of the "optional" noncoordinated no-fault and health insurance coverage] where the insured failed to disclose other drivers in the household on her application. In *Titan Ins Co*, 491 Mich at 558, the Supreme Court explained that the legal and equitable remedies available for defending against misrepresentations, fraud, and silent fraud include "grounds to retroactively avoid contractual obligations through traditional legal and equitable remedies such as cancellation, rescission, or reformation" unless the right is restricted by statute. *Id*. at 558..

D. THE MISREPRESENTATION NEED NOT BE INTENTIONAL.

It is generally held that, if the fact misrepresented or the undisclosed information is material, it does not matter whether the misrepresentation or a non-disclosure was intentional or by mistake.

Handbook on Insurance Coverage Disputes §3.01[c] states:

> The insurer will be relieved of liability even though the material misrepresentation was not made knowingly, willfully, or with an intent to deceive. *See Michael v. World Ins. Co.*, 254 F2d 663, 664 (6th Cir. 1958); *In re Epic Mortgage Ins. Litig.*, 701 F Supp 1192, 1242-43 (E.D. Va. 1988); *Hatch v. Woodmen Accident & Life* Co., 88 111. App. 3d 36, 409 NE2d 540, 543 (2d Dist. 1980); *Barrera v. State Farm Mut. Auto. Ins. Co.*, 71 Cal2d 659, 659 n.4, 456 P2d 674, 679 n.4, 79 Cal. Rptr. 106, 111 n.4 (1969); *Modisette v. Foundation Reserve Ins. Co.*, 77 N.M. 661, 427 P2d 21, 25 (1967); *Anaheim Builders Supply, Inc. v. Lincoln Nat'l Life Ins. Co.*, 233 Cal. App. 2d 400, 43 Cal. Rptr. 494 (5th Dist. 1965); *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 NE2d 952 (1938); *Piccininni v. Aetna Life Ins. Co.*, 250 A.D. 498, 294 NYS 880 (2d Dep't 1937). *See generally* R. Long, *The Law of Liability Insurance § 19*.08, at 19-21 (1986); 17 *Couch on Insurance* 2d §67:343(1983).

Michigan appellate courts have recognized this rule.

In *U. S. Fidelity & Guaranty Co v Black*, 412 Mich 99 (1981), the Supreme Court held that, in cases involving parties to a contract, there is no necessity to prove intent to deceive in order to show misrepresentation:

> Therefore we hold that independent proof of intent to induce reliance is unnecessary to maintain an action in deceit under the

> doctrine of innocent misrepresentation inasmuch as the material statement made in the course of contractual negotiations is presumptively made with the intention that it should be relied upon. [*Black*, 412 Mich at 120.]

In *Legel v American Community Mut Ins Co*, 201 Mich App 617 (1993), the Court of Appeals affirmed summary disposition to the defendant insurer holding on this issue:

> However, it is unnecessary for an insurer to show fraudulent intent in order to cancel an insurance policy where an applicant makes a material misstatement concerning prior medical history. [*Legel*, 201 Mich App at 618 (citation omitted).]

In *Lash*, the issue involved whether the applicant was mistaken as to the date of his previous citation for operating a motor vehicle while impaired. The Court of Appeals held that whether the misrepresentation was innocent or intentional was irrelevant to void the policy of insurance *ab initio*:

> Rescission is justified in cases of innocent misrepresentation if a party relies upon the misstatements, because otherwise the party responsible for the misstatement would be unjustly enriched if he were not held accountable for his misrepresentation. *Britton v Parkin*, 176 Mich App 395, 398-399; 438 NW2d 919 (1989). This is true, even as in this case, if it was a mutual mistake of fact. [*Lash*, 210 Mich App at 103.]

In *Lakes State Ins Co*, the Court of Appeals ordered summary disposition for the insurer on appeal holding:

> It is the well-settled law of this state that where an insured makes a material misrepresentation in the application for insurance, including no-fault insurance, the insurer is entitled to rescind the policy and declare it void ab initio. *Lash v Allstate Ins. Co.*, 210 Mich App 98, 101, 532 NW2d 869 (1995). Rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer. Reliance may exist when the misrepresentation relates to the insurer's guidelines for determining eligibility for coverage. [*Wilson*, 231 Mich App at 331.]

There is no need for the insurer to prove fraud in order to rescind the policy because of a material misrepresentation:

> Prudential need not prove a fraudulent intent on Mr. Reed's part in order to cancel the policy. *Wiedmayer v. Midland Mut. Ins. Co.*, 108 Mich. App. 96, 310 N.W.2d 285 (1981), *rev'd on other*

> *grounds*, 414 Mich. 369, 324 N.W.2d 752 (1982). Mr. Reed had a duty to answer the questions truthfully as the truth was known to him. [*Reed v Prudential Ins Co*, 849 F2d 1473 (6th Cir, 1988).]

"[A]n insurance contract can be rescinded due to an intentional or innocent misrepresentation." *Huda*, 341 Fed Appx at 154.

E. THE INSURER MUST RELY ON THE MISREPRESENTATION.

The insurer may not assert a misrepresentation as a basis to void a policy of insurance if the insurer has not relied on the misrepresentation. *Lash*, 210 Mich App at 103.

In *Darnell*, the plaintiff applied for a no fault insurance policy on April 1, 1980 and denied that any drivers in her household had their licenses revoked, restricted or suspended within three years. The insurer then obtained the plaintiff's driving record and learned that the applicant's husband had a restricted license. Despite having this information, the insurer issued the policy. The Court of Appeals held that the insurer could not later rescind the policy on the basis of the misrepresentation:

> . . . Mrs. Darnell's misrepresentation as to plaintiff's driving record, as a matter of law, was not material since Auto-Owners' very action of issuing the policy with knowledge of plaintiff's record belies any contention that it would have rejected the risk or charged an increased premium. Accordingly, the misrepresentations of Mrs. Darnell were not material, based upon Auto-Owners' actions. [*Darnell*,142 Mich App at 10.]

In order to void a policy for material misrepresentation, the insurer must have justifiably relied upon the misrepresentation. If the insurer was not justified in relying upon the misrepresentation, it may not assert the misrepresentation to void the policy.

But in *Titan Ins Co*, the Supreme Court explained that it is irrelevant whether it would have been easy for an insurer to determine that a misrepresentation was made in the policy: "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.

In *Manier*, the court noted that there was no duty to investigate:

> In *Hammoud v Metropolitan Prop & Cas Ins Co*, 222 Mich App 485, 489; 563 NW2d 716 (1997), this court held that "an insurer does not owe a duty to the insured to investigate or verify" a policy applicant's representations "or to discover intentional material misrepresentations." Here, Alice Burton advised defendant that Manier resided in her home, and claims to have no awareness of

> Manier's driver's license number. Burton also failed to advise defendant that Manier's girlfriend drove the Silhouette. Reviewing the issue *de novo*, we conclude that defendant could not have "easily ascertained" Burton's misrepresentations at the time she made them. Because no duty of investigation compelled defendant to perform further research regarding Manier's residence, [*Farmers Ins Exch v Anderson*, 206 Mich App 214 (1994)] does not control this case, and the circuit court correctly determined that Burton's misrepresentation entitled defendant to reform the policy. [*Manier*, 281 Mich App at 490.]

For cases involving insurance policies governed by MCL 500.2218, which pertains to life and disability insurance, in *Smith v Globe Life Ins Co*, 460 Mich 446, 460-62 (1999), the Supreme Court held that if the misrepresentation deals with the "hazard assumed" then the insurer is not required to establish reliance under MCL 500.2218 in order to void the policy. The court referred to the language of the statute which provides:

> The falsity of any statement in the application for any disability insurance policy covered by Chapter 34 of this code may not bar the right to recovery thereunder unless such false statement materially affected ***either the acceptance of the risk or the hazard assumed by the insurer.*** (MCL 500.2218, emphasis added)

In the *Smith* case, the misrepresentation dealt with a misrepresentation that the applicant did not have a heart condition. He had a heart condition and died of a heart attack. The court thus held that the misrepresentation was causally connected to the loss, and thus, the misrepresentation materially affected the hazard assumed regardless of whether the defendant actually relied upon the misrepresentation.

F. THE INSURER'S REQUEST FOR INFORMATION MUST BE CLEAR AND UNAMBIGUOUS.

The material misrepresentation by the insured must be clear and unambiguous.

Where the insurer asks an ambiguous question on the application, the ambiguity will be construed against the insurer. For example, in *Cook v Auto-Owners*, unpublished Michigan Court of Appeals decision docket number 168780 (1995), Cook applied for insurance when her son resided with her and the son's license had been suspended three times during the previous three years and was suspended at the time the application was completed. The claim resulted when the son, Albert Cook, was a pedestrian when struck and killed by a vehicle that had been struck by an uninsured motorist. The application failed to disclose that her son's license had been suspended three times in the previous three years, but the insured claimed that this information was not clearly asked for:

> Cook claims (1) that the form itself was ambiguous, and (2) that the agent who filled out the form asked her only for information

> regarding any other persons that would drive her vehicle. Plaintiff told the agent that she was the only person that would be driving her vehicle. The agent who filled out the insurance application indicated that she asked each question on the insurance application. According to the agent, she specifically asked plaintiff to identify any other drivers in her household and whether any driver had a license suspension or revocation in the previous three years.
>
> The application contained a section headed 'DRIVER INFORMATION,' which was followed by a heading 'PROVIDE APPLICABLE INFORMATION FOR ALL HOUSEHOLD MEMBERS.' Under these headings are columns asking for the state in which the driver is licensed, the driver license number, the person's name as it appears on the license, and whether the driver is a principal or occasional driver of the insured vehicle. The application also asks whether 'any driver had a license suspension or revocation during the past 3 years.'
>
> Ambiguities in insurance contracts must be construed in favor of the insured and against the insurer, the drafter. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994). Where the provision is clear and unambiguous, its terms must be construed according to their plain, ordinary, and popular meaning. When the terms may reasonably be understood in different ways, the contract is deemed ambiguous. *Id.*
>
> We find the form to be ambiguous. The form can be read so as to lead an applicant to understand that it requests information only as to household members that will drive the insured vehicle. That the form specifically asks for an indication as to whether a household member is either a principal or occasional driver of an insured vehicle creates a question as to whether a person who will not be driving an insured vehicle must be listed. Moreover, the form includes questions pertaining to 'driver', such as whether a driver has had a license suspended within the past three years, and separate questions referring to 'any household member[s].'
>
> Because the application is ambiguous, there is a question of fact as to whether Cook made intentional misrepresentations on the application. Therefore, summary disposition pursuant to MCR 2.116(C)(10) was improperly granted on this issue.

The Court of Appeals addressed the issue in light of a medical condition on an application for mortgage life insurance in *Frost v Minnesota Life Ins Co*, 2007 WL 914627 (Mich Ct App Docket No. 273745, March 27, 2007). Plaintiff's decedent wife described herself as bulimic, but she was never diagnosed as bulimic. During her pregnancy, she was referred to a

psychologist due to the failure to experience normal weight gain, but she never actually went to the appointment. After the pregnancy, the plaintiff and the decedent purchased mortgage life insurance. Question 3 on the application asked whether the decedent had ever had, or been treated for, mental disorders. The decedent answered no to this question. Three months later, the decedent died due to heart problems, potassium deficiency, and bulimia nervosa. The insurer denied coverage claiming a misrepresentation of the decedent's mental health in the application. The insurer relied on the fact that the Diagnostic and Statistics Manual of Mental Disorders (4th Ed, 1994), a treatise regarding the diagnosis of mental disorders, indicated that eating disorders were mental disorders. Because bulimia is an eating disorder, the insurer argued that this amounted to a mental disorder under the medical treatise. The Court of Appeals rejected this because:

> It is unlikely that the average lay person is familiar with the provisions of the DSM-IV, and there is no evidence that the decedent was familiar with the treatise. Further there is no evidence that the decedent had ever been diagnosed by a qualified health professional as having a recognized eating disorder before her death and, regardless of how we may view the decedent's behavior in light of the diagnosis criteria for eating disorders, lay persons are not qualified to make medical diagnoses. Thus the mere fact that an eating disorder qualifies as a mental disorder under the DSM-IV does not itself prove that the decedent's condition constituted a mental disorder or that she believed it to be a mental disorder. [*Id.* at slip op p 2.]

The court also noted that the fact that the decedent was referred to a psychologist for counseling does not prove that she had or believed she had a mental disorder. Therefore, under the facts, the court found a question of fact regarding whether the decedent made a false representation in her application for insurance.

G. THE INNOCENT THIRD PARTY RULE HAS BEEN RECENTLY REJECTED.

In the past, the Michigan appellate courts had held that, in cases where the insured has made a misrepresentation in the application and there is an intervening accident involving an innocent third party before the time the insurer voids the policy, then the insurer is then estopped or barred from voiding the policy.

In *Ohio Farmers Ins Co v Michigan Mut Ins Co*, 179 Mich App 355, 364-65 (1989), the Court of Appeals held on this issue:

> Therefore, we conclude that basic public policy considerations require that, once an innocent third party is injured in an accident in which coverage is in effect on the automobile, an insurer will be

> estopped from asserting rescission as a basis upon which it may limit its liability to the statutory minimum. Accordingly, the trial court was correct in determining that plaintiff failed to state a claim upon which relief can be granted.

In *Katinsky v Auto Club Ins Ass'n*, 201 Mich App 167, 170-71 (1993), the Court of Appeals held:

> A false representation in an application for no-fault insurance that materially affects the acceptance of the risk entities the insurer retroactively to void or cancel a policy. See *Auto-Owners Ins Co v Comm'r of Ins*, 141 Mich App 776, 779-780; 369 NW2d 896 (1985). However, this right to rescind ceases to exist once there is a claim involving an innocent third party. *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985). Public policy requires that an insurer be estopped from asserting rescission when a third party has been injured. *Ohio Farmers Ins Co v Michigan Mutual Ins Co*, 179 Mich App 355, 364-365; 445 NW2d 228 (1989). Therefore, any misrepresentation McBride may have made on an insurance application regarding the validity of the check cannot result in rescission of the policy with respect to plaintiff's claim.

In *Anderson*, 206 Mich App at 214, the Court of Appeals held that the estoppel to void the policy would only apply to the statutorily mandated minimum coverage of $20,000/$40,000. In *Anderson* case, the policy provided liability limits of $100,000/$300,000 and the court held that the insurer would be able to rescind the policy to the extent of the coverage in excess of the statutorily mandated minimum coverage.

The Michigan Court of Appeals further held that the estoppel to assert rescission does not apply to any "optional" coverage which the court defined as "any lawful coverage in excess of or in addition to the [mandatory minimum] coverage specified for a motor vehicle liability policy." *See* MCL 257.520(g). In *Lakes State Ins Co*, the Court of Appeals held:

> Once an innocent third party is injured in an accident in which coverage was in effect with respect to the relevant vehicle, the insurer is estopped from asserting fraud to rescind the insurance contract. MCL 257.520(f)(1); MSA 9.2220(f)(1); *Auto-Owners Ins. Co. v Johnson*, 209 Mich App 61, 64, 530 NW2d 485 (1995). However, an insurer is not precluded from rescinding the policy to void any 'optional' insurance coverage, MCL §257.520(g); MSA 9.2220(g), unless the fraud or misrepresentation could have been 'ascertained easily' by the insurer. [*Lake States Ins Co*, 231 Mich App at 331-32.]

One unpublished case from the Michigan Court of Appeals further suggested that an

"innocent third party" includes only those third parties injured or killed by a vehicle and excludes a lienholder. *See GMAC v Titan Ins Co*, 2004 WL 2256170 (Mich Ct App Docket No. 244722, Oct 7, 2004).

In *Continental Gen Ins Co v Gershonowicz*, 2008 Mich App Lexis 762 (Mich Ct App Docket No. 277199, April 15, 2008), the Court of Appeals concluded that the innocent third party exception to rescissions for material misrepresentation did not apply to health insurance. The court noted that the insurer's right to rescind a health insurance policy is not limited by statute as the right to rescind auto insurance policies is by MCL 257.520.

The innocent third party rule, however, has recently been rejected by the Michigan Court of Appeals. In *Bazzi v Sentinel Ins Co*, __Mich App __; __NW2d__ (Docket No. 320518, 2016) 2016 Mich App Lexis 1153 the Court of Appeals followed the Supreme Court's ruling in *Titan* Ins Co, 491 Mich at 547. The Court of Appeals concluded that, in light of the Supreme Court's precedent discussing the traditional defenses available to insurers, no special protections existed for injured innocent third-parties claiming a right to no fault benefits:

> [T]he Supreme Court in Titan clearly held that fraud is an available defense to an insurance contract except to the extent that the Legislature has restricted that defense by statute. . . . [T]he Legislature has not done so with respect to PIP benefits under the no-fault act, and, therefore[,] the judicially created innocent third-party rule has not survived the Supreme Court's decision in Titan. . . . Therefore, if an insurer is able to establish that a no-fault policy was obtained through fraud, it is entitled to declare the policy void ab initio and rescind it, including denying the payment of benefits to innocent third-parties. [Bazzi, __Mich App at slip op p 10.]

Other Court of Appeals panels have reached the same conclusion as *Bazzi*. *AR Therapy Serv v Progressive Marathon Ins Co*, 2016 Mich App Lexis 1148 (Mich Ct App Docket No. 322339, June 14, 2016); *State Farm Mut Auto Ins Co v Mich Mun Risk Mgmt Auth*, __Mich__; ___NW2d___; 2016 Mich. App. LEXIS 1605, at *6; *Oakwood Healthcare v Hartford Ins Co*, 2016 Mich App Lexis 2174 (Mich Ct App Docket No. 328162, November 22, 2016); *Dewley v Pioneer State Mut Ins Co*, 2016 Mich App Lexis 1975 (Mich Ct App Docket No. 324751, October 25, 2016).

An application for leave to appeal to the Michigan Supreme Court has been filed in *Bazzi*, but leave has not been granted, and *Bazzi* is currently binding precedent.

H. THE INSURER MUST RESCIND AND MAY NOT PROCEED AS A CANCELLATION.

Where the insurer has a right to rescind the policy for a misrepresentation and void the policy from the inception of the policy, the insurer must take steps to do so. However, if the insurer learns of the misrepresentation and then chooses to cancel the policy, then the policy is not void from the inception, and the rules of cancellation apply.

For example in *Burton v Wolverine Mutual Ins Co*, 213 Mich App 514 (1995), the insured learned of the misrepresentation but chose to retain the earned portion of the premium and then cancelled the policy. Before the effective date of cancellation, the accident occurred. The court held that the insurer was barred from claiming that the policy was void:

> The remedy that defendant seeks is untenable. Defendant wishes, upon the discovery of a misrepresentation in the application, to have the right to collect a premium and provide coverage as long as there are no losses and yet remain entitled to choose rescission and deny coverage if a loss occurs. In short, defendant wishes to be able to earn a premium without having to provide coverage. That, however desirable it may be to defendant, is not an available option. Rather, it must either rescind the policy upon discovery of the misrepresentation and refund the premium or cancel the policy, retaining the premium earned until the effective date of the cancellation and provide coverage until the effective date of the cancellation. But it cannot have its premium and deny coverage too.
>
> In sum, defendant was entitled upon discovery of the misrepresentation to rescind the policy issued to plaintiffs. Instead, it chose to continue coverage for approximately three weeks longer and to retain a premium for that period. Having chosen to do so, defendant was obligated to provide coverage for that period and to pay the loss that happened to have occurred. [*Burton*, 213 Mich App at 519-520.]

Similarly, in *Hill v Pioneer State Mutual*, 2001 WL 1353655 (Mich Ct App Docket No. 222646, Nov 2, 2001), the insureds failed to mention to the defendant's agent that their son was living with them and driving their vehicles at the time of the application. Subsequently, the agent learned that the son was residing with them and obtained a motor vehicle report and learned that he had nine points. Despite this knowledge the insurer issued the policy covering the insureds and their son. One day later, the insurer issued a cancellation notice effective December 15, 1997. However, on November 19, 1997 the son was involved in an accident. When the insurer became aware of the accident, it then sent a letter on December 20, 1997 seeking to rescind the policy and return the premium. The Court of Appeals relied upon the decision in *Burton*, holding that the insurer had the option to rescind the policy *ab initio* once it determined that misrepresentation had occurred but instead chose to cancel the policy and keep the premium payment. Thus, the defendant was barred from later attempting to rescind the policy:

> Like the defendant in *Burton*, defendant in the instant case had the option to rescind plaintiffs' policy ab initio once it determined that misrepresentation occurred; instead, defendant chose to cancel the policy and keep plaintiffs' premium payment. Like the plaintiff in *Burton*, Gregory was in an accident during the covered period before a cancellation notice was to take effect. Defendant in the

> instant case, like the defendant in *Burton*, attempted to rescind plaintiffs' policy once it learned of the accident. As in *Burton*, defendant is not entitled to do so. Indeed, defendant had already chosen its remedy by canceling plaintiffs' policy instead of rescinding it, and it cannot 'have its premium and deny coverage too.' *Id.* at 520. The trial court did not err by relying on *Burton* to rule for plaintiffs.

See also NCMIC Ins Co v Dailey, 2006 WL 2035597 (Mich Ct App Docket No. 267801, July 20, 2006), in which the court held that the insurer could rescind the legal malpractice policy because the attorney (through his agent) had materially misrepresented items on the application, but the insurer had to refund policy premiums to put the parties back to the status quo since the policy was void *ab initio*.

See also Al-Talaqani V Liberty Mut Gen Ins Co, 2016 US Dist Lexis 110576 (ED Mich, July 21, 2016), where the insured misrepresented the owner of the vehicle and failed to list a driving age son but the Court found that the insurer was estopped from rescinding the policy after an accident because the insurer had learned of the misrepresentations before the accident and decided to cancel the policy rather than rescind it at that time.

I. RETENTION OF INSURANCE PREMIUMS WHERE POLICY IS RESCINDED FOR MISREPRESENTATIONS

Where an insurer seeks to rescind a contract for insurance on the basis of misrepresentation the general rule is that the insurer must return all premiums paid by the insured. *Burton v Wolverine Mut Ins Co*, 213 Mich App 514, 520 (1995); *NCMIC Ins Co v Dailey*, 2006 WL 2035597 (Mich Ct App Docket No. 267801, July 20, 2006). The rationale behind this rule is that the parties will be restored to their pre-contract status quo. *Id*..

Although there are no cases on point in Michigan, other states have noted an exception to this general rule. Specifically, these cases have held that if an insured makes material misrepresentations in the application and an insurance company pays claims under the policy, the insurance company is entitled to a setoff and need not return the full premium to rescind the policy.

In *American Standard Ins Co v Durham*, 403 N.E.2d 879 (Ind Ct App, 1980), citing 6 Couch on Insurance (2d ed. 1961) § 34:35 at 779, the Court held:

> Notwithstanding the general rule that, in order to avoid liability on a policy there must be a prompt tender of premiums, such a tender is not necessary where . . . the insurer has paid a claim thereon which is greater in amount than the premiums paid.
>
> Though not cited by the parties, directly on point is a 60 year old Indiana case, *Great Eastern Casualty Co v Collins* (1920), 73 Ind App 207, 126 NE 86. Collins sued Great Eastern for failure to pay

> on an insurance policy. As a defense, Great Eastern asserted a material misrepresentation in the policy application, entitling the company to a rescission of the contract. Over the six months the policy had been in effect, Collins had paid $16 in premiums, but had received $16.67 on a previous claim. . . .
>
> On appeal, this court held that when an insurance company has already paid out more in claims than had been paid in premiums, there is no need to tender premiums into the court. The court summarized:
>
> > We are not unmindful of the rule in this state, so well established that we do not need to cite authorities, that in order to avoid liability there must be a seasonable and prompt tendering back of premiums received. . . . (But) the law, as well as equity and good conscience, does not require appellant to return the premiums where appellee was appellant's debtor for more than the amount thereof. [*Durham*, 403 NW2d at 881-882 (internal citations omitted).]

Likewise, in *Gutting* v *Shelter Mut Ins Co*, 905 SW2d 550 (Mo Ct App, 1995), the insurance company was allowed to offset losses by retaining the insured's premium upon rescission. In *Gutting, supra*, the insured brought a claim to recover for losses from a fire. The insurer denied plaintiff's claim and rescinded the policy on grounds that plaintiff failed to disclose prior insurance claims on her application. Because the insurer had already made a $2,500 advance payment for the loss, it refused to tender back any of the premium and requested reimbursement from the insured for money advanced in excess of the premium. The Court held that "where, as here, the insurer has paid money to the insured under the policy which is subsequently rescinded by reason of the insured's knowingly false application, and the money paid exceeds the premium received by the insurer, the insurer has a right of offset, and return of the premium is not a condition precedent to rescission." *Id*.

In *Borden v Paul Revere Life Ins Co*, 935 F2d 370 (CA 1, 1991), the Court determined that an insurance company was not in breach of contract and could rightfully rescind a policy for the insured's misrepresentations where the insurer had paid close to $65,000 in benefits as compared to the insured's $1,500 in premium payments:

> The function of rescission, after all, is to restore the status quo ante--a feat which will customarily involve returning the consideration originally paid. But the rule--like most rules--is not without its exceptions. We think it is good law that, when an insurer has paid a claim to an insured under a policy which is subsequently rescinded by reason of the insured's knowingly false application, and the monies paid are in excess of the premiums received, the insurer has a right of offset; hence, return of the

> premium is not a condition precedent to rescission. *Accord American Standard Ins Co v Durham*, 403 NE2d 879, 881 (Ind Ct App 1980); *Mincho v Bankers' Life Ins Co*, 129 AD 332, 113 NYS 346, 348 (1908); *see also* 6 *Couch on Insurance 2d* [§34.35], at 892- 93 [(1985)]; 3A J. Appleman, *Insurance Law & Practice* § 1832 (1979); 2 *Black on Rescission* § 483, at 1219-20 (1929). A contrary rule – requiring an insurer which has already overpaid a scalawag insured to throw good money after bad in order to set aside a policy obtained by the insured's deceit – would make no sense. [*Borden*, 935 F2d at 379.]

J. MISREPRESENTATIONS BY THE INSURED MAY NOT AFFECT THE INSURER'S LIABILITY TO THE LIENHOLDER.

There are two types of loss-payee/mortgage clauses: 1) standard clauses and 2) ordinary clauses. While the two have confusingly similar names, they are in fact very different. Ordinary clauses (also referred to as open loss clauses) merely direct the insurer to pay the proceeds of the policy to the lienholder, as its interest may appear, before it makes payment to the insured. Under these provisions, the leinholder does not have a separate interest from the insured. It merely collects as the insured would, standing in the place of the insured. *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 383 (1992). *Van Reken v Michigan Basic Prop Ins Ass'n*, 2001 Mich App Lexis 482 (Mich Ct. App, Docket No. 216478, May 18, 2001), provides an example of an ordinary clause.

> In this case, the loss payable clause covering plaintiffs' interest in the property was clearly an ordinary loss payable clause, because it provided for payment to the insured and plaintiffs "as their interests may appear," ***without any additional language providing that plaintiffs would be protected from loss*** based on any act or neglect of the insured. [*Id*. at slip op p 2 (emphasis added).]

Standard clauses (also called union clauses or New York clauses), on the other hand, create a separate contract between the leinholder and the insurance company. They do so by noting the leinholder's right to recover in spite of any action by the insured. *Foremost Ins Co*, 439 Mich 383-384. *Foremost* provides an example of a standard clause. It provided in part:

> Loss or damage, if any, under the policy shall be payable as interest may appear to [State Employees Credit Union] and this insurance as to the interest of the Bailment Lessor, Conditional Vendor, Mortgagee or other secured party of Assignee of Bailment Lessor, Conditional Vendor, Mortgagee or other secured party [herein called a Lienholder] shall not be invalidated by any act or neglect of the Lessee, Mortgagor, Owner of the within described automobile. [*Id*. at 382.]

Under standard mortgage clauses, a separate contract is formed, and the leinholder retains the right to recovery. This point is well settled in Michigan. "It is well settled that a policy's

standard mortgage clause constitutes a separate and distinct contract between a mortgagee and an insurance company for payment on the mortgage." *Singer v American States Ins*, 245 Mich App 370, 379; 631 NW2d 34 (2001). "A standard mortgage clause, such as the one contained in the insurance policy at issue, creates an independent contract between the mortgagee and the insurer so that the mortgagee's rights under the policy are not subject to forfeiture because of any act or omission of the mortgagor." *Cole v Michigan Mut Ins Co*, 116 Mich App 51, 55; 321 NW2d 839 (1982).

The Michigan Supreme Court long ago held that misrepresentations in the application for insurance do not affect the leinholder's rights under a standard mortgage clause.

> In the instant case, the defendant argues that Barrus made certain misrepresentations in his application for the policy. He represented that there was only a mortgage of $1,000 on the property, whereas, in reality, the total amount of the encumbrances was $1,400. Moreover, the true state of Vanderwarker's title was not set forth. Assuming that the statements in the application as to the amount of the encumbrances and status of the title constituted warranties and that these warranties were breached by the falsification of the amount of the mortgages and status of title, can such defense be pleaded in a suit by the mortgagee on the policy? It has been almost universally held that the clause, 'this insurance, as to the interest of the mortgagee shall not be invalidated by any act or neglect of the mortgagor or the owner of the within described property,' prevents the insurance company from raising the defense that there were misrepresentations or breaches of warranty when the policy was taken out. As it is commonly stated, the above-quoted words in the standard clause precludes the defense of breach of condition or misrepresentation by any acts or neglects of the mortgagor contemporaneous with or subsequent to the issuance of the main policy. [*Citizens State Bank of Claire v State Mut Rodden Fire Ins Co of Michigan*, 276 Mich 62, 69 (1936).]

This rule of law is well accepted as the general rule throughout the country. See: 24 ALR 3d 435 ("The courts, in applying such a clause, have held that fraud, false swearing, or other misconduct on the part of a mortgagor will not preclude an innocent mortgagee from recovering on a property insurance policy, regardless of whether the act or neglect of the mortgagor occurred before, at the time of, or subsequently to, the issuance of the policy."); and 4 Couch on Ins § 65:48 ("Under the standard or union mortgage clause, an independent or separate contract or undertaking exists between the mortgagee and the insurer, which cannot be defeated by improper or negligent acts of the mortgagor, whether done or permitted prior or subsequently to, or at the time of, the issuance of the policy.")

K. FRAUDULENT INSURANCE ACT

MCL § 500.4503 defines fraudulent insurance acts which include acts or omissions committed by any person who knowingly and with intent to injure, defraud or deceive:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or any agent of an insurer, or any agent of an insurer, reinsurer, or broker any oral or written statement knowing that the statement contains any false information concerning any fact material to an application for the issuance of an insurance policy.

(b) Prepares or assists, abets, solicits, or conspires with another to prepare or make an oral or written statement that is intended to be presented to or by any insurer in connection with, or in support of, any application for the issuance of an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the application.

(c) Presents or causes to be presented to or by any insurer, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim.

(d) Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim.

(e) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer.

(f) Removes or attempts to remove the assets or records of assets, transactions, and affairs, or a material part of the assets or records, from the home office or other place of business of the insurer or from the place of safekeeping of the insurer, or who conceals or attempts to conceal the assets or record of assets, transactions, and affairs, or a material part of the assets or records, from the commissioner.

(g) Diverts, attempts to divert, or conspires to divert funds of an insurer or of other persons in connection with any of the following:

(i) The transaction of insurance or reinsurance.

(ii) The conduct of business activities by an insurer.

(iii) The formation, acquisition, or dissolution of an insurer.

(h) Employs, uses, or acts as a runner, capper, or steerer with the intent to falsely or fraudulently obtain benefits under a contract of insurance or to falsely or fraudulently assert a claim against an insured or an insurer for providing services to the client, patient, or customer.

> (i) Knowingly and willfully assists, conspires with, or urges any person to fraudulently violate this act, or any person who due to that assistance, conspiracy, or urging knowingly and willfully benefits from the proceeds derived from the fraud.

MCL 500.4511 provides the penalty making a person who commits a fraudulent insurance act guilty of a felony punishable by imprisonment for not more than four years or a fine of not more than $50,000 or both. The person shall be ordered to pay restitution.

L. FALSE STATEMENT PROVISIONS IN POLICIES

Often, insurance policy provisions will contain concealment or misrepresentation provision that provide language similar to the following:

> A. The statements made by **you** in the application are deemed to be representations. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by **us**, by: direct misrepresentation; omission; concealment of facts or incorrect statements; the coverage provided under this policy will be null and void.
> B. If any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by **us**, by: direct misrepresentation; omission; concealment of facts or incorrect statements; the coverage provided under this policy will be null and void.
> C. We do not provide coverage for any **insured** who has made one or more false statement(s) or engaged in fraudulent conduct in connection with any **accident** or **loss** for which coverage is sought under this policy. To prevail under this exclusion, **we** will not be required to prove the **insured's** intent to defraud with regard to any false statements or fraudulent conduct.

Courts have found that an insurer may void the policy pursuant to such misrepresentation and concealment provisions without being required to prove fraud. This is true even if the misrepresentation is "cured" prior to renewal. In *21st Century Premier Ins v Zufelt*, __Mich App__; __NW2d__ (Docket No. 325657, 2016), the plaintiff misrepresented information in the application for insurance and failed to disclose a prior accident which made him ineligible for coverage. During the course of the policy period, points from other violations "dropped off" of his record, and by the time the policy renewed, he was eligible to be insured. Shortly after the renewal, the insured was involved in an accident. The insurer argued that it was permissible under the policy language as well as state law to void the policy it issued on the basis of the misrepresentation and concealment of material facts that it did not learn about until after the accident. The trial court granted the insurer's motion for summary disposition and ordered that the policy be rescinded at that time. The Court of Appeals affirmed:

> The plain terms of the contract did not require a finding of fraud or

> intentional misstatement, but rather allowed plaintiff to rescind the contract based on a false statement, misstatement of a material fact, or failure to disclose. . . .
> Had Barry disclosed the April, 2012 accident, he would have been unable to obtain the insurance policy. . . .
> The eligibility for the renewal turned on the representations that Barry made on the initial application and the material terms in the initial contract applied to the renewal. Therefore, the renewal was inextricably linked to the initial application and plaintiff was entitled to rescind the contract based on Barry's misrepresentations even after the renewal issued. [*Id*., slip op p 4.]

Several cases have enforced such false statement/misrepresentation provisions and have found no duty to prove fraud. In *Dewley v Pioneer State Mut Ins Co*, 2016 Mich App Lexis 1975 (Mich Ct App Docket No. 324751, October 25, 2016) the Court found silent fraud existed because "[u]nder the terms of the policy, an insured was obligated to review the information provided to Pioneer, both at the time of the initial application and each time the policy was renewed, to determine if the information was accurate or required updating." But the insured failed to disclose an additional driver.

In *Secura Ins v Thomas*, 2015 Mich App Lexis 2230 (Mich Ct App Docket No. 322240, December 1, 2015), the Court stated "An insurer does not have to prove fraud to void the policy. It may be voided upon an insured's false statements relating to either the insurance or to a loss to which the insurance applies."

In *Electric Stick v Primeone Ins Co*, 2016 Mich App Lexis 1688 (Mich Ct App Docket No. 327421, September 15, 2016), the found that the insurer does not need to show a fraudulent intent when an insured failed to disclose relevant information necessary to the making of the insurance contract, which in that case were tax liens and prior bankruptcies.

In *Home-Owners Ins Co v Griffith*, 2014 Mich App Lexis 2083 (Mich Ct App Docket No. 312707, October 28, 2014), the Court found a false statement provision enforceable. The Court stated:

> The insurance policy expressly provides that plaintiff is not obligated to provide coverage for any loss to an insured who intentionally conceals or misrepresents any material fact or circumstance, engages in fraudulent conduct, or makes a false statement relating to the insurance. This policy language is consistent with that of MCL 500.2833(1)(c), which provides that every fire insurance policy issued or delivered in this state shall contain a provision "[t]hat the policy may be void on the basis of misrepresentation, fraud, or concealment."

In *Ward v State Farm Auto Ins Co*, 2016 Mich App Lexis 1719 (Mich Ct App Docket No. 327018, September 15, 2016), the insured made false statements regarding replacement services in her

no fault claim. The insurer argued that this barred all coverage under the policy due to a misrepresentations/false statement provision in the policy. The Court of Appeals agreed, noting that the insurer did not have to prove reliance on the false statement as the terms of the policy controlled:

> [T]his appeal simply involves the interpretation of the insurance contract's plain terms, which provides that "[t]here is no coverage under th[e] policy" if the insured "made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy." Hence, the contract's plain terms control and do not mention that defendant must have relied on any false statements. Thus, plaintiff's position that defendant must also establish some detrimental reliance in order to invoke this provision lacks merit.
>
> * * *
>
> Due to this clear documentary evidence, reasonable minds could not differ on the conclusion that plaintiff made a false statement with the intent to conceal a material fact from defendant in relation to her wage-loss claim. See id. Therefore, pursuant to the contract's plain terms, "[t]here is no coverage under th[e] policy," and defendant was entitled to summary disposition. Notably, all coverage is forfeited under the policy if a false statement was made "in connection with any claim under this policy." (Emphasis added.) Therefore, plaintiff's false statement in connection with her wage-loss claim voids all coverage under the policy, including her claim for medical benefits. [*Id*. at *6, *9.]

M. AN INSURED IS BOUND BY AN APPLICATION HE SIGNS

An insured generally cannot escape a misrepresentation in the application by claiming that he or she did not read the application or by arguing that the application was filled in by someone else. "The policy application, declarations page of policy, and the policy itself construed together constitute the contract." *Royal Prop Group, LLC v Prime Ins Syndicate*, 267 Mich App 708, 715; 706 NW2d 426 (2005). The Michigan Supreme Court has made it abundantly clear that the insured is required to read the contract: "[A]n insured's failure to read his or her insurance contract has never been considered a valid defense. This Court has historically held an insured to have knowledge of the contents of the policy, in the absence of fraud, even though the insured did not read it." *Rory v Continental Ins Co*, 473 Mich 457, 489 n 82; 703 NW2d 23 (2005). Michigan courts have applied this rule to bind insureds to applications they signed but did not bother to read. In *Snyder v Wolverine Mut*, 231 Mich 692; 204 NW 706 (1925), the insured claimed that he sought $5,000 in coverage. The policy only provided $800 in coverage. The insured admitted that he did not read the policy or the application, but he still argued that the insurer committed fraud. The Court disagreed:

> The defendant issued and delivered to the plaintiff the kind of policy that his application called for. He supposed that the application was for a policy in which he would be protected to the

> extent of $5,000, but he would have known better, if he had read it. . . . By reading the application, he could have prevented the fraud complained of. His failure to do so was inexcusable negligence. . . . Having negligently failed to read the application, and having accepted and retained the policy for an unreasonable time without examining it, he is now estopped in this action at law from asserting that he was defrauded. [*Id*. at 693-694.]

In *Montgomery*, Montgomery and her decedent husband applied for life insurance benefits but failed to list that the decedent was a smoker. Despite the fact that the decedent died in an unrelated car accident, the insurer denied recovery based on the misrepresentation. *Montgomery*, 269 Mich App at 127-128. The Court affirmed in spite of Montgomery's claim that she ***did not read or fill out*** the application:

> Plaintiff asserts that the agent is the one who actually completed the application and that neither she nor the decedent read the application before signing. Plaintiff's argument is misplaced. Whether it was plaintiff, the decedent, or the agent who misrepresented the decedent's tobacco use on the application is not material because plaintiff and the decedent signed the authorization, stating that they had read the questions and answers in the application and that the information provided was complete, true, and correctly recorded. It is well established that failure to read an agreement is not a valid defense to enforcement of a contract. A contracting party has a duty to examine a contract and know what the party has signed, and the other contracting party cannot be made to suffer for neglect of that duty. ***Regardless of who actually completed the application, plaintiff and decedent both signed the authorization, attesting to the completeness and truth of the answers, after the application was completed. Thus, plaintiff and the decedent had the opportunity to review the application and correct any errors before submitting it***. We therefore conclude that there was no genuine issue of material fact that the decedent made a material misrepresentation on the application, entitling defendant to rescind or avoid the policy. [*Montgomery*, 269 Mich App at 129-130 (emphasis added, citations omitted).]

Usewick v Safeco Ins, 2013 Mich App Lexis 474 (Mich Ct App Docket No. 300657, March 19, 2013), followed *Montgomery*:

> Most importantly, a contracting party has a duty to examine the contract and to know what he has signed. And, one's signature on a document indicates that he or she warrants the answers to be true and complete in every respect.
>
> * * *

> Plaintiff cannot recall providing any answers on the application to Aagesen, but admits that she signed the application. She testified that she did not read the application, but that is of no consequence under *Montgomery*. She had the opportunity to read the application and correct any errors. The fact that she did not does not relieve her of any obligation to do so, and her signature serves as her attestation that the information contained in the application is true and complete. [*Usewick*, slip op p 6.]

In *Auto-Owners Ins Co v Yahia Motan & Motan Yahia*, 2015 Mich App Lexis 1659 Mich Ct App Docket No. 321059, September 8, 2015), the Court again applied the rule despite a dispute regarding who actually filled in the answers in the application:

> Obviously, the parties dispute whether the misrepresentations in the application resulted from Jabbar providing misinformation to James Anderson or from Anderson mischaracterizing the correct information given to him by Jabbar. There is no dispute, however, that after Anderson filled out the application, Jabbar signed it. By doing so, he ratified that all of the information in the application was complete and accurate. It is of no import that Jabbar failed to review the application for accuracy before signing it; his signature is valid just the same. Thus, regardless of whether the insurance application was actually completed by Anderson, and regardless of whether Anderson may have mischaracterized some of the information provided to him by Jabbar, the misrepresentations were attributable to Jabbar, not Anderson. Accordingly, summary disposition was properly granted in Anderson's favor. [*Id*. at slip op p 5.]

See also *Jones v Allstate Life Ins Co*, 16 F3d 1219 (CA 6, 1994) (unpublished) 1994 US App Lexis 1796 ("an applicant for insurance has a duty to read what he submits to the insurance company"); *Huda*, 341 Fed Appx 149, at *12-13 (finding that claims that the insured did not receive all of the pages in the application did not excuse a misrepresentation when the insured signed the application attesting that all of the answers were correct); and *Sahabi Convenience Store Inc v State National Ins Co Inc*, 2011 Mich App Lexis 1582 (Mich Ct of App Docket No. 298849, September 15, 2011) (finding that the insured was bound by his signed application despite claims that he did not read the application or understand English).

This rule is supported by the fact that independent insurance agents in Michigan generally serve as the agent of the insured and not the agent of the insurer issuing the policy. See *Genesee Food Services Inc v Meadowbrook Inc*, 279 Mich App 649, 654; 760 NW2d 259 (2008) ("When an insurance policy is facilitated by an independent insurance agent or broker, the independent insurance agent or broker is considered an agent of the insured rather than an agent of the insurer."); *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 20; 592 NW2d 379 (1999) ("Ordinarily, an independent insurance agent or broker is an agent of the insured, not the insurer."); *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 254; 535 NW2d

207("Ordinarily, an independent insurance agent or broker is an agent of the insured, not the insurer."); *Mayer v Auto-Owners Ins Co*, 127 Mich App 23, 26; 338 NW2d 407 (1983) ("An independent insurance agent, or insurance broker, is ordinarily the agent of the insured, not the insurer".). Appleman on Insurance indicates that this is simply a matter of agency law:

> When an insured retains as his agent a third-party agent or broker for the purpose of making and submitting an application for commercial property insurance, the insured may be bound by any representations or warranties made by the insured's agent or broker in the same manner as if the insured had made the statements personally. General principles of agency law apply, so that the extent of the insured's liability for representations and warranties by its agent is confined to statements made within the agent's actual or apparent authority on which the insurer could reasonably rely. [5-41 Appleman on Ins § 41.04.]

N. GEICO POLICY LANGUAGE

The GEICO Michigan Family Automobile Insurance Policy (A-30-MI (04-10)) contains a condition precedent to coverage that the insured notify of changes:

> 3. CHANGES
> The terms and provisions of this policy cannot be waived or changed, except by an endorsement issued to form a part of this policy.
>
> We may revise this policy during its term to provide more coverage without an increase in premium. If we do so, ***your*** policy will automatically include the broader coverage when effective in ***your*** state.
>
> The premium for each auto is based on the information we have in ***your*** file. ***You*** agree:
>
> (a) That we may adjust ***your*** policy premiums during the policy term if any of this information on which the premiums are based is incorrect, incomplete or changed.
>
> (b) That ***you*** will cooperate with us in determining if this information is correct and complete.
>
> (c) That ***you*** will notify us of any changes in this information.
>
> Any calculation or recalculation of ***your*** premium or changes in ***your*** coverage will be based on the rules, rates and forms on file, if required, for our use in ***your*** state. [p 19 of 22, emphasis original.]

The GEICO Michigan Family Automobile Insurance Policy (A-30-MI (04-10)) also contains a Fraud and Misrepresentation provision:

> 13. FRAUD AND MISREPRESENTATION
> We may void this policy or deny coverage if ***you*** or an ***insured*** person:
>
> > (a) Knowingly made incorrect statements or representations to us with regard to any material fact or circumstance;
> >
> > (b) Concealed or misrepresented any material fact or circumstance; or
> >
> > (c) Engaged in fraudulent conduct;
>
> at the time of application or at any time during the policy period or in connection with the presentation or settlement of a claim. [p 21 of 22.]

This language does not reference false statements as other polices do in Michigan. But subpart (b) of the Fraud and Misrepresentation provision could be used to argue that GEICO is not required to prove fraud in order to void the policy based on misrepresentations or concealed facts by the insured.