

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## LANGUAGE ARTS: The Court of Appeals Clarifies the Right to Reimbursement Pursuant to the No-Fault Act's Reimbursement Mechanism for Assigned Claims

By: Paul Shkreli

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In *Citizens Insurance Company of America v University Physician Group, et al*, published case issued on May 23, 2017, the Court of Appeals draws an important distinction relative to the applicable statute of limitations for reimbursement of no-fault benefits paid against a third party as prescribed in the Michigan No-Fault Act.

On August 2, 2009, claimant William Sullivan was injured in an accident while driving an uninsured Ford F-150 apparently registered to his neighbor. The claimant applied for benefits through the Michigan Assigned Claims Facility, which was in turn assigned to Citizens Insurance Company of America, the Plaintiff.

Citizens hired Data Surveys to investigate Sullivan's entitlement to no-fault benefits. During the investigation, Sullivan participated in an unsworn interview and made unsworn, written statements during which he denied having any personal automobile insurance and claimed to be an "occasional" permissive user of the vehicle. He did not regularly possess the keys, claimed he had no written agreement with the vehicle owner, and was not financially responsible for the vehicle.

On November 24, 2009, Citizens determined the claimant was entitled to no-fault benefits and extended benefits to Sullivan. On August 8, 2012, Citizens filed a lawsuit against the owner of the vehicle for reimbursement of all no-fault benefits paid on behalf of the claimant. Plaintiff moved for summary disposition and in response to same, the owner of the vehicle, Leonardo Terriquez-Bernal, submitted an affidavit from the claimant which stated:

1. That claimant Sullivan purchased the 1999 vehicle when it was new and was the title owner of the vehicle until July 2008 when he sold it to the current owner, Leonardo Terriquez-Bernal, for one dollar as he "needed to have the vehicle title in Defendant's name."

### SECRET WARDLE NOTES

When seeking to enforce rights to indemnity or reimbursement against a third party, assigned claims carriers would do well to recognize the statutory limitations imposed by MCL 500.3175(3), which states: "An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant."

2. From July 2008 until August 2, 2009, Sullivan used and possessed the 1999 Ford Truck "as if [Sullivan] was the owner.
3. At the time of the accident, Sullivan did not have no fault insurance on the subject vehicle.

On July 12, 2013, Mr. Terriquez-Bernal was deposed by Citizens. During the deposition he advised he transferred the title and registration into his name as a favor to Sullivan, who did not have a driver's license or the requisite identification to register the vehicle. At the time of the title transfer, the two were neighbors. Terriquez-Bernal testified he *never* took possession of the vehicle, drove the vehicle, or had keys to the vehicle after transferring the title.

As such, according to Sullivan's affidavit and Terriquez-Bernal's deposition testimony, it appeared Sullivan was the actual owner of the uninsured vehicle involved in the accident. Accordingly, he was never entitled to no-fault benefits pursuant to MCL 500.3113(b) which states, in pertinent part:

"A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:... (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which security required by section 3101 or 3103 was not in effect."

Due to the information gleaned during the suit against Terriquez-Bernal, Citizens filed the current lawsuit against Sullivan and four of his medical providers, including Oakwood and Henry Ford Hospital for reimbursement for the PIP benefits paid on behalf of the claimant. Oakwood filed a dispositive motion, arguing the claims were barred by the limitations enumerated in MCL 500.3175(3), which is applicable to actions to enforce rights to indemnity or reimbursement against third parties. Henry Ford followed in turn, filing a similar Motion for Summary Disposition. Citizens responded, arguing the statutory limitations set forth in MCL 600.5813, for "[a]ll other personal actions" applied. The provider-defendants further claimed entitlement to dismissal pursuant to MCR 2.116(I)(2) and 2.116(C)(10).

The trial court granted summary disposition in favor of Henry Ford and Oakwood. Another provider then filed the same dispositive motion, which was ultimately granted pursuant to MCR 2.116(C)(7). Citizens filed a motion for reconsideration which was denied, giving rise to the subject appeal.

The appellate court astutely noted this was an issue of statutory interpretation. Their determination largely hinged on which statute applied. If MCL 500.3175(3) applied, Plaintiff's claims would be precluded pursuant to the limitations period contained therein. However, if MCL 600.5813 applied, the claims against Sullivan and his providers would be deemed timely.

The Court initially reviewed the specific statutes, noting the "general" six-year limitation period described in MCL 600.5813, noting:

"All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes."

MCL 500.3175(3), on the other hand, is a specific statute of limitations addressing lawsuits for indemnification and reimbursement under Michigan's assigned claims system. It provides:

"An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant."

The appellate court noted the goal of statutory interpretation is to identify and give effect to the intent of the Legislature, citing a general rule that courts are to enforce an unambiguous statute as written<sup>1</sup>. However, undefined terms are given their

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<sup>1</sup> See *Booker v Shannon*, 285 Mich App 573; 776 NW2d 411 (2009); and *Rowland v Washtenaw Co Rd Cmm*, 477 Mich 197; 731 NW2d 41 (2007)

plain and ordinary meanings. The Court noted the "crucial terms" relative to this lawsuit - *indemnity*, *reimbursement*, and *third party* - were not defined in the statute. The court then utilized Webster's dictionary for the definitions of those terms.

In reviewing the subject complaint, the Court noted the Plaintiff set forth two counts against the medical provider defendants. While fraud and misrepresentation were pled, they were only pled against Sullivan. The court agreed the general statute of limitations of six years is applicable to claims of fraud and misrepresentation. However, with respect to the second count, titled "payment under mistake of fact," Plaintiff alleged it "...is entitled to *reimbursement* of the payments made to each of the Defendants..." Similarly, in the fourth count, titled "unjust enrichment," plaintiff claimed it was entitled to *reimbursement* for the fees paid on behalf of the claimant.

The Court of Appeals stated that upon review of the complaint and definitions related to MCL 500.3175(3), same concluded the action was one "to enforce rights to indemnity or reimbursement against a third party." Plaintiff carrier paid defendants for medical services provided to the claimant, then sought to recover from defendants the amounts it paid. Essentially, the Plaintiff wanted the medical providers to "repay" or "pay back" or "refund" all sums paid for the care provided to the claimant.

Plaintiff alleged a right to repayment and sought to enforce same in this action. The Court noted the Plaintiff actually utilized the word "reimbursement" to describe the relief sought from the providers - the exact term used in MCL 500.3175(3). The Court further noted the Plaintiff used the same diction in the actual appeal, writing that the trial court barred its "claim seeking *reimbursement* of no-fault benefits..." The court finally noted the term "third party" is broad enough to apparently include the provider defendants. Regardless, the plaintiff did not argue the providers were not "third parties," as the term is used in MCL 500.3175(3).

The Court ultimately opined Citizen's lawsuit was an action "to enforce rights to indemnity or reimbursement against a third party," pursuant to MCL 500.3175(3), it was subject to the limitations period in MCL 500.3175(3). As such, Plaintiff was not entitled to summary disposition because it did not bring its claim within the limitations period set forth in MCL 500.3175(3). As such, Citizens could not seek reimbursement from University Physician Group, Oakwood, or Henry Ford<sup>2</sup>.

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<sup>2</sup> The reimbursement claim against Feinberg Consulting was otherwise resolved. According to the Court of Appeals Register of Actions, an Order of Judgment against William Sullivan was entered in the lower court on August 14, 2015.

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**Please contact Paul Shkreli at**

**[pshkreli@secrestwardle.com](mailto:pshkreli@secrestwardle.com)**

**or 248-539-2837**



Secret Wardle



Email



YouTube



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SECREST  
**SW**  
WARDLE

**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 Chair  
Mark C. Vanneste**

**Editors  
Linda Willemsen  
Sandie Vertel**

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