

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

2.28.06

COURT CONFIRMS THE NO-FAULT STATUTE OF LIMITATIONS IS NOT TOLLED FOR MINORS

By James Swaim

In *Hatcher v. State Farm Mutual Automobile Ins. Co.*, the Michigan Court of Appeals upheld the constitutionality of the 1993 amendment to the Revised Judicature Act (RJA), which effectively limits the tolling of the statute of limitations for minors and insane persons. The Court of Appeals previously held that an action to recover personal protection insurance (PIP) benefits is not an action brought under the RJA and, as such, the tolling provision of the RJA would not apply to actions for no-fault benefits. *Cameron v. Auto Club Ins. Ass'n*, 263 Mich App 95; 687 NW2d 354 (2004).

In *Hatcher*, the Plaintiff minor applied for PIP benefits through the assigned claims office five years after she was involved in an accident. The claim was assigned to State Farm. Plaintiff argued the one-year statute of limitations in MCL 500.3145(1), also known as the "one-year-back" rule, should be tolled under the RJA. Recognizing the adverse ruling in *Cameron*, the Plaintiff argued the 1993 amendment to the RJA violated equal protection as well as the due process safeguards of the state and federal constitutions. The Court of Appeals disagreed, finding "the 1993 amendments, as applied in *Cameron*, are rationally related to protecting potential defendants and providing prompt recovery of damages."

The Court of Appeals addressed State Farm's argument that the proper "claimant" for attendant care services was Plaintiff's mother because she had provided the attendant care services. State Farm claimed there was no need for the Court to address the issue of tolling of the statute of limitations under the RJA because the person who provided the services was a competent adult. The Court of Appeals disagreed with State Farm

SECRET WARDLE NOTES:

The decision in *Hatcher*, which has been approved for publication, further strengthens the holding in *Cameron v. Auto Club Ins. Ass'n* (Secret Wardle *No-Fault Newslines* July 30, 2004). In *Cameron*, the Court of Appeals held the no-fault statute of limitations is no longer subject to the tolling provisions of the Revised Judicature Act. Attorneys are likely to respond to this ruling by filing lawsuits for PIP benefits within one year of the accident to avoid strict application of the one-year-back rule. The *Hatcher* ruling also confirms that a PIP claim "belongs" to the injured person, not to the individual who provides services to the injured person.

CONTINUED...

on this issue, commenting "the statute confers a cause of action on the injured party and does not create an independent cause of action for the party who is legally responsible for the injured party's expenses." Accordingly, the right to bring a PIP action to recover attendant care benefits was held to belong to the Plaintiff minor, not the adult who provided the services.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secretwardle.com

SECRET
SW
WARDLE

Copyright 2006 Secret, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Nelson

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newline, or for newsletters pertaining to any of our other practice groups, please contact Secret Wardle Marketing at cnelson@secretwardle.com, or **248-539-2850**.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowners' Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability
Update Illinois - Current trends in Illinois law