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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Court of Appeals rules that minority/insanity tolling provision of Revised Judicature Act applies to written notice requirement in No-Fault claims, but does not allow a claimant to avoid "one-year-back" rule.

By Meghan K. Connolly

In *Estate of Thomas v Citizens Ins Co,* ___ Mich App ___ (released November 13, 2014) (No. 312702, for publication), the Court of Appeals addressed the interplay between the No-Fault statute and Revised Judicature Act (RJA), as well as several issues relating to the one-year statute of limitations outlined in MCL 500.3145 and the one-year back provision as applied through MCL 500.3174.

India Arne Thomas, a minor, was catastrophically injured in a motor vehicle accident on July 17, 2001. Her injuries included brain damage and physical injuries that resulted in becoming wheelchair-bound and requiring round-the-clock attention. Plaintiff, India's guardian, did not file an application for benefits through the Michigan Assigned Claims Facility (MACF) until June 24, 2010, almost nine years after the motor vehicle accident in question. MACF assigned the claim to Defendant, Citizens Insurance Company, for further handling.

Defendant denied Plaintiff's claim, based on the fact that no written notice was provided within the statutory time frame, citing MCL 500.3145(1) and MCL 500.3174. As a result, Plaintiff sued Defendant, claiming PIP benefits all the way back to 2001. Defendant filed a motion for summary disposition or partial summary disposition on the grounds that Plaintiff failed to provide written notice within one year of the date of accident, as required under MCL 500.3145(1), or in the alternative, that any of Plaintiff's claims more than one year from the date of filing the lawsuit would be barred pursuant to the one-year-back provision also contained within MCL 500.3145(1).

The trial court denied Defendant's motion, and granted partial summary disposition in favor of Plaintiff, finding that the tolling provision in MCL 600.5851(1) of the Revised Judicature Act applied to Plaintiff, therefore notice of the loss was timely. The trial court also ruled that the one year back rule does not apply to Plaintiff because MCL 500.3174, which governs the notice provisions the MACF, does not specifically include this limitation, and because of the equitable doctrine of *contra non valentem.*

On appeal, the Court of Appeals both agreed and disagreed with this ruling. MCL 500.3174 states, in pertinent part, that an uninsured party must notify the MACF of its claim within the same time frame that an insured party would be required. MCL 500.3145(1) governs both the statute of limitations for insured parties, requiring written notice of a claim within one year of loss, as well as the limitation that

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Estate of Thomas is a published opinion and conclusively answers the questions of whether the minority/insanity tolling provisions under MCL 600.5158(1) may be applied to a No-Fault Claim, as well as the question of whether this same tolling provision or the equitable doctrine of *contra non valentem* would allow a plaintiff to claim No-Fault benefits more than one year back from the date the benefit was incurred.

MCL 500.3145 provides for both a statute of limitations, requiring written notice of a claim within one year, as well as a second and distinct limitation, commonly referred to as the "one-year-back rule." The Court of Appeals held that the minority/insanity tolling provision under MCL 600.5158(1) will toll the statute of limitations, therefore allowing written notice outside of one year of the date of accident under these circumstances. It further held that the one-year-back rule still applies and does not toll according to MCL 600.5158(1) or the doctrine of *contra non valentem.*

damages can only be claimed within one year from which they were incurred. Historically, the courts have held that these are two distinct limitations contained within MCL 500.3145(1).

First, the court found that the No-Fault statute should be read in conjunction with the Revised Judicature Act, and thus agreed with the trial court's decision that written notice within one year of the motor vehicle accident was not required in this instance. Defendant argued that the RJA only applies to claims brought specifically under that Act, and that the No-Fault Act was a separate and distinct statute. The Court cited *Klida v Braman,* 278 Mich App 60 (2008), which found that all civil actions are brought under RJA. Based on this, the minority/insanity tolling provision outlined in MCL 600.5851(1) applied to No-Fault cases. Because of India's age, the minority/insanity tolling provision would apply, thus allowing the claim to be brought.

As for the one-year-back provisions, the Court cited *Cameron v Auto Club Ins Ass'n,* 476 Mich 55 (2006), finding that MCL 500.3145(1) contains two limitations—written notice within one year, and the one-year-back rule. The *Cameron* court found that the first sentence, which requires written notice within one year of the motor vehicle accident is the statute of limitations. The second limitation relates to the one-year-back rule, which is not a statute of limitations. Based on this distinction, the Court of Appeals found in the instant case that the tolling provision of MCL 600.5851(1) does not apply to the one-year-back rule, and Plaintiffs claims are therefore limited to one year back from the date of filing her lawsuit.

Plaintiff attempted to argue that because the one-year-back rule was not specifically outlined in MCL 500.3174, this limitation would not apply to claims made through MACF. The Court of Appeals disagreed, finding that *Bronson Methodist Hosp v Allstate Ins Co,* 286 Mich App 219 (2009), already addressed this issue, finding that because MCL 500.3174 did not explicitly address the one-year-back provision, as it did the statute of limitations, the one-year-back rule still applied.

Finally, the Court addressed Plaintiff's argument that the doctrine of *contra non valentem* would preclude any time limitations under MCL 500.3145(1). *Contra non valentem* is an equitable doctrine that states that the statute of limitations does not begin to run when a plaintiff is prevented from acting. The Court of Appeals found that Plaintiff failed to establish that this principle is recognized and applied in Michigan. Further, the Court recognized that, regardless of whether the courts find a statute unfair, it must apply the law as written by the Legislature. Plaintiff failed to show any unusual circumstance that would be a basis to set aside the statute as written.

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We welcome your questions and comments.

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