STATE OF MICHIGAN

COURT OF APPEALS

LOCAL 3126 of the NATIONAL ASSOCIATION OF LETTER CARRIERS OF THE UNITED STATES OF AMERICA and PAUL ROZNOWSKI, Individually and as an agent/servant/employee of the NATIONAL ASSOCIATION OF LETTER CARRIERS OF THE UNITED STATES, Plaintiffs-Appellants, v JUDGE-MCKEE INSURANCE AGENCY, INC., Defendant-Appellee.	UNPUBLISHED April 18, 2000 No. 198934 Oakland Circuit Court LC No. 95-507194 CK ON REMAND

Before: Gribbs, P.J., and Murphy and Gage, JJ.

GAGE, J. (dissenting).

As I did in our previous consideration of this matter, *Local 3126 of the Nat'l Ass'n of Letter Carriers of the USA v Judge-McKee Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued 4/3/98 (Docket No. 198934) (Gage, J. dissenting), I again respectfully dissent.

The Supreme Court remanded this case for reconsideration in light of its opinion in *Harts v Farmers Ins Exchange*, 461 Mich 1, 10-11; 597 NW2d 47 (1999), in which it held that an insurance agent owes no duty to advise a potential insured about any coverage unless (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, through he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. I find that plaintiffs failed to present documentary evidence suggesting the existence of any of these special relationship exceptions to the general "no duty" rule.

With respect to the question whether defendant misrepresented the scope of plaintiffs' coverage, I rely on the same analysis of the record set forth in my previous dissent. Plaintiffs have failed to specifically set forth any statements of defendant's agent that could be deemed misrepresentations. Fraud and misrepresentation are similar and require proof that (1) the defendants made a material

misrepresentation; (2) it was false; (3) when the defendants made it, the defendants knew that it was false or made recklessly without knowledge of its truth or falsity; (4) the defendants made it with the intent that the plaintiffs would act on it; (5) the plaintiffs acted in reliance on it; and (6) the plaintiffs suffered damage. *Mitchell v Dahlberg*, 215 Mich App 718, 723; 547 NW2d 74 (1996). Circumstances constituting fraud must be stated with particularity. *Kassab v Michigan Basic Property Ins Ass'n*, 441 Mich 433, 442-443; 491 NW2d 545 (1992). Even if, assuming arguendo, "pretty broad" coverage or a description of "most everything" could be considered fraudulent misrepresentations, plaintiffs' theory still fails because, as plaintiffs' expert's April 1991 letter establishes, the reliance element is missing.

I would affirm.

/s/ Hilda R. Gage