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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Court of Appeals clarifies that an erroneous payment, made more than one year after an accident, does not revive PIP claims that are otherwise stale under MCL 500.3145(1).

By Drew Broaddus

In *Jesperson v Auto Club,* __ Mich App __ (released September 16, 2014) (case no. 315942, for publication), the Court of Appeals clarified an important point regarding the one year limitations period for filing PIP suits, set forth at MCL 500.3145(1). In *Jesperson,* the no-fault carrier (Auto Club, represented by Secrest Wardle), persuaded the trial court – and ultimately, a 2-1 majority of the Court of Appeals – that the plaintiff's PIP claim was time barred, where the plaintiff did not provide the carrier with written notice within one year of the accident, the plaintiff did not sue the carrier within one year of the accident, and the carrier did not make any payments within one year of the accident. Plaintiff argued that the suit was timely because the carrier made a payment approximately 14 months after the accident (in response to a written notice plaintiff sent to the carrier about 13 months after the accident), and the Plaintiff filed suit against the carrier within a year of that payment. The Court of Appeals majority agreed that nothing in the plain language of § 3145(1) allows a claimant to file suit within one year after a payment, where the payment had been made more than a year after the accident and the other requirements of § 3145(1) had not been satisfied.

SECREST WARDLE NOTES:

"The one-year-back rule draws a strict line, which must be followed" even if the result seems harsh. *Bronson Methodist Hosp v Allstate Ins Co,* 286 Mich App 219, 229 (2009).

Jesperson illustrates that § 3145(1) requires *something* to happen within one year of the accident, in order for a claimant to bring a PIP suit. Either the claimant must provide written notice to the carrier, the claimant must file suit, or the carrier must make a payment. In *Jesperson,* none of these three things occurred until more than a year after the accident.

MCL 500.3145(1) states that "[a]n action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced … unless written notice of injury … has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury." This subpart actually "contains two limitations on the time for filing suit and one limitation on the period for which benefits may be recovered." *Joseph v Auto Club Ins Ass'n,* 491 Mich 200, 203 (2012). "(1) An action for personal protection insurance [PIP] benefits must be commenced not later than one year after the date of accident, unless the insured gives written notice of injury or the insurer previously paid [PIP] benefits for the injury." *Id.* at 207. "(2) If notice has been given or payment has been made, the action may be commenced at any time within one year after the most recent loss was incurred." *Id.* "(3) Recovery is limited to losses incurred during the one year preceding commencement of the action." *Id.*

Put another way, § 3145(1), does two things. First, it provides that an action to collect PIP benefits must be commenced within one year after the date of the accident. The period is tolled if a proper notice is given to the insurer within one year. Second, it provides that a claimant may not recover benefits for losses incurred more than one year before the date the action was commenced. This appeal dealt with the former, i.e. whether the suit was timely commenced. In answering this question in the negative, the Court of Appeals majority explained:

> 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 question then becomes what the adverb "previously" means in the context of this statutory language. … The word "previously" means "coming or occurring before something else; prior[.]" … The pertinent issue before this Court is what the "something else" is before which the payment by an insurer must have come or occurred. Plaintiff essentially argues that the "something else" is simply the filing of plaintiff's first-party claim against defendant; defendant argues to the contrary, and the trial court found, that the "something else" is the expiration of one year following the accident. We agree with defendant and the trial court.

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…[T]he Legislature intended that the word "previously" mean previous to "1 year after the date of the accident causing injury." This interpretation is supported by the fact that the Legislature juxtaposed "previously" with "1 year after the date of the accident causing injury," which language thus appears much closer in proximity to the word "previously" than does the Legislature's earlier reference to the commencement of "[a]n action." This interpretation also is supported by two principles of statutory construction: our directive to avoid interpretations that result in absurd consequences, and our directive to avoid interpretations that render portions of a statute nugatory. … To hold, as plaintiff suggests, that any payment made by an insurer would revive a stale claim, no matter how much time has elapsed, would render an absurd result by allowing, potentially, even decades-old claims to be asserted. Further, such an interpretation would essentially eliminate the limitations period of MCL 500.3145(1) in cases where an insurer has ever paid anything on a claim, rather than providing a limited exception that allows for the filing of suit more than one year after the accident in certain circumstances.… *Jesperson,* Slip Op at 5-7 (citations omitted).

Judge Deborah Servitto dissented, but on procedural grounds unrelated to the majority's statutory analysis. Judge Servitto felt that the carrier waived the § 3145(1) argument by not spelling it out in its affirmative defenses. The majority found that the trial court impliedly granted the carrier's oral motion for leave to amend the affirmative defenses, and that this was a proper exercise of the trial court's discretion because the timing of the amendment did not unfairly prejudice the plaintiff.

CONTACT US

Troy
2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

Lansing
6639 Centurion Drive, Ste. 100, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 600, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs
Terry S. Welch
Jane Kent Mills

Editor
Linda Willemsen

We welcome your questions and comments.

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