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Insurer Action for Reimbursement Limited by One-Year Back Rule Despite Mistake of Fact

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It has long been held by Michigan courts that where a priority question arises between two Personal Protection Insurance (PIP) insurers, the preferred method of resolution is for one of the insurers to pay the claim and sue the other in an action of subrogation.

However, insurers must carefully heed the rigors of the Michigan No-Fault Act where the insurer steps directly into the shoes of the claimant in an action for reimbursement based on common law subrogation.

The Michigan Court of Appeals recently addressed this issue in the unpublished opinion, *Special Tree Rehab System v Progressive Mich Ins Co*, 2014 WL 4375729 (Sept 4, 2014), where the appellate court reversed the trial court's ruling by holding that the one-year back rule, pursuant to 3145(1), limited an insurer's claim for reimbursement via subrogation.

In *Special Tree,* the plaintiff, Daniel Button, was injured when he was hit while riding his bicycle by a motor vehicle operated by Ruben Arreola on June 2, 2007. Because household insurers are first in priority for pedestrians injured in motor vehicle accidents, pursuant to MCL 500.3115(1), insurance was first sought from QBE Insurance Company, the insurer of plaintiff's father's live-in girlfriend who told QBE that plaintiff was her step son. After she falsely told QBE that the plaintiff was her step-son, QBE voluntarily paid over $200,000 in Personal Protection Insurance (PIP) benefits through 2010.

The plaintiff eventually filed suit against QBE for wrongfully denied benefits at which time it was revealed through discovery that he was actually not the step-son of his father's live-in girlfriend. Accordingly, QBE filed a claim against Progressive, the insurer of the driver Arreola, seeking "reimbursement."

The appellate court found that although the trial court correctly characterized QBE's claim as one of subrogation, it incorrectly found that 3145(1) did not apply under a mistake of fact. The court reasoned that no-common law authority existed whereby a party that made payments under a mistake of facts

can then recoup monies from a party that did not actually receive the payments mistakenly made.

Regardless, the appellate court further held that even if QBE's claim could have been characterized as a common law claim for "reimbursement," the claim would still be subject to MCL 500.3145(1). Notably, 3145(1) states, in pertinent part, that it is a limitations period for "an action for recovery of personal protection insurance benefits payable under this chapter." The court cited this exact language for the broad proposition that any claim brought by QBE directly against Progressive would be a claim for recovery of PIP benefits subject to 3145(1).

The appellate court did not elaborate on the distinction between common law remedies and statutory recoupment actions for insurers in equal priority pursuant to MCL 3114(6) and 3115(2), which have been long been held been to be subject to the six-year statute of limitations.

Insurers should carefully note the distinctions between reimbursement actions for PIP benefits mistakenly paid and actions for recoupment from equal priority insurers due to the strict implications of the one-year back rule.

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