SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

05.16.12

Total "Insanity" or "Minor" Miracle? Supreme Court Throws Out *U of M Regents v Titan* In Less Than Two Years, Reinstates *Cameron's* Rule of No Insanity/Minority Tolling Under Section 3145(1)

By Drew Broaddus

On May 15, 2012, the Michigan Supreme Court in *Joseph v Auto-Club,* Case No. 142615 took the dramatic step of overruling *U of M Regents v Titan* 487 Mich 289 (2010) – which had held that the minority/insanity tolling provision of MCL 600.5851(1) applied to the No-Fault Act's one-year-back rule, MCL 500.3145(1) – just two years after it was issued. *Joseph* reinstated the ruling of *Cameron v Auto Club,* 476 Mich 55 (2006) and held that the one-year-back rule *is not* subject to § 5851(1) tolling. The opinion was authored by Justice Mary Beth Kelly, who was elected to the Court in November 2010, three months after *U of M Regents.*

The *Joseph* majority found that *U of M Regents* "was wrongly decided" for "the simple reason that the statutory texts of [§] 3145(1) and [§] 5851(1) plainly do not support it." Although the majority expressed some reluctance "in overruling a precedent of recent vintage by this Court," the Court nonetheless held that *U of M Regents* "simply failed to apply our then recent decision in *Cameron,* resulting in a decision that patently failed to enforce the requirements of the statutes that it interpreted…."

SECREST WARDLE NOTES:

***Cameron v Auto Club,* 476 Mich 55 (2006) is again the law in Michigan. The No-Fault Act's one-year-back rule is not subject to the tolling provisions of MCL 600.5851(1).**

While *Joseph* does not expressly address retroactivity, the decision will likely be given full retroactive effect. The general rule is that Supreme Court decisions are to be applied retroactively, and are given prospective effect only as an "extreme measure." Also, the fact that the one-year-back rule was applied to plaintiff's claim in *Joseph* itself indicates that the Court has already decided to give the decision retroactive effect, even if the word "retroactive" does not appear in the *Joseph* opinion.

In June 1977, then 17-year-old Doreen Joseph was involved in an automobile accident, in which she suffered a traumatic brain injury and quadriplegia. At the time of the accident, Plaintiff had automobile insurance coverage through Defendant Auto-Club's predecessor. Defendant later assumed responsibility for paying Plaintiff's PIP benefits. Between June 1977 and early 2009, Defendant paid more than $4 million in PIP benefits for Plaintiff's care. On February 27, 2009, Plaintiff filed a complaint seeking additional PIP benefits for allegedly unpaid services that had been provided by Plaintiff's family members, dating back to 1977. In order to avoid § 3145(1), Plaintiff alleged that, in light of her alleged insanity, § 5851(1) tolled the one-year-back rule, rendering any losses incurred from the date of plaintiff's 1977 accident recoverable.

Defendant moved for summary disposition, arguing – under the reasoning of *Cameron, supra* and *Liptow v State Farm,* 272 Mich App 544 (2006) – that the one-year-back rule barred Plaintiff's claim. The trial court denied the motion based on *U of*

M Regents. The Supreme Court granted Defendant's "bypass application," a rarely invoked procedural tool that allows a party to seek review from the Supreme Court before the Court of Appeals has decided the case.

In finding that the one-year-back rule applied, and in reinstating *Cameron,* the *Joseph* Court cited the following passages from *Cameron* with favor:

> By its unambiguous terms, [§] 5851(1) concerns when a minor or person suffering from insanity may "make the entry or bring the action." It does not pertain to the damages recoverable once an action has been brought. MCL 600.5851(1) then is irrelevant to the damages-limiting one-year-back provision of [§] 3145(1). … [T]he minority/insanity tolling provision in [§] 5851(1), by its plain terms, only addresses when an action may be brought. Therefore, it does not apply to toll the one-year-back rule in [§] 3145(1) because that provision does not concern when an action may be brought but, instead, limits the amount of PIP benefits a person injured in an automobile accident may recover.

Thus, the Court held that "Plaintiff's recovery is limited to losses incurred on or after February 27, 2008." The Court further explained: "[t]he minority/insanity tolling provision of [§] 5851(1), which concerns when an action may be commenced, does not render inoperable the one-year-back rule, which only limits how much can be recovered after the action has been commenced. Consequently, the one-year-back rule does not fall within the purview of what is intended to be tolled by the minority/insanity tolling provision. … These two, distinct statutory provisions serve different purposes and by their express language operate separately."

Three Justices dissented on the grounds that it was *Cameron,* and not *U of M Regents,* that was wrongly decided, in their view. Justice Marilyn Kelly, writing for the dissent, lamented the fact that *Joseph* was "this Court's third ruling on the same issue in six years. Yet nothing accounts for its going back and forth on the issue – no new or revised legislation or social upheaval – except changes in the composition of the Court itself."

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 SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECREST SW WARDLE

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs
Thomas J. Azoni
John H. Cowley, Jr.

Editor
Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newsline, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at **swsubscriptions@secrestwardle.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
Landowner's 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
Standards – A guide to avoiding risks for professionals
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