

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## Closed for the Weekend: MCR 1.108 Applies to One-Year-Back Rule

By: Alison M. Quinn and Jack Sklarski

September 21, 2016

### SECRET WARDLE NOTES

*Henry Ford Macomb* is unpublished and therefore not binding authority, but does show the Court's willingness to apply MCR 1.108 to the one-year-back portion of MCL § 500.3145(1). Insurers should be aware that if the one-year date falls on a weekend or holiday, courts might construe the deadline as being the following business day. Note, however, that there was a strong dissenting opinion filed in *Henry Ford Macomb*, whereby Judge Michael F. Gadola argues that the plain, unambiguous language of the statute forbids recovery of benefits for services provided more than one-year prior to the filing of the case, regardless of the day of the week either date falls on.

\* \* \* \*

Under the Michigan No-Fault Act, MCL § 500.3145(1), a case may be filed after one-year from the accident date where "written notice of injury . . . has been given to the insurer within 1 year after the accident or [] the insurer has previously made a payment of personal protection insurance benefits for the injury." MCL § 500.3145(1). However, the second portion of the statute limits the benefits that are payable, stating, "the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." As many of you know, this limitation on damages is known as the "one-year-back rule."

In a recent case concerning the one-year-back rule, on September 20, 2016, the Michigan Court of Appeals released an unpublished per curiam opinion in the case of *Henry Ford Macomb v Farmers Ins Exchange* (Docket No. 327572). The ruling states that, when it comes to the one-year back rule, where the deadline-date for filing a case falls on a weekend or holiday, the deadline extends to the end of the next business day.

In this case, the plaintiff, Henry Ford Macomb, treated a driver after he was injured in an automobile accident that occurred on August 2, 2013. Plaintiff treated the driver from August 2, 2013 to August 5, 2013. Eventually, the plaintiff filed suit to collect no-fault benefits on Monday, August 4, 2014. Notably, August 2, 2014 fell on a Saturday.

Defendant, Farmers Insurance, paid for services rendered on August 4, 2013 and August 5, 2013, but filed a motion for summary disposition arguing that Plaintiff was not permitted to recover benefits for August 2,

2013, and August 3, 2013, because it had filed the complaint more than one-year after those service dates. The trial court denied the motion, agreeing instead with the plaintiff that MCR 1.108(1) governed the computation of time for the one-year-back rule, and because August 2, 2014, was a Saturday, the one-year-back rule extended to the next business day, which was Monday, August 4, 2014.

MCR 1.108 provides in relevant part:

In computing a period of time prescribed . . . by statute . . .

The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.

In this new case, Defendant, Farmers Insurance, argued that because the one-year-back portion of MCL § 500.3145(1) is a damages-limiting provision, and not a statute of limitations, MCR 1.108 should not apply. The Court of Appeals ultimately disagreed, reasoning that "the Supreme Court has indicated that MCR 1.108(1) should be consulted where a given statute does not provide directions for the computation of a given time period."

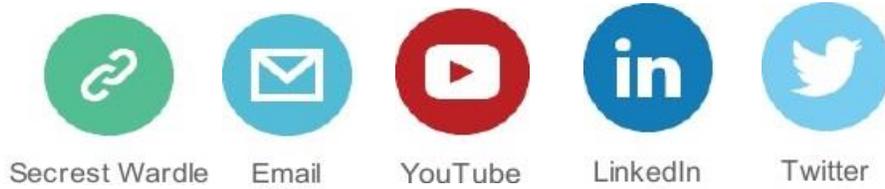
The *Henry Ford Macomb* Court looked to various cases applying MCR 1.108 to statutes. Specifically, in *People v Williams*, 475 Mich 245 (2006), the Michigan Supreme Court noted that MCR 1.108 "unambiguously governs the computation of a period prescribed in a statute." *Id.* at 256 n 4. In *People v Sinclair*, 247 Mich App 685, 689 (2001), the Court of Appeals interpreted MCR 1.108 to apply generally to those situations where a time period prescribed by statute must be computed. Finally, in *Dunlap v Sheffield*, 442 Mich 195, 199 (1993) the Michigan Supreme Court ruled that they themselves "promulgated MCR 1.108 to clarify and avoid any disputes regarding what is the last day" of any given time period.

Ultimately, the takeaway from this unpublished case is, when determining the filing deadline date for purposes of the one-year-back rule, the court is inclined to extend the date to the end of the next business day in situations where the deadline would otherwise fall on a weekend or holiday. Practically speaking, this means the "one-year-back rule" can, in certain situations, actually function as a "one-year-and-a-couple-of-days-back rule."

**PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE  
NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW**



We welcome your questions -  
Please contact Alison M. Quinn at  
[aquinn@secrestwardle.com](mailto:aquinn@secrestwardle.com)  
or 248-539-2846



**Troy 248-851-9500**  
**Lansing 517-886-1224**  
**Grand Rapids 616-285-0143**  
**[www.secrestwardle.com](http://www.secrestwardle.com)**

## **CONTRIBUTORS**

### **Motor Vehicle Litigation Practice Group Chairs**

**Mark C. Vanneste**

**Alison M. Quinn**

### **Editors**

**Linda Willemsen**

**Sandie Vertel**

**This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.**

*Copyright © 2016 Secrest Wardle. All rights reserved.*