

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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The One Year Statute of Limitations of the No-Fault Act Is Clear, Unambiguous and To Be Given Retroactive Effect

By John H. Cowley, Jr.

The Supreme Court overruled *Lewis v DAIIE*, 426 Mich 93 (1986), which had adopted a judicial tolling doctrine under which the one-year statutory period was tolled from the time a specific claim for benefit was filed to the date the insurer formerly denied liability.

The majority of the Court in *Devillers v Auto Club Insurance Association*, 4__ Mich ____; ____NW2d ____ (Supreme Court No.126899, *rel'd* 7/29/05), held that section 3145(1) clearly and unambiguously states that a claimant “may not recover benefits for any portion of the loss incurred more than one year before the date on which the action was commenced.” Because the *Lewis* rule contravenes this plain statutory directive and ignored almost a century of contrary precedent, it was overruled. Further, the Court saw no reason to depart from the general rule that its decisions are to be given retroactive effect. This decision applies to all pending cases which challenged the *Lewis* judicial tolling approach.

In this case, Michael Devillers was an insured under a policy of no-fault automobile insurance issued to his parents by Defendant Auto Club Insurance Association. In September 2000, Michael, then age 16, was seriously injured in an automobile accident. Michael’s injuries include a traumatic brain injury. Michael’s mother, Plaintiff in this case, cared for him after his discharge from the hospital.

Auto Club Insurance Association paid Plaintiff benefits for home health care for the period of October 20, 2000 to February 14, 2001. On February 14, 2001, Defendant received a physicians prescription stating that Michael could function without close supervision. Defendant discontinued home care health payments effective February 15, 2001 based upon the prescription indicating that Michael did not require supervision. However, based upon a latter prescription, Defendant began paying Plaintiff for home care benefits and attendant care as of October 15, 2003 and continued to make those payments. Plaintiff continued without payment to provide services for Michael, including driving him to and from school and the doctor’s office. On October 7, 2002, Defendant

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This decision is a major victory for insurers and will bar no-fault claimants from claiming no-fault benefits that have been incurred more than one year prior to the institution of litigation. This case is a strong indication that the Supreme Court is going to affirm the Court of Appeals decision of *Cameron v Auto Club Insurance Association* (Secret Wardle No-Fault Newsline July 30, 2004), which held that the no-fault statute of limitations was no longer subject to the tolling provisions of the revised Judicature Act. This decision will result in an increased number of lawsuits due to the courts strict application of the one-year back statute of limitations without exception.

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wrote a letter to Plaintiff memorializing the February 2001 discontinuation of benefits.

Plaintiff filed a Complaint on November 12, 2002, seeking payment for services allegedly rendered for which she did not receive payment. At issue in this case was the nine-month period beginning on February 16, 2001 (the date after Defendant discontinued paying home health care benefits), and ending on November 12, 2001 (one year prior to the filing of the Complaint in this matter). Defendant moved for partial summary disposition with respect to benefits sought for that nine month period, arguing that Plaintiff was precluded from recovering benefits under the one year back rule of MCL 500.3145(1).

Plaintiff contested Defendant's Motion, arguing that pursuant to *Lewis*, the one year limitation period provided for in section 3145(1) was tolled from February 15, 2001, (the date Defendant discontinued home health care benefits and attendant care benefits) to October 7, 2002 (the date of Defendant's letter memorializing the termination).

The trial court denied Defendant's Motion for Partial Summary Disposition, citing *Lewis*. Defendant then filed an emergency application for leave to appeal in the Court of Appeals, arguing that the judicial tolling doctrine adopted in *Lewis* should be abrogated. Additionally, Defendant filed a bypass application for leave to appeal to the Michigan Supreme Court, noting that only this Court has the power to overrule *Lewis*.

The Court of Appeals denied leave to appeal. The Michigan Supreme Court entered an Order staying trial and subsequently entered an Order granting Defendant's application for leave to appeal.

Justices Young, Taylor, Corrigan and Markman made up the majority in this case which reversed the trial court and remanded for entry of an Order for Partial Summary Disposition for the Defendant.

The majority agreed with the views expressed by dissenting opinions in *Thomas*, *Ford* and *Lewis* that statutory and contractual language "must be enforced according to its plain meaning, it cannot be judicially revised or amended to harmonize with prevailing policy whims of members of this Court. The *Lewis* majority impermissibly legislated from the bench in allowing its own perception concerning the lack of 'sophistication' possessed by no-fault claimants, as well as the speculation that the average claimant expects payment without the necessity for litigation to supersede the plainly expressed legislative intent that recovery of PIP benefits be limited to losses incurred within the year prior to the filing of the lawsuit."

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We welcome your questions and comments.

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