

# Local Voice

STEVEN GURSTEN

## *Decision allows insurers to get away with lying*

*Johnson v. Wausau* 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. In *Johnson*, an insurance company got away with deliberately lying for 16 years to save money from paying insurance



Steven Gursten

benefits to a 10-month-old girl with catastrophic traumatic brain injuries received from a car accident. After this tragic case, insurance company adjusters can now deliberately and intentionally lie to their own policy holders to save money — legally.

The Michigan Court of Appeals held in *Johnson* [Docket No. 281624] that even if an insurance claims adjuster's representation is fraudulent — meaning even if it's a deliberate lie — an insured person in Michigan cannot establish that he or she relied on this lie to sue the insurance company for fraud.

Who are we protecting, a lying insurance company or a brain-injured baby?

*Johnson* was about a 10-month-old named Nancy, who suffered severe traumatic brain injuries in a 1983 auto accident. If we accept the plaintiff's version of the facts as true, Wausau Insurance never told Nancy's legal guardian and caregiver that she was entitled to attendant care insurance benefits (nursing services). Instead, she was told she was only entitled to \$20 per day in replacement services (chores/help with children). This continued for 16 years, until the caregiver consulted with an attorney and finally sued her no-fault insurer.

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.

The Court "logic" goes like this:

1. We should assume our own insurance company will lie to us.

2. 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.

3. The public has the ability to call lawyers and double-check the accuracy of what our insurance company is saying to us.

4. Because of this hypothetical right to review what a claims adjuster is saying, even deliberate and intentional lies from our own insurance company will not constitute fraud. Therefore, the claim for fraud must fail in court.

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.

### **Why are we doing this?**

There is so much wrong with this decision, it's almost difficult to begin, but let's start with the underlying premise: People can double-check the accuracy of everything their own claims adjuster says with a lawyer. This is completely wrong. Most people do not have unfettered, free access to insurance lawyers who understand Michigan's complicated no-fault insurance laws.

Also, most people cannot pay for the type of legal advice that this Court just assumes people can get. Why should Michigan residents be forced to check everything a claims adjuster is telling them with a lawyer? And why should people have to pay? Far more disturbing, why are we allowing these insurance company adjusters to deliberately lie to their own policy holders?

# VOICE:

## *Why should insurers not lie?*

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Keep in mind that most people don't even have a copy of their no-fault insurance policy. This gives insurance adjusters complete power when dealing with their injured policy holders because they have information about Michigan's complicated no-fault law that the average driver does not understand, let alone have access to.

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 will now be lied to by insurance company adjusters. And why not lie? By lying to their policyholders, these insurance company adjusters will save millions of dollars at the expense of the most vulnerable and catastrophically injured members of our communities, and they are now legally protected for doing so.

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*Steven M. Gursten is head of Michigan Auto Law, which specializes in insurance benefits and car accidents throughout Michigan. Contact him at [www.michiganautolaw.com](http://www.michiganautolaw.com)*