



Volume XX, No. 7
February 27, 2008

FROM THE LAW OFFICES OF GARAN LUCOW MILLER, P.C.

LAW FAX

A Publication for Insurance Providers and Adjusters

www.garanlucow.com

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From the Co-Editors
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COURT OF APPEALS TOLLS THE “ONE YEAR BACK” RULE FOR MINOR’S CLAIM FOR UNDERINSURED MOTORIST BENEFITS

Patricia Dooley¹ – Contributor

In a published decision issued on February 19, 2008, the Michigan Court of Appeals affirmed a holding by the Bay County Circuit Court which applied MCL 600.5851(1), the minority/insanity tolling provision of the Revised Judicature Act (RJA), to prohibit the application of a one year limitation provision in an Underinsured Motorist (UIM) policy. In *Katie M. Klida v Gregory S. Barman et al and Farm Bureau General Ins Co of Michigan, et al*, COA No. 273334, plaintiff, Katie Klida, sustained injuries as a consequence of a motor vehicle accident when she was 15 years of age. The policy of insurance issued by Farm Bureau General Insurance Company of Michigan (“Farm Bureau”) contained a policy provision which held that “no claimant may bring a legal action against the company more than one year after the date of the accident”. Shortly after she turned 18 years of age, the plaintiff filed a lawsuit seeking UIM benefits under the policy. Farm Bureau filed its Motion for Summary Disposition contending that plaintiff’s claim was barred by the plain language of the contract of insurance. The trial court denied Farm Bureau’s motion and held that MCL 600.5851(1) applied to this breach of contract action and that “a minor claimant has one year after attaining the age of majority to bring a breach of contract claim”.

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In rendering its decision, the Court of Appeals held that because the plaintiff did not file her legal action until over three years after the accident, the action was barred under the terms of the policy unless she could establish that the one-year limitation was not applicable to her claim. The Court of Appeals cited the minority tolling provision, MCL 600.5851(1) which provides:

“Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring *an action under this act* is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.” [Emphasis added.]

Farm Bureau argued that MCL 600.5851(1) did not apply by its plain language because, consistent with *Cameron v ACIA (Cameron I)*, 263 Mich App 95, 100-101 (2004), this action is not an “action under [the RJA] and this contractual limitation is not a “period of limitations”, provided for by the RJA. The Court of Appeals construed the language of MCL 600.5851(1), and, in particular, the phrase “*entitled to ...bring an action under this act*” and in its interpretation of the legislative intent held that the statutory provision was susceptible to more than a single meaning, concluding that the minority tolling provision of MCL 600.5851(1) was ambiguous. Therefore, the Court of Appeals held that judicial construction was appropriate.

In its judicial construction, the Court of Appeals analyzed the purpose of the statute tolling the period of limitations for persons to whom a legal disability was attributed and additionally considered the harm that MCL 600.5851(1) was designed to remedy, such as to safeguard the minor’s civil cause of action until the minor reaches the age of majority. The Court of Appeals concluded that the reasonable construction of the phrase “under this act” contained within the minority tolling provision, MCL 600.5851(1), that best accomplishes the statute’s purpose is that all civil actions are brought “under” the RJA, including plaintiff’s breach of contract action. The Court of Appeals further held that “to deny minors whose cause of action accrues during their disability the opportunity to pursue their otherwise unasserted legal rights would be the antithesis of a firmly-rooted public policy that such minors are to be protected until one year after they reach the age of majority”.

The Court of Appeals affirmed the trial court’s decision in denying Farm Bureau’s Motion for Summary Disposition holding that plaintiff’s claim which was premised on the breach of a UIM contract is “an action under the RJA”, and her cause of action accrued when she was under eighteen years of age, but she brought her claim within one year of reaching the age of majority thus meeting the requirements of MCL 600.5851(1).

BUCKEYE SEMINAR

The Firm's annual seminar in Ohio will be held on March 12, 2008 at the Greater Columbus Convention Center in Columbus, Ohio. An agenda for this event is as follows:

- 8:00 - 8:30 a.m. CONTINENTAL BREAKFAST
- 8:30 - 8:40 a.m. WELCOME AND INTRODUCTION
Speaker: Susan Williams
- 8:40 - 9:40 a.m. MICHIGAN AUTOMOBILE NO-FAULT - FIRST PARTY UPDATE
Speaker: Edward Freeland
- Coverage
 - "Arising Out Of"
 - Allowable Expenses
 - Government Benefits/Liens
 - Order of Priority
 - Statute of Limitations
 - Attorney Fees and Interest
- 9:40 - 10:30 a.m. NORTHERN MICHIGAN RECREATIONAL ACCIDENTS
Speaker: Peter Worden
- Land based accidents
 - Skiing
 - Off Road Vehicles
 - Snow Mobiling
 - Hunting
 - Fishing
 - Equine
 - Bicycling
 - Water based accidents
 - Michigan versus Maritime Law
 - Federal Maritime Law
- 10:30 - 10:45 a.m. BREAK
- 10:45 - 11:45 a.m. MICHIGAN THIRD-PARTY AUTOMOBILE LIABILITY UPDATES
Speaker: Christopher Jelinek
- Statutory/Case Law Overview
 - Non-Party At Fault Rule
 - Threshold Requirements
 - Dispositive Motions

- *Kreiner* and its Progeny
- Court of Appeals/Supreme Court - Recent Rulings
- Proposed Legislative Changes
- Uninsured Motorist/Underinsured Motorist Coverage

11:45 - 1:00 p.m. LUNCH ON YOUR OWN

1:00 - 1:30 p.m. CATASTROPHIC CLAIMS

Speaker: Susan Williams

- MCCA
- Guardianship Fees
- Use of Case Managers and Other "Experts"
- Attendant Care
- Transportation Purchase Agreements
- Home Modifications/New Building Agreements

1:30 - 2:30 p.m. MICHIGAN DRAM SHOP LAW

Speaker: Stacey King

- Michigan Case Law and Statutes
- Representing the Owner versus AIP
- Importance of Early Investigation
- Use of Experts
- Settlement Agreements

2:30 - 3:00 p.m. QUESTIONS AND ANSWERS

Please call or email Kristi Woloszyk at (248) 641-7600 or kwoloszyk@garanlucow.com for more information or to register.

GRAND RAPIDS BREAKFAST SEMINAR

The Firm's annual West Michigan Seminar will be held on April 24, 2008 at the Meijer Gardens in Grand Rapids. Please contact Lynn Beatty (lbeatty@garanlucow.com) for additional information or to preregister.

BASIC NO FAULT COURSE AT LTU

The Basic No Fault course will commence on Tuesday, May 13, 2008 and run through July 29, 2008. The classes will be at the Southfield campus of Lawrence Tech University. Please call Tim Meloche at (248) 204-4055 for additional information or to register for the course.