



## GUEST OPINION

### **Ruling protects insurer instead of patient**

Tammy Johnson v. Wausau Insurance Co. is truly one of the most disturbing cases I have ever read, and the public policy it creates for Michigan residents could not be worse.

If we accept the plaintiff's version of the facts as true in Johnson, an insurance company lied to save money from paying insurance benefits to the caregiver of a 10-month-old girl with catastrophic traumatic brain injuries from a car accident. The company withheld payments for 16 years and got away with it. The Michigan Court of Appeals implied in Johnson (Docket No. 281624) that even if an insurance claims adjuster's representation is fraudulent, an insured person in Michigan cannot establish that he or she relied on this lie to sue the insurance company for fraud, because that person can consult with a lawyer.

Who are we protecting, a dishonest insurance company or a brain-injured baby? Johnson was about a 10-month-old named Nancy Eastman, who suffered severe traumatic brain injuries in a 1983 auto accident. Nancy's legal guardian and caregiver was told by Wausau that she was only entitled to \$20 per day in replacement services (chores, help with children). The case stated: "When plaintiff ... inquired as to whether she was entitled to additional benefits, defendant told her that no additional benefits were available to her." And the insurance adjuster "admitted he never advised ... plaintiff that (she) was entitled to attendant care benefits."

Attendant care benefits are also referred to as nursing services, and would have given the caregiver financial stability to properly care for Nancy. But the caregiver was given the minimum for 16 more years, and financially struggled the entire time. She sued her no-fault insurer for breach of contract and fraud.

The Court's ridiculous reasoning to deny the caregiver benefits is that any person should check out the accuracy of anything and everything an insurance claims adjuster says by consulting with a lawyer.

My interpretation of the Court "logic" goes like this:

First, we should assume our own insurance company will lie to us. Then, when an insurance company claims adjuster lies to us, the right to bring a lawsuit for fraud (or common law breach of contract), is not available because everyone has an "ability" to consult with a lawyer.

Also, the public has the ability to call lawyers and double check the accuracy of what our insurance company is saying to us. Because of this hypothetical right to review what a claims adjuster is saying, even deliberate lies from our own insurance companies will not constitute fraud. Therefore, the claim for fraud must fail in court.

To back this up, the court stated in Johnson, "Because plaintiff... had the means to determine the accuracy of (insurance adjuster's) representation, plaintiff is not able to establish that..."

she... relied on (insurance adjuster's) representation. Accordingly, plaintiff's claim for fraud fails."

It's hard to think of a reason why the court would protect insurance companies with such unclean hands, or punish those who are obviously in a vulnerable and unequal position by presuming they should know all of their legal rights — especially when these people have undergone horrible personal injuries that require attendant care to begin with.

As a Michigan lawyer, I would be the first to tell you that people should be able to receive no-fault insurance benefits from their own insurance company without having to hire a lawyer. I worry about the thousands of people who now could be lied to by insurance company adjusters. And why not lie? By lying to policyholders, some insurance company adjusters will save millions — and they are now legally protected for doing so.

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