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Court of Appeals Clarifies 'Notice' Requirement Under Michigan No-Fault Act (MCL 500.3145(1))

November 18, 2014
LegalTrend Newsletter - Fall/Winter 2014

They say that timing is everything. In a recent case involving a first-party no-fault claim, this couldn't more true. The Michigan Court of Appeals recently held that a claimant's failure to strictly adhere to the filing requirements of MCL 500.3145(1) will bar their claim.

Specifically, an insurer must either (1) be given notice within one year after the motor vehicle accident, or (2) have paid no-fault benefits within one year of the accident, in order for an insured person to be entitled to bring suit under the No–Fault Act, (MCL 500.3145(1)).

In *Jesperson v Auto Club Insurance Association*, the plaintiff was involved in a motor vehicle accident on May 12, 2009. He alleged that he later developed back and shoulder pain as a result of the motor vehicle accident, which eventually resulted in surgeries on his right shoulder, neck and back.

On June 2, 2010, more than one year after the accident, the defendant-insurer was provided with notice that the plaintiff had been injured in a motor vehicle accident. The defendant-insurer paid medical expenses and made the first payment on July 23, 2010, more than one year after the accident.

At some point later, the defendant-insurer stopped paying no-fault benefits, and on May 16, 2011, the plaintiff filed suit. The defendant-insurer filed a motion for summary disposition, arguing that the plaintiff's claim was barred by the statute of limitations provision of MCL 500.3145(1). The trial court granted the defendant-insurer's motion, and the plaintiff appealed.

The appellate court discussed interpreting statutory law and the language and meaning of MCL 500.3145(1), and gave the following explanation:

> The statute begins by establishing a general rule that an action for first-party personal protection insurance benefits "may not be commenced later than 1 year after the date of the accident causing the injury." MCL 500.3145(1). However, the statute then provides two exceptions to the general rule, under which a suit may be brought more than one year after the date of the accident. The first exception is where "written notice of injury as provided herein has been given to the insurer within 1 year after the accident." The second exception is where "the insurer has previously made a payment of personal protection insurance benefits for the injury." Although the first exception explicitly requires that notice have been provided within one year of the accident,

> the second exception requires that the insurer have "previously" made a payment of insurance benefits.

The appellate court focused on the adverb, "previously," referring to the dictionary definition to aid interpretation. The court concluded that the Michigan Legislature understood the word "previously" to mean previous to "1 year after the date of the accident causing injury."

The appellate court upheld summary disposition in the defendant-insurer's favor, reasoning that because the accident occurred on May 12, 2009, and the first-party no-fault claim was not filed until May 16, 2011, the plaintiff's suit was time barred, unless he had provided written notice *or* received payment from the defendant-insurer within one year of the accident.

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