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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## Court of Appeals Allows Use of Equitable Estoppel to Toll PIP Statute of Limitations

By James Swaim

In *Douse v. Farm Bureau General Insurance Company*, the Michigan Court of Appeals upheld the decision of a trial court to toll the statute of limitations where a claimant was induced by the insurance company to refrain from filing a lawsuit.

On July 12, 2003, Steven Douse was involved in a motor vehicle accident. Six days later, Mr. Douse submitted an application for personal protection insurance (PIP) benefits to Farm Bureau.

On February 9, 2004, Farm Bureau sent a letter to the Mr. Douse in which it advised:

As of the date of this letter we have not been able to obtain documentation to support [that the] injuries claimed are related to the above date of loss.

Farm Bureau is in the process of investigating this claim. As part of our investigation we are requesting that you provide [sic] the complete names and addresses of all medical facilities you have treated with in [sic] the last 3 years.

Based on the above we have no alternative but to deny personal injury benefits in relationship to this claim until our investigation has been completed. Once we have completed our investigation we will notify you of our position.

Mr. Douse had repeatedly contacted Farm Bureau about the status of his claim before he received the February 9, 2004 letter. After receiving the letter,

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MCL 500.3145(1) provides, in relevant part, "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." The ruling in *Douse* reflects that there are occasions where a court may employ equitable estoppel to prevent an insurance company from benefiting from the statute of limitations. Accordingly, claim representatives handling claims for PIP benefits should ensure that any letter intended to deny a claim should unequivocally state that the claim is being denied.

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however, he ceased initiating contact about his claim. He did submit the requested material to Farm Bureau.

On April 11, 2005, Farm Bureau wrote to Mr. Douse advising him that the one-year statute of limitations for submission had expired and, as such, the “previous denial” of PIP benefits was being maintained. Mr. Douse responded by filing a Complaint on July 28, 2005.

Farm Bureau subsequently moved for partial summary disposition under MCL 500.3145(1), requesting dismissal of all claims incurred more than one year before the lawsuit was filed. The trial court denied the motion, invoking its equitable powers to estop the insurance company from asserting the one-year back rule set forth in the statute on the basis that Farm Bureau’s February 9, 2004 letter induced plaintiff to refrain from filing suit.

The Michigan Court of Appeals upheld the denial of Farm Bureau’s motion for summary disposition, commenting the “effect of defendant’s February 9, 2004 letter, requesting additional information and promising to advise plaintiff when defendant reached a decision on his claim, was to induce plaintiff to refrain from filing suit until after defendant unequivocally rejected that claim on April 11, 2005.”

In reaching its decision, the Court of Appeals cited *Devillars v. Auto Club Insurance Association*, 473 Mich. 562; 702 N.W.2d 539 (2005), a favorable decision for insurance companies in which the previously-recognized practice of allowing “judicial tolling” in PIP cases was eliminated. The Supreme Court in *Devillars* left the door open for the use of equitable estoppel in unusual circumstances, however, commenting that courts may employ equitable principles to estop a party from benefiting from the limitations periods set forth in the statute in the face of “fraud, mutual mistake, or any other unusual circumstance” so warranting. The Supreme Court added that courts should be reluctant to apply equitable estoppel “absent intentional or negligent conduct designed to induce a plaintiff [to refrain] from bringing a timely action.”

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We welcome your questions and comments.

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