



Michigan Supreme Court Overturns Itself on Application of Tolling to "One Year Back" Rule

Thomas R. TerMaat

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The "one year back" rule found in Section 3145 of the Michigan No-Fault Act (MCL 500.3145) provides that a claimant may not recover benefits for any portion of the loss incurred more than one year before the date on which suit was filed. This is separate from the one year statute of limitations found in the same Section which requires a suit for the payment of outstanding no-fault ("PIP") benefits to be filed no later than one year after the date of the accident causing the injury or one year after the most recent expense or loss has been incurred. Michigan also has a general savings provision found in MCL 600.5851 which tolls the statute of limitations for a cause of action in situations involving a minor or insane/incapacitated individual. This savings provision allows minors and insane claimants an additional year in which to file suit once the disability or minority status has been removed.

Two years ago, the Michigan Supreme Court considered the matter of *Regents of the University of Michigan v Titan Insurance Company*, 487 Mich 289 (2010), and found that the minority/insanity tolling statute applied to both the no-fault statute of limitations and the one year back rule. In essence, under that decision, minors must still bring suit before their 19th birthday and mental incompetents/insane people must still bring suit within one year after the disability is removed (assuming they are not also a minor), but these claimants are still entitled to recover the full amount of damages, regardless of when they were incurred. For example, a person injured as a result of a motor vehicle accident may file suit for unpaid benefits between his 18th and 19th birthdays, but may recover unpaid benefits such as attendant care or replacement household services incurred more than a decade earlier.

More recently, the Supreme Court issued its opinion in *Joseph v Auto Club Insurance Association*, 491 Mich 200 (2012), which involved a claim brought by an injured motorist involved in an accident 32 years earlier. Doreen Joseph's claim sought payment of additional PIP benefits dating back to June, 1977 when she was 17 years old. *This*

AUTHORS/ CONTRIBUTORS

Thomas R. TerMaat

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Supreme Court, however, overruled the 2010 *Regents* decision, finding that the holding in that case contravened the clear and unambiguous language in Section 3145 of the No-Fault Act and the minority/insanity tolling provision. Specifically, the Court found that the tolling provision only extended the time for filing suit by tolling an otherwise applicable statute of limitations. It also found that the No-Fault Act's one year back rule is not a statute of limitations limiting the period of time within which a claimant may file an action, but rather is a limitation on the amount of damages a claimant is entitled to recover.

This case is significant for several reasons. First, the result of this opinion is that minors and mental incompetents will lose unpaid benefits which are more than one year old by the time they file suit. Even though an injured minor may still be entitled to file suit for the collection of unpaid benefits before his 19th birthday, he will only be entitled to recover unpaid benefits which are less than one year old. Additionally, the likely result of this opinion will be that parents or legal guardians will file PIP suits on behalf of their injured minor children more frequently and more promptly, rather than waiting until that child reaches the age of majority, at which time he could file suit on his own behalf. Otherwise, unpaid benefits which are more than a year old will be lost.

