

STATE OF MICHIGAN
COURT OF APPEALS

TRINA GOETHALS,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE,

Defendant-Appellant.

UNPUBLISHED

March 23, 2004

No. 242422

Leelanau Circuit Court

LC No. 02-005830-AV

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this action for both property protection insurance (“PPI”) benefits and personal injury protection (“PIP”) benefits under the no-fault automobile insurance act, MCL 500.3101 *et seq.*, the Leelanau Circuit Court affirmed the district court’s order denying defendant’s motion for summary disposition and granting plaintiff’s motion for no-fault attorney fees, interest, and taxable costs. We granted defendant leave to appeal to address whether plaintiff’s action was time-barred by the one-year statute of limitations applicable to PPI benefits claims, and the one-year statute of limitations and one-year back rule applicable to PIP benefits claims.¹ We conclude that plaintiff’s action was barred by the relevant statutes of limitation. Accordingly, we reverse.

I. Facts and Procedural History

On August 5, 1998, plaintiff and her father were struck by a pickup truck driven by Harry Gleason and insured by defendant as they were riding their bicycles near Suttons Bay in Leelanau County. After Gleason notified defendant of the accident, defendant assigned the matter to its claims adjusters David Galerneau, who manages PPI benefits claims and tort actions, and Kellie Warner, who manages PIP benefits claims. Shortly after the accident,

¹ Plaintiff’s claim for PIP benefits was made because her own automobile insurance company had filed decertification with the state of Michigan, making defendant the automobile insurer first in priority to pay plaintiff’s PIP claims under the no-fault act.

plaintiff filed an automobile negligence action against Gleason, seeking to recover for personal injuries exceeding the tort threshold provided by the no-fault insurance act.²

With respect to the PPI benefits claim, plaintiff's second attorney in this case, Christopher Buday, sent a letter to Galerneau on January 14, 1999, referencing the tort action against Gleason and enclosing copies of medical reports to confirm that plaintiff's injuries met the threshold injury requirement for the suit against Gleason. In a letter dated February 3, 1999, Galerneau informed plaintiff that the medical records did not warrant a settlement for bodily injury in the tort case and that plaintiff should submit further medical information. However, Galerneau's letter also stated that "[i]n regards to the bicycles themselves, we will pay for the damage as soon as we have received the proof of damage to them."

Buday did not submit any proof of damage to the bicycles. Rather, on June 25, 1999, he sent a letter to Galerneau, referencing the tort action with further medical documentation. On July 1, 1999, Galerneau requested more recent records. In his letter, he once again requested that plaintiff submit the property damage estimates for the bicycles.

With respect to the PIP benefits claim, on September 1, 1998, Warner called plaintiff and left a telephone message. On October 5, 1998, after plaintiff did not return Warner's call, Warner mailed her a note asking her to contact Warner to discuss plaintiff's "injury claim." On October 9, 1998, plaintiff's father gave Warner the name of plaintiff's first attorney in this case, James Beebe. Warner obtained Beebe's address from his office and she sent him two letters, dated November 3, 1998 and December 13, 1998, asking him to contact her to discuss the claim. It is unclear from the record whether Beebe or plaintiff's next attorney in this case received the letters. However, when plaintiff's attorney failed to contact Warner, she closed the file on February 3, 1999.

One year later, on February 7, 2000, plaintiff's third lawyer, Grant Parsons, submitted a medical bill to Galerneau. Galerneau directed Parsons to submit the bill to plaintiff's automobile insurer. On April 5, 2000, Parsons forwarded to Galerneau a letter from plaintiff's Missouri insurer stating that it was not authorized to provide no-fault coverage in Michigan. On April 10, 2000, Galerneau sent Warner a memorandum advising her to reopen her file. On June 21, 2000, Warner sent Parsons a letter denying plaintiff's PIP benefits claim on the ground that defendant did not receive written notice of the claim within one year from the accident.

On January 8, 2001, over two years after the accident, plaintiff filed this first-party case in district court to recover PPI benefits and PIP benefits. Defendant moved for summary disposition, asserting that plaintiff's claim was untimely. The district court ruled that, while defendant did not receive written notice of the accident from plaintiff, it nevertheless had sufficient notice to apprise it of plaintiff's benefits claims. The court ruled that the February 3, 1999 letter from Galerneau in which he stated that defendant would pay for property damages to the bicycles and helmets satisfied the doctrine of equitable estoppel. The court ruled that the

² That tort action against Gleason, itself, is not part of this appeal.

one-year back rule should not preclude plaintiff's PIP benefits claim because there was no formal declination letter declining the benefits more than a year before the filing of the suit.

Following a bench trial, the district court entered a \$4,606.82 judgment in plaintiff's favor, representing \$2,056.46 in PIP benefits and \$2,550.36 in PPI benefits. The court also ordered defendant to pay an additional \$5,000 in attorney fees, interest, and costs after it found that defendant's denial of plaintiff's claim was unreasonable. Defendant appealed to the circuit court, which affirmed. We granted defendant leave to appeal.

II. Standard of Review

Defendant brought its motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). This Court reviews the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(7) permits summary disposition where a claim is barred by a statute of limitations. Absent disputed questions of fact, whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo. *Hudick v Hastings Mut Ins Co*, 247 Mich App 602, 605-606; 637 NW2d 521 (2001). MCR 2.116(C)(10) provides for summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

III. Property Protection Insurance (PPI) Benefits

Defendant argues that the district court erred in concluding that, despite the one-year limitation period for filing an action to recover PPI benefits pursuant to MCL 500.3145(2), defendant was required to pay the benefits under the doctrine of equitable estoppel. Defendant asserts that the court improperly applied a tolling period to account for the ongoing negotiations.³

Under Michigan no-fault automobile insurance law, property damaged in an automobile accident is to be paid by the insurer of the vehicle involved in the accident. MCL 500.3125. Pursuant to MCL 500.3145(2), "[a]n action for recovery of personal protection insurance benefits shall not be commenced later than 1 year after the accident." The one-year period for filing an action to recover PPI benefits is not subject to tolling during negotiations between the parties. *Secura Ins Co v Auto-Owners Ins Co*, 461 Mich 382, 387; 605 NW2d 308 (2000). However, under some circumstances, an insurer may be estopped from asserting the statute of

³ We reject plaintiff's position that defendant waived the issues raised on appeal for failing to present proofs in support of its statute of limitations defense at the bench trial. At the beginning of the trial, the district court denied defendant's motion for summary disposition. Defense counsel stated his understanding that the ruling essentially rendered defendant liable for paying plaintiff's claims, and that "given those rulings, the only issues for trial would be Plaintiff's ability to submit proofs to support [the payment of] benefits." Both the district court and plaintiff's counsel expressly agreed with counsel's statement. Under these circumstances, defendant is not precluded from challenging the trial court's decision to deny its motion for summary disposition for lack of evidence.

limitations as a bar to bringing an action to recover PPI benefits. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270-273; 562 NW2d 648 (1997). The doctrine of equitable estoppel is “essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar.” *Id.* at 270. The test to be applied to determine whether a plaintiff may invoke the doctrine of equitable estoppel is as follows:

One who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party. This Court has been reluctant to recognize an estoppel absent intentional *or negligent* conduct designed to induce a plaintiff to refrain from bringing a timely action. Negotiations intended to forestall bringing an action have been considered an inducement sufficient to invoke the doctrine, however. [*Cincinnati Ins Co, supra* (emphasis in original; citations omitted).]

Here, the representation at issue is contained in Galerneau’s February 3, 1999 letter to plaintiff’s attorney stating that “[i]n regards to the bicycles themselves, we will pay for the damage as soon as we have received the proof of damage to them.” We conclude that this statement should not be read as a promise to waive the one-year limitation period, contrary to the district court’s apparent conclusion. There is no indication in the record that plaintiff’s failure to submit her proofs of damages or file her action was either at the request, or for the convenience, of defendant. Moreover, there is nothing to reflect that defendant engaged in intentional or negligent conduct to induce plaintiff to refrain from bringing a timely action. To the contrary, defendant’s February 3, 1999 letter shows that defendant was willing to pay plaintiff’s claim provided that plaintiff submitted her estimates. When plaintiff failed to do so, defendant sent another letter on July 1, 1999, one month before the expiration of the one-year statute of limitation, again asking her to submit the damages estimates. Given the timing of Galerneau’s offer, six months before the expiration of the one-year period, and his subsequent reminder to for plaintiff to submit a damages estimate, it cannot be said that Galerneau’s conduct was consistent with an intent to forestall a lawsuit. We agree with defendant’s contention that the district court’s ruling improperly created a tolling period that was controlled merely by plaintiff’s decision to fail to promptly submit a damage estimate, contrary to *Secura, supra*.

Plaintiff relies on the decision in *Huhtala v Travelers Ins Co*, 401 Mich 118; 257 NW2d 640 (1977), and argues that Galerneau’s promise and agreement to pay plaintiff’s property loss claims constituted a separate, independent agreement enforceable in contract or promissory estoppel, making plaintiff’s claims subject to the six-year statute of limitations applicable to claims for breach of contract. Plaintiff’s reliance on *Huhtala* is misplaced. In that case, our Supreme Court held that the six-year statute of limitations for contract actions governed based on a finding that “the nature and origin of plaintiff’s claim for promissory estoppel is an express promise and not a duty imposed by law.” *Id.* at 130. Here, defendant was acting under a duty imposed by law to pay plaintiff’s property loss claims provided that plaintiff submitted the damages estimates.

IV. Personal Injury Protection (PIP) Benefits

Defendant next asserts that the district court erred in holding that plaintiff's claim for PIP benefits was not barred by the one-year statute of limitations set forth in MCL 500.3145(1). Defendant argues that plaintiff's claim was barred because she did not provide sufficient written notice of injury to extend the one-year limitation period. We agree.

MCL 500.3145(1) provides:

An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, 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 notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

Thus, "[t]his single statutory provision has been construed to be both a notice provision and a limitation of action provision," with the purpose of the notice provision being to "provide time for defendant to investigate and appropriate funds for settlement." *Walden v Auto Owners Ins Co*, 105 Mich App 528, 533; 307 NW2d 367 (1981). The notice must be specific enough "to inform the insurer of the nature of the loss" and it must provide sufficient information "that the insurer knows or has reason to know that there has been a compensable loss." *Mousa v State Auto Ins Cos*, 185 Mich App 293, 295; 460 NW2d 310 (1990). Although section 3145 expressly requires written notice to the insurer, this Court has held that the statute has been complied with if the notice is submitted to the insurance company by the claimant's insurance agent or attorney as "someone in his behalf." *Walden, supra* at 533-534.

In this case, plaintiff filed her complaint about 2½ years after the accident. She did not take steps to determine that defendant was first in priority to pay her PIP claims until one year and 8 months after the accident. Thus, defendant was not given adequate opportunity to "assess its liability while the claim was relatively fresh." *Hudick, supra* at 605. Rather, it was defendant who took steps to locate plaintiff to inquire as to whether she would make a claim, to which she never responded.

Plaintiff asserts that the medical records that attorney Buday sent to Galerneau in connection with the tort action were a "specific claim for benefits." We disagree. These items, which include some billing statements, are not sufficient to put an insurer on notice of the expenses incurred, whether the expenses were covered losses, and whether the claimant would file a claim. *Welton, supra*. Importantly, the medical records were submitted in the context of

the tort action, not a claim for PIP benefits. Even when plaintiff's counsel did finally contact defendant, plaintiff's counsel made no request and gave no notice regarding PIP benefits. Instead, plaintiff's counsel limited its discussions with defendant to plaintiff's third-party claim against Gleason and plaintiff's PPI claim. This is further supported by the fact that plaintiff did not diligently establish that defendant was responsible for these payments until over one year after the accident. We conclude that plaintiff's claim was barred because she failed to provide sufficient notice to toll the one-year statute of limitations provided in MCL 500.3145(1).

Defendant next argues that the district court erred in applying the one-year back limitation on plaintiff's PIP benefits claim. The one-year-back rule may be tolled from the date that an insured makes a specific claim for benefits to the date that the insurer formally denies liability. *Lewis v DAIIE*, 426 Mich 93, 101; 393 NW2d 167 (1986). If the one-year cap is tolled, it extends back in time the period for which the insured may recover. *Welton v Carriers Ins Co*, 421 Mich 571, 576; 365 NW2d 170 (1984). Tolling under the rule depends on a triggering event sufficient to warrant tolling. *US Fidelity & Guaranty Co v Amerisure Ins Co*, 195 Mich App 1, 6; 489 NW2d 115 (1992). A triggering event for tolling is one that informs the insurer of the expenses incurred, whether the expenses were covered losses, and whether the claimant would file a claim. *Welton*, *supra* at 578. "This cannot occur unless a claim for a specific amount of benefits has been submitted to the insurer." *Id.*

In this case, plaintiff sought reimbursement for a medical bill on February 7, 2000, about 1½ years after the accident. Thus, plaintiff would only be entitled to recover for losses incurred during the year before she filed her lawsuit on January 8, 2001, in addition to an added tolling period equaling the time from the February 7, 2000 until defendant's denial of coverage on June 21, 2000, a period of about 4 ½ months. Any losses incurred before mid-August 1999 (4 ½ months before January 8, 2000) would not be recoverable. Accordingly, on remand, the district court is directed to redetermine the amount of PIP benefits plaintiff may claim during that period.

V. Attorney Fees

Defendant finally argues that the trial court erred in awarding plaintiff attorney fees. Under MCL 500.3148(1), a claimant is entitled to attorney's fees "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making a proper payment." We review a trial court's decision that an insurer unreasonably refused to pay benefits for clear error. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 38-39; 651 NW2d 188 (2002).

The purpose of the no-fault act's attorney-fee penalty provision is to ensure prompt payment to the insured. *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 629; 550 NW2d 580 (1996). The scope of inquiry under §3148 is not whether the insurer ultimately is held responsible for a given expense, but whether its initial refusal to pay the expense was unreasonable. *McCarthy v Auto Club Ins Ass'n*, 208 Mich App 97, 105; 527 NW2d 524 (1994). "A refusal or delay in payment by an insurer will not be found unreasonable within the meaning of §3148(1) where the refusal or delay is the product of a legitimate question of statutory construction, constitutional law, or a bona fide factual uncertainty." *Id.* at 103 (citation omitted). However, where there is such a delay or refusal, a rebuttable presumption or unreasonableness arises such that the insurer has the burden to justify the refusal or delay. *Bloemsma v Auto Club Ins Co*, 174 Mich App 692, 696-697; 436 NW2d 442 (1989).

We conclude that the district court erred when it determined that defendant's denial of PPI benefits was unreasonable, given MCL 500.3145(2)'s absolute bar against property benefits claims more than a year after the loss and the body of case law forbidding tolling of that one-year period. We conclude that defendant's denial of PIP benefits was unreasonable only to the extent of the application of the one-year-back rule. Accordingly, we direct the district court on remand to make a determination with respect to those attorney fees as they relate to the PIP benefits period between mid-August 1999 and January 8, 2001.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot