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Some attorneys have made hay in recent weeks about whether a health insurance carrier can misrepresent the benefits it owes to a customer, so long as the customer can get the truth elsewhere. So it may be worth addressing here as well.

Garan Lucow Miller P.C. in Troy and Southfield-based **Gursten, Koltonow, Gursten, Christensen & Raitt P.C.** both have published online material or client advisories on the impact of a new Michigan Court of Appeals ruling. And it does set a controversial precedent.

On May 12 the court published its previous finding that Wisconsin-based **Wausau Insurance Co.**, and later Ohio-based **Nationwide Indemnity Inc.** could not be sued for fraud by the guardian of a Michigan child who suffered severe brain injuries in an automobile accident with an insured driver.

The child, Nancy Eastman, was 10 months old at the time of the crash in 1983. Her father had automotive insurance at the time with Wausau, and guardian Tammy Johnson sued for breach of the no-fault insurance contract and fraud in a 2006 lawsuit.

At issue is whether the insurance company committed fraud when a claims adjustor, Albert Abdey, allegedly deflected Johnson's requests for more help with Eastman's care and did not inform her she was entitled to attendant care expenses for the child.

The court found that Johnson's 2006 lawsuit was barred by a kind of one-year statute of limitations in the no-fault law, the court found the lawsuit could not proceed in court. But it also found that it was immaterial whether Abdey or any other insurance industry workers misled Johnson about attendant care.

"(A)ssuming Abdey make a fraudulent misrepresentation...(it) did not involve information or facts that were exclusively or primarily in the control of defendant," the ruling states. "Rather, Abdey's misrepresentation concerned what benefits were

available...under the no-fault act (and the guardian) had means, i.e., consultation with a lawyer, to determine whether Abdey's representation was true. Indeed, soon after plaintiff learned that additional benefits might be available for her care of Eastman, she consulted a lawyer and the present case was initiated soon thereafter."

In other words, even if an insurance carrier did misrepresent its benefits to a customer, the customer can verify or repudiate the information elsewhere.

But a Garan Luow newsletter to providers and claims adjustors last month raised an interesting question on the ruling. "Since a person, presumably, always has the ability to consult with a lawyer, can a plaintiff ever establish a claim for fraud?" it states.

You can read more on the ruling [here](#).