SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

A Case of Mistaken Identity Proves Costly for DTE Energy

By: Paul Shkreli **November 3, 2015**

SECREST WARDLE NOTES

This is an unpublished opinion. However, it is worth noting that in the event a plaintiff brings an action against the wrong insurer, and is unable to correct the defect within a year of the loss, the plaintiff's claims may be barred pursuant to MCL 500.3145(2) if the insurer did not have notice of the accident within a year. While parties are typically free to amend their pleadings, a plaintiff may be unable to add a new defendant via an amended complaint if the applicable statute of limitations has run, as an amendment would be futile.

This opinion raises a question as to what affirmative action, if any, an insured must take to inform a plaintiff of their no-fault carrier.

* * * *

In *DTE Electric Company v Theut Products, Inc. and John Doe Insurance Company*, an unpublished Court of Appeals opinion released on September 29, 2015, the Court dealt with the one-year notice rule. More specifically, the Court determined whether the plaintiff had given written notice to the proper insurance carrier within one year of the date of loss, as required by MCL 500.3145(2).

On June 4, 2012, a cement truck owned by Theut Products caught electrical lines pulling down utility poles owned by DTE Energy. According to the police report, the cement truck was insured with "EMC Insurance." Counsel for DTE attempted to identify the proper no-fault insurer of the truck. He found two carriers with "ECM," a slightly different acronym, in their names. However, those companies had since merged and changed their name to Socius Insurance Agency Services, Inc.

DTE filed suit on April 3, 2013, against the owner of the truck, Theut Products, and John Doe Insurance Company (JDIC) seeking property protection benefits. Theut answered the Complaint on June 28, 2013, asserting it was not liable since the electrical lines were too low. Theut also maintained that the statute of limitations period outlined in MCL 500.3145(2) barred DTE's claims. Lastly, Theut's attorney eventually notified DTE that the proper no-fault carrier was EMC Insurance Company.

Once the proper insurance company was identified as EMC, DTE filed pleadings requesting that the complaint be amended to change all references to JDIC to EMC. The trial court denied the motion since

DTE had failed to properly notify the insurance company, EMC, within one year as required by MCL 500.3145(2).

Theut then filed a Motion for Summary Disposition alleging they were not liable since Theut maintained the proper no-fault security, via EMC, in accordance with MCL 500.3101. The trial court granted the motion dismissing Theut from the case. In regard to EMC, the trial court found that DTE had failed to show diligence in learning what carrier actually insured Theut and failed to serve EMC at any time.

On appeal, DTE argued that the trial court abused its discretion when it denied DTE's motion to amend the complaint. The Court of Appeals disagreed indicating that the amendment would have been futile. Pursuant to MCL 500.3145(2), an action for recovery of property protection benefits "…shall not be commenced later than 1 year after the accident." DTE's complaint was filed within one year of the accident. However, DTE's motion to amend the complaint to include the proper insurance company, EMC, did not occur until *after* the one-year limitations period expired.

DTE attempted to argue that the limitations period was tolled pursuant to MCL 600.5856. The Court disagreed, citing case law that the filing of a "John Doe Insurance Company" complaint does not toll the statute of limitation with respect to parties not yet specifically named. Essentially, filing the action against "JDIC" did not toll the limitations period with regard to EMC.

The Court noted that DTE had sought to add a separate party to the case, rather than correct a minor defect in the pleadings. The misnomer doctrine (allowing the correction of inconsequential deficiencies or technicalities in the naming of parties) did not apply in this case. Even if the "John Doe" complaint could have tolled the statutory limitation, DTE failed to serve the Complaint on EMC.

DTE also argued that the trial court erred in granting summary disposition to Theut. Again the Court disagreed pointing out that MCL 500.3135(3) precluded Theut from being liable. MCL 500.3135(3) abolishes tort liability stemming from the ownership use, or maintenance of a motor vehicle in the state for which security was obtained under MCL 500.3101. Theut produced the no-fault policy that was in effect at the time of loss and, therefore, MCL 500.3135(3) abolished Theut's tort liability.

We welcome your questions -

Please contact Paul Shkreli at

pshkreli@secrestwardle.com

or 248-539-2837

Tweet Share Forward

Secrest Wardle Email YouTube LinkedIn Twitter

SECREST WARDLE

Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secrestwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs
Mark C. Vanneste
Alison M. Quinn

Editor
Linda Willemsen

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.