

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## No-Fault Statute of Limitations Is No Longer Subject To the Tolling Provisions of The Revised Judicature Act

By John H. Cowley Jr.

The tolling of the one year statute of limitations of the Michigan No-Fault Act due to mental impairment resulted in substantial claims for increased attendant care benefits dating back many years and in some instances to the original date of loss. The Michigan Court of Appeals in interpreting the 1993 amendment to the Revised Judicature Act (RJA) has held that insureds involved in motor vehicle accidents subsequent to October 1, 1993 can only claim benefits that have been incurred within one year from the date of the filing of the lawsuit even if the injured insured is mentally impaired or under the age of 18.

In *Cameron v Auto Club Insurance Association*, \_\_\_ Mich App \_\_\_ (2004), Daniel Cameron, age 13 was involved in a bicycle/car accident and sustained a closed head injury with personality changes resulting in aggressive behavior. Daniel's parents took care of him for three years following the accident before admitting him to an inpatient rehabilitation program. In 2002, Plaintiff filed suit in Washtenaw County Circuit Court claiming attendant care benefits incurred from 1996 through 1999.

At the trial court level, ACIA argued that Plaintiffs (Guardians of the Estate) could not recover attendant care benefits because MCL 500.3145(1) of the No-Fault Act specifically limited Plaintiffs' recovery to one year back from the date of filing the pending lawsuit. In further support, ACIA argued that the tolling provision of the Revised Judicature Act was not applicable to the No-Fault Act.

Plaintiffs argued in the trial court that *Rawlings v Aetna Casualty & Surety Division*, 92 Mich App 268 (1970), which determined that the savings (tolling) provision of MCLA 600.5851(1) applied to the No-Fault minor Plaintiff's claims was applicable. Plaintiffs

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This decision will allow a tolling argument to be utilized in claiming benefits that have accrued between October 1, 1973 and October 1, 1993, the date of the statutory amendment. It is anticipated that Plaintiffs will seek leave to appeal this case to the Michigan Supreme Court, but the trial courts are bound to follow *Cameron* in deciding pending and subsequently filed cases until further court rulings or amendment of the statute by the Michigan legislature. However, this decision will bar the vast majority of claimants from claiming no-fault benefits that have been incurred more than one year prior to the institution of litigation.

## CONTINUED...

further argued that the tolling provision was found applicable to mentally incompetent claimants in *Hartman v Insurance Company of North America*, 106 Mich App 731 (1981).

The trial court judge agreed with Plaintiffs and granted Summary Disposition in favor of Plaintiff. The judge also entered judgment in the amount of \$182,500, for attendant care provided by Plaintiff's parents prior to placing their son in a residential program.

In *Cameron*, the Michigan Court of Appeals held that as of the effective date of the 1993 amendment (October 1, 1993) to the general savings provision of the RJA did not apply to actions commenced under the No-Fault Act. Prior to the amendment of MCLA 600.5851(1), the Courts consistently held that the general savings provision of the Revised Judicature Act applied to all causes of action created by Michigan statutes even when the statute creating the right contained its own limitation period. Thus, Michigan courts had previously ruled that the one year statute of limitations (MCLA 500.3145(1) of the No-Fault Act was subject to the minority provision of §600.5851(1), giving a minor one year grace after termination of his disability of minority (19 years of age) in which to commence an action. However, the wording of the 1993 amendment changed the statutory language from "an action" to "an action under this Act." The Court of Appeals in *Cameron* utilizing the strict constructionist view, that has been embraced by the Michigan Supreme Court, held that the tolling provisions of the RJA do not apply to the No-Fault Act.

The concurring opinion by Judge Thomas Fitzgerald urged the legislature to amend the Revised Judicature Act to make it applicable to no-fault claimants.

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