

## COA Opinion: Automobile Insurance contract containing an innocent misrepresentation may not be reformed if the misrepresentation was easily ascertainable

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In *Titan Insurance Co. v. Hyten*, the Court of Appeals upheld the “easily ascertainable rule” set forth in *State Farm Mutual Auto Insurance Co. v. Kurlyowicz*, 67 Mich App 568; 242 NW2d 530 (1976). *Kurlyowicz* held “an automobile liability insurer must undertake a reasonable investigation of the insured’s insurability within a reasonable period of time from the acceptance of the application and the issuance of a policy.” *Id.* at 576. In support of its holding, the Court of Appeals points out that MCL 500.3220(a), which allows an insurer to cancel a policy within 55 days “if the risk is unacceptable to the insurer,” “envisions that no-fault insurers will either perform an investigation to determine whether to accept a new risk, or forfeit the opportunity to later decide that an insured’s driving record or other characteristic should require cancellation of the policy.” The Court went on to note that although “no Michigan statute directly imposes on an insurance company the duty to investigate the representations of an insured, . . . MCL 500.3220 does express that if an insurer opts against undertaking an early investigation, it may not use later-acquired information to terminate its policy obligations, except under very limited circumstances.”

After a series of traffic violations defendant Hyten’s license was suspended. In anticipation of obtaining her driving privileges again, Hyten’s mother, Johnson, contacted an insurance agent authorized to issue Titan insurance policies. Johnson told the agent that Hyten would likely get her license back on August 24, 2007. The insurance agent filled out the insurance application, and at some point before August 24, 2007, Hyten signed the application and paid the insurance premium. Hyten did not receive her driving privileges until September 20, 2007. In February 2008, Hyten was in a car accident and innocent third parties were injured.

Plaintiff Titan Insurance filed a declaratory action seeking to have the automobile insurance contract reformed to reduce liability coverage limits to the statutory minimum because the insured, Hyten, misrepresented that she was licensed at the time she submitted her insurance application. Both parties moved for summary disposition and the circuit court granted summary disposition in favor of Hyten finding that Titan could have easily ascertained whether Hyten had a license. The court declined to reduce the coverage to the statutory minimum.

The Court of Appeals affirmed the circuit court’s decision, determining that Titan had not shown that it reasonably relied on Hyten’s misrepresentation that she was licensed at the time she submitted the insurance application. Titan elected not to investigate the risk it undertook by insuring Hyten, and Hyten’s unlicensed status was easily ascertainable.