

August 15, 2003

Kimberly A. Harrison, Esquire  
919 Market Street, Suite 725  
Wilmington, DE 19899

Victoria Bryant  
P.O. Box 70  
Milford, DE 19963

RE: ***GEICO et. al v. Bryant et. al, C.A. No. 02-10-043***

Dear Ms. Harrison and Ms. Bryant:

The Court has reviewed the parties' submissions, and the relevant law, regarding the statute of limitations issue upon which the Court reserved decision in the above-reference matter.

The three-year statute of limitations set forth in 10 Del. C. § 8106 only applies to PIP subrogation claims under the ruling *of Harper v. State Farm Mutual Automobile Insurance Company*, Del. Supr., 703 A.2d 136 (1977). It does not apply to property damage claims against an uninsured motorist brought by the subrogee insurance company of the other driver. The property damage claim is the original right of action of the other driver, and the insurance company, as subrogee of the other driver, does not have greater rights than the original holder of the right of action. Thus, "it is clear that the [subrogation] property damage claim is subject to a two year statute of limitations pursuant to 10 Del. C. § 8170," and that the statute begins to accrue on the date of the accident. *State Farm Mutual Automobile Insurance Company v. Baron*, 2002 WL 32007217 (Del. Com. Pl.) The same statute applies to plaintiff Carol Milton's separate claim for her policy deductible.

This accident occurred on September 22, 1999. Suit was filed on October 2, 2002, beyond the expiration of the applicable statute of limitations. Therefore defendants prevail upon their affirmative defense. Judgment is entered against plaintiffs and in favor of defendants. Plaintiffs shall pay costs of suit.

**IT IS SO ORDERED.**

Very truly yours,

Kenneth S. Clark, Jr.  
Judge