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The Michigan Supreme Court Grants Leave To Consider Reversal Of Its Own 2010 Decision Regarding "One Year Back Rule"

By Kimberly A. Carmack

On May 20, 2011, the Michigan Supreme Court granted leave to appeal in *Joseph v Auto Club Ins Assn*, No. 142615, in order to consider whether its own decision in *Regents of the Univ of Michigan v Titan Ins Co*, 487 Mich 289; 791 NW2d 897 (2010) was correctly decided. The Honorable Richard Caretti of the Macomb County Circuit Court denied the Auto Club Insurance Association's (ACIA) motion for summary disposition which was based upon the "one year back rule" set forth in MCL §500.3145(1) of the Michigan No-Fault Act. Although ACIA initially appealed the denial to the Michigan Court of Appeals, No. 302508, a bypass application was filed with the Michigan Supreme Court and granted before any opinion by the Court of Appeals was issued.

SECREST WARDLE NOTES:

For the first time since the new conservative majority took over the Michigan Supreme Court in January of 2011, under the leadership of Chief Justice Robert Young, Jr., the Court has decided to specifically take up review of one of its own prior decisions affecting Michigan No-Fault law. The decision being considered for reversal was issued when the Court, under the leadership of Chief Justice Marilyn Kelly, held a liberal majority, albeit short lived. The Court's decision to accept *Joseph* upon bypass application for leave to appeal is noteworthy, not just because it affects an important aspect of Michigan No-Fault law, but also because it signifies the expediency with which the Young Court is willing to consider potentially overruling prior Kelly Court precedents.

Regents was released for publication on July 31, 2010, the same date that the landmark Michigan Supreme Court decision of *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010) was released and just 18 months after Justice Diane Hathaway replaced former Chief Justice Clifford Taylor, thereby turning the once 4 to 3 conservative majority in a more liberal direction. The balance of power in the Court shifted once again subsequent to the November, 2010 election after Justice Robert Young, Jr. and Wayne County Circuit Court Judge Mary Beth Kelly defeated the newly appointed Justice Alton Davis and Oakland County Circuit Court Judge Denise Langford Morris. Since January of 2011, a conservative majority has ruled. By granting leave to appeal in *Joseph,* the new Michigan Supreme Court may be sending a signal that change is going to come; perhaps sooner rather than later.

While the issue being considered for reversal may not be as talked about in legal circles as the "serious impairment of body function" threshold established in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), which was subsequently overruled by *McCormick, supra*, it is still undoubtedly an important question of law. *Regents, supra*, overruled the Supreme Court's decision in *Cameron v ACIA*, 476 Mich 55; 718 NW2d 784 (2006), wherein the

Court held by a 4 to 3 majority that the minority/insanity provision in MCL 600.5851(1) did not remove the plaintiff's claim from application of the "one year back rule." Although the "one year back rule" set forth in MCL §500.3145(1) is not a statute of limitations per se, it essentially functions as such by barring recovery of benefits incurred greater than one year prior to the filing of an action. See, *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005). Under *Cameron*, claimants were bound by the "one year back rule" regardless of their minority/insanity status but the *Regents* Court, in overruling *Cameron,* opened the door and allowed these claimants to recover until their period of minority/insanity was no longer tolled pursuant to MCL 600.5851(1), however long that may be.

The Court's May 20, 2011 order granting ACIA's application for leave to appeal prior to decision by the Court of Appeals specifically instructed the parties to brief the following issues: "(1) whether the minority/insanity tolling provision of the Revised Judicature Act, MCL 600.5851(1), applies to toll the "one-year back rule" in MCL 500.3145(1) of the No-Fault Automobile Insurance Act; and (2) whether *Regents of the Univ of Michigan v Titan Ins Co*, 487 Mich 289 (2010), was correctly decided." Additionally, the Court invited the Michigan Association for Justice and Michigan Defense Trial Counsel, Inc. to file briefs amicus curiae while indicating that other persons or groups interested in the determination of the issues presented in the case could move the Court for permission to file briefs amicus curiae. Considering that the outcome of the *Joseph* case and the Court's potential reversal of its prior 2010 decision will serve to foreshadow review of other significant 2010 decisions (e.g. *McCormick*), one need not be a soothsayer to predict that the Court's invitation will be accepted.

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