SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Timely Application still found to be a "Day Late and a Dollar Short"

By Michael K. Faust, II

The Michigan Court of Appeals held that a medical provider's application to recover medical expenses submitted to the Assigned Claims Facility within one year after the allowable expenses were incurred does not extend or toll the "one-year-back rule" provided in MCL 500.3145(1).

Bronson Methodist Hospital (BMH) provided medical treatment to Mr. Lemuel Brown from December 30, 2006 through January 5, 2007 following his December 29, 2006 accident. Neither Mr. Brown, nor any of his relatives with whom he resided, had any automobile insurance and the vehicle Mr. Brown was driving was uninsured. On December 14, 2007, within one year of the medical expenses being incurred, BMH submitted an application to the Michigan Assigned Claims Facility (MACF) seeking recovery of medical expenses. BMH received notice that the claim was assigned to Allstate Insurance Company on January 15, 2008. The Hospital then submitted bills directly to Allstate, which were denied. A lawsuit was filed on February 6, 2008 seeking recovery of medical expenses incurred between December 30, 2006 and January 5, 2007.

SECREST WARDLE NOTES:

This case illustrates the significance of the "one-year-back" rule. Courts are continuing to strictly construe its terms and limit recovery of allowable expenses to those incurred within one year of filing suit. An insurance company to whom a claim is assigned by the Michigan Assigned Claims Facility should verify whether the benefits claimed fall within the one year time window.

Summary disposition was granted based on the one-year-back rule, which barred the Hospital's claim for medical expenses incurred for treatment between December 30, 2006 and February 6, 2007. BMH responded to the Motion for Summary Disposition claiming that the notice and commencement sections of MCL 500.3174 regarding claims submitted to the Assigned Claims Facility extended the recovery limitation provision (i.e., the one-year-back rule).

The Court of Appeals reaffirmed that "under its plain terms, MCL 500.3145(1) precludes an action to recover benefits for any portion of a loss incurred more than one year before the date on which the action was commenced" and that the recovery limitation ("one-year-back rule") is to be strictly enforced as written. *Bronson Methodist Hospital v. Allstate Ins. Co.*, ___ Mich App ___ (2009).

Personal protection insurance benefits under the No-Fault Act are governed by MCL 500.3145(1), which provides:

> An action for recovery of personal protection insurance benefits . . . may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein 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.

…

> However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

Based on the facts of the case, the MACF was the insurer of last priority. A person entitled to no-fault benefits may obtain benefits through the Assigned Claims Facility "if no personal protection insurance is applicable to the injury." The No-Fault Act further provides:

> A person claiming through an Assigned Claims Plan shall notify the facility of his claim within the time that would have been allowed for filing of an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect.
>
> . . .
>
> An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later. MCL 500.3174.

The Court of Appeals found that the relevant language in MCL 500.3174 regarding the statute of limitations relates to when a lawsuit can be filed, but "does not contain any language extending the recovery limitation [i.e., the one-year-back rule] of MCL 500.3145(1)." The Court held that although the Hospital's lawsuit filed on February 6, 2008 was not barred by MCL 500.3174 or MCL 500.3145(1), the "one-year-back" rule bars BMH's recovery of medical benefits prior to February 6, 2007. *Id.*

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We welcome your questions and comments.

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