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Supreme Court Overrules Application of Judicial Tolling to the One Year Back Statute of Limitations of Michigan’s No-Fault Act

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Recently, the Michigan Supreme Court, in *Devillers v Auto Club Insurance Association*, 2005 Mich LEXIS 1313, Docket No. 126899 (2005), overruled the judicial tolling doctrine under which the one year back limitation of Michigan’s No-fault Act, MCLA § 500.3145(1), was tolled from the time a specific claim for benefits was made to the date the insurer formally denied liability.

The Supreme Court overruled its prior holding of *Lewis v DAIE*, 426 Mich 93, 393 NW2d 167 (1986), which had adopted the judicial tolling doctrine. The court held that the *Lewis* rule contravenes “plain statutory directive and ignores almost a century of contrary precedent.” The court noted that MCLA § 500.3145(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.”

Mary Massaron Ross, head of Plunkett & Cooney, P.C.’s appellate practice group, authored an amicus curiae brief on behalf of the Insurance Institute of Michigan (IIM), which urged the court to enforce the legislative dictate limiting recovery of benefits to those incurred no more than one year before suit was filed.

The IIM also urged the court to give its decision full retroactive effect. At the request of the defendant insurer, Massaron Ross also appeared for oral argument and argued the retroactivity issue before the Supreme Court. The court agreed with the IIM’s position and issued a ruling that is favorable to insurers because it effectuates the statutory limitation on benefits as to all pending cases in which the issue has been raised and preserved.

In *Devillers*, the plaintiff was an insured under a policy of no-fault automobile insurance issued to his parents by the defendant, Auto Club Insurance Association. In September 2000, the plaintiff sustained a traumatic brain injury in a motor vehicle accident. The defendant paid benefits from Oct. 20, 2000 to Feb. 14, 2001. On Feb. 14, 2001, the defendant received a physician’s prescription stating that the plaintiff could function without close supervision. Therefore, the defendant discontinued home healthcare payments on Feb. 15, 2001.

The effect of this recent Michigan Supreme Court decision is to limit a claimant’s ability to recover certain no-fault benefits.

Thereafter, the plaintiff filed a complaint on Nov. 12, 2002, seeking payment for the discontinued benefits. At issue before the court was the nine-month period beginning on Feb. 16, 2001 (the day after the defendant discontinued paying home healthcare benefits), and ending Nov. 12, 2001 (one year prior to the filing of the complaint), and whether benefits were recoverable during that period. The plaintiff argued that pursuant to *Lewis*, the one year limitations period was tolled from Feb. 15, 2001 (the date the defendant discontinued home healthcare benefits) to Oct. 7, 2002 (the date the defendant's letter memorialized the termination).

The trial court denied the defendant's motion for partial summary disposition, citing *Lewis*. The Michigan Court of Appeals denied leave to appeal, and the Michigan Supreme Court granted leave as only the Supreme Court had the authority to overturn *Lewis*. The Supreme Court held that "because the *Lewis* court exceeded its constitutional authority by engrafting onto the statutory one year period a judicial tolling mechanism, we overrule *Lewis*." *Id* at 4.

Devillers limits a claimant's ability to recover certain no-fault benefits. Consistent with the majority's textualist philosophy, the Supreme Court interpreted MCLA §500.3145(1) to bar a plaintiff from recovering benefits for payments incurred more than one year before the complaint was filed. This may mean that plaintiffs file suit sooner to ensure that they do not lose benefits. The court gave its decision retroactive effect to pending cases in which a *Lewis* challenge has been preserved. The "one year back" statute of limitations should be raised on all applicable no-fault benefit claims.

For a complete copy of the Michigan Supreme Court opinion in *Devillers v Auto Club Insurance Association*, [click here](#).

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