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## A SMART Ruling? Supreme Court Holds That Plaintiff's Filing Of No-Fault Claim Against SMART's Insurer Did Not Place SMART On Notice Of Tort Claim

By Drew Broaddus

In *Atkins v Suburban Mobility Authority for Regional Transportation* ("SMART"), Supreme Court No. 140401, released August 20, 2012, the Court was called upon to interpret Section 19 of the Metropolitan Transportation Authorities Act of 1967. This subpart, codified at MCL 124.419, states in relevant part: "[a]ll claims that may arise in connection with the transportation authority shall be presented as ordinary claims ... [p]rovided, [t]hat written notice of any claim based upon injury to persons or property shall be served upon the authority no later than 60 days from the occurrence through which such injury is sustained...." The question presented in *Atkins* was whether the plaintiff's filing of a no-fault claim against SMART's insurer within 60 days of the accident constituted timely "written notice" of her tort claim, which she did not notify SMART of until approximately six months later. The Supreme Court answered this question in the negative; Plaintiff's tort claim was barred for failure to comply with § 419.

The *Atkins* decision arose out of the following facts: on September 15, 2006, plaintiff was a passenger on a SMART bus when it collided with another SMART bus. Plaintiff initially did not believe that she was injured, but about 10 days later, she contacted ASU Group, SMART's no-fault claims representative, and informed them that she had been injured in the accident. ASU sent plaintiff an application for no-fault benefits, which she completed and returned to ASU. Plaintiff identified her medical providers and described injuries to her shoulders, stomach, and back. SMART, through its insurer, began paying plaintiff first-party, no-fault benefits. While paying benefits, SMART received updates on plaintiff's condition, including a physician's report. SMART also became aware that plaintiff was on a short leave of absence from work, and that plaintiff's mother and daughter were performing some household services for her.

Plaintiff's condition continued to worsen, and an MRI revealed disk herniations and degenerative changes in her spine. On May 4, 2007, she sent a letter to SMART, notifying it of her intent to pursue tort claims arising out of the September 15, 2006 accident. About three months later, plaintiff filed suit against SMART, alleging third-party claims for negligence resulting in a serious impairment of body function, along with other tort theories and a claim for first-party no-fault benefits. SMART moved for summary disposition with respect to the tort claims, alleging that plaintiff had failed to give notice of her tort claims as § 419 required.

The trial court granted SMART's motion on this basis, drawing a distinction between notice of an *injury* (which had been provided via the no-fault claim) and notice of a tort claim. The Court of Appeals reversed, finding that SMART's knowledge of plaintiff's no-fault claim and

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*Atkins* holds that "MCL 124.419 requires that a plaintiff who wishes to bring a claim for injury to person or property arising out of an incident with a common carrier like SMART must provide notice of the claim to the transportation authority within 60 days." *Atkins*, Slip Op at 2.

Providing notice of a no-fault claim to the insurer of a common carrier like SMART is not, at least within the meaning of MCL 124.419, the same as providing notice of a tort claim. Even where there is an active no-fault claim, the injured person must send SMART a separate written notice of her tort claim within 60 days.

In a broader sense, *Atkins* underscores the current Supreme Court majority's adherence to the principle that statutes must be rigidly applied in accordance with their plain language. "When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted." *Atkins*, Slip Op at 8.

## CONTINUED...

the aggregate information that plaintiff had provided to SMART and its insurer were sufficient to give SMART written notice of a third-party tort claim. The Court of Appeals observed that § 419 does not delineate between notice of a claim for first-party no-fault benefits and notice of a third-party tort claim; the provision only requires notice of “a” claim, which the Court of Appeals defined “as the aggregate of operative facts giving rise to an enforceable right.

However, the Supreme Court reversed, noting that § 419 had to be construed narrowly because it is in derogation of the governmental immunity that SMART would otherwise enjoy. Narrowly construing the plain language of § 419, the Court held:

The Court of Appeals held that plaintiff’s no-fault application and her communications with SMART or its insurer provided SMART with sufficient knowledge to anticipate plaintiff’s tort claim, and thus sufficed as the notice required to satisfy the statute. We disagree. MCL 124.419 plainly requires “written notice” of any “ordinary claims” for personal injury within 60 days of the underlying occurrence, and the ordinary claims that may be brought pursuant to the statute are qualitatively different from a demand for no-fault benefits paid by a common carrier’s insurer. Accordingly, the demand for no-fault benefits and other communications with SMART or its insurer did not satisfy the “written notice” requirement with respect to plaintiff’s ordinary claims. *Atkins*, Slip Op at 8.

The Court concluded:

Statutory notice requirements like the one at issue in this case must be interpreted and enforced as plainly written. The Legislature has determined that it will waive governmental immunity in cases of personal injury or property damage that occur in connection with a common carrier of passengers for hire only when written notice of the claim is served on the transportation authority within 60 days. Our opinion today enforces that legislative determination. *Atkins*, Slip Op at 14.

Chief Justice Young authored the majority opinion, which – falling along now familiar lines – garnered the votes of Justices Markman, Zahra, and Mary Beth Kelly. Justice Marilyn Kelly authored a dissent which earned the votes of Justices Cavanagh and Hathaway. The Dissenters would not have dismissed Ms. Atkin’s tort claim because, in their view, “the legislative purpose of the notice requirement was so clearly fulfilled” and SMART “was not prejudiced by plaintiff’s failure to file notice....”

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