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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Supreme Court holds that a contractual limitations period in an insurance policy is not subject to "automatic tolling"

By Michael L. Updike

In Mary Ellen McDonald v Farm Bureau Insurance Company, 4__ Mich ___; ___ NW2d ___ (Supreme Court No. 132218, rel'd 4/23/08), the Michigan Supreme Court held that a contractual limitations period for an insured to bring suit against an insurer is not subject to what the Supreme Court styled as "automatic tolling." That is, the contractual limitations period was not automatically tolled or stayed from the time an insured first presented a claim to an insurer to the time when the insurer denied the claim. However, a contractual limitation period could be avoided by waiver and estoppel on the part of the insurer.

In McDonald, the plaintiff insured made an underinsured motorist claim against the defendant insurer. The claim was timely brought. There was some delay by the insurer in giving the insured authorization to settle with the underinsured motorist, but it was given in writing more than three months before the one year contractual limitation period for the insured to sue the insurer after an accident with an underinsured motorist had expired. After the one year period expired, the insurer advised the insured that it would not consider the insured's claim because suit had not been brought within the one year period.

Chief Justice Taylor, joined by Justices Corrigan, Young and Markman, held that express limitations periods in optional insurance contracts are not automatically tolled by filing a claim, unless the contract itself so provides. The majority strongly emphasized the need to enforce contracts, as well as statues, as written. However, where there is a waiver, a voluntary relinquishment of a known right, a contractual limitations period will not bar an action. Similarly, if there were acts or representations that reasonably led an

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The contractual limitation period at issue in McDonald pertained to optional uninsured/underinsured motorist coverage, so the parties were free to contract for a time less than the statute of limitations for breach of contract actions, which is six years. However, the Michigan Office of Financial and Insurance Regulation now prohibits insurers from reducing the contractual period for insureds to bring suit against insurers for uninsured/underinsured motorist coverage in new policies to less than three years.

While "automatic tolling" or "judicial estoppel" was expressly disapproved in McDonald, insurers should be careful about waiver and equitable estoppel, as those still can be used by insureds to circumvent a contractual limitations period. Urging an insured not to file suit, for example, might create a fact question over whether the insured reasonably relied on that admonition in not filing suit until after the contractual limitation period expired. If it is determined the insured did reasonably rely on the admonition, the period will be tolled and the insured allowed to file suit against the insurer despite the apparent expiration of the contractual limitation period.

insured to believe that a contractual limitations period would not be enforced, enforcement of the limitations period could be barred by the doctrine of equitable estoppel. In McDonald, however, there was no evidence of waiver or any acts by the insurer that could have reasonably led the insured to believe the one year limitations period would not be enforced.

The majority emphasized that the earlier case of Tom Thomas Org, Inc v Reliance Insurance Company, 396 Mich 588; 242 NW2d 396 (1976) had been overruled in the cases of Rory v Continental Insurance Company, 473 Mich 457; 703 NW2d 23 (2005) and Devillers v Auto Club Insurance Association, 473 Mich 562; 702 NW2d 539 (2005). Tom Thomas was no longer good law with respect to automatic tolling.

There were strong dissents by Justices Cavanagh, Weaver and Kelly.

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