

# *Law Fax*

**Volume XVIII, No. 3**

**January 20, 2006**

**JAMES L. BORIN, CO-EDITOR**

**SIMEON R. ORLOWSKI, CO-EDITOR**

**(248) 641-7600**

**COURT OF APPEALS UPHOLDS THIRTY-DAY WRITTEN  
NOTICE REQUIREMENT IN UNINSURED MOTORIST POLICY**

***L. Ladd Culbertson<sup>1</sup> - Contributor***

In a unpublished decision, the Michigan Court of Appeals has upheld a policy provision requiring that an insured provide written notice of an accident at least 30 days prior to the filing of his lawsuit to collect uninsured motorist benefits. In *Harwood v. State Farm Mutual Automobile Ins. Co.*, Unpublished Opinion *per curiam* of the Court of Appeals, decided January 10, 2006 (Docket No. 263500), the Court held that the insurer was not required to demonstrate that it had suffered prejudice as a result of the claimant failing to meet the notice requirement in the policy, and that the insurance contract should be enforced as written.

In this case, the Plaintiff, a Detroit police officer, was injured on November 20<sup>th</sup>, 2001, while initiating a traffic stop. The first written notice of the claim for uninsured motorist benefits was not provided to State Farm until October 1, 2004. The Plaintiff's Complaint was filed on October 27<sup>th</sup>, 2004, less than 30 days after written notice was supplied.

Under the terms of the Plaintiff's insurance policy with State Farm, the insured was required to provide written notice of the accident or loss. With regard to this notice, the policy required as follows:

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

---

<sup>1</sup>Mr. Culbertson is an associate in the Firm's Grand Rapids office and can be reached at (616) 742-5500 or [lculbertson@garanlucow.com](mailto:lculbertson@garanlucow.com).

- a. your name; and
- b. the names and addresses of all the *persons* involved; and
- c. the hour, date, place and facts of the accident or *loss*; and
- d. names and addresses of witnesses.

With respect to lawsuits filed against State Farm, the policy provided that no suit could be filed seeking uninsured motorist benefits until 30 days after this written notice had been provided:

There is no right of action against us:

\* \* \*

- c. under uninsured motor vehicle, any physical damage, death, dismemberment and loss of sight coverages, until 30 days after we get *insured's* notice of accident or *loss*.

The Court determined that these provisions were unambiguous, and that they required that the insured provide written notification of the loss to State Farm, and that the notice must have been received not less than 30 days before the filing of a subsequent lawsuit to recover the claimed benefits.

The Plaintiff recognized that the lawsuit had been filed less than 30 days after the date *written* notice had been provided, but argued that State Farm had received *actual* notice several months earlier, in the form of a telephone call from the claimant's wife. The Court rejected this argument noting that an insurance contract must be enforced as written, and the unambiguous terms of the policy in question required that *written* notice be provided. Because the suit had been filed less than 30 days after the written notice was provided, the Court held that the lawsuit was properly dismissed.

The Plaintiff also attempted to argue that before State Farm could rely upon the notice requirement that it was required to demonstrate that it had been prejudiced by the Plaintiff's failure to comply. In making this argument, the Plaintiff attempted to rely upon Koski v. Allstate, 456 Mich 439 (1998). That case held that an insurer attempting to deny a claim based upon a provision requiring that notice be provided "within a reasonable time", (but which did not include reference to an unambiguous time-frame, as in Harwood), was required to demonstrate that it had suffered prejudice.

The Harwood Court rejected this argument finding that the 30 day notice requirement in the policy at issue was unambiguous. The Court noted that it was required to construe and apply the unambiguous policy provisions as they were written, based on the same principles of contract construction which applied to any other type of contract. Because "lack of prejudice" is not a traditional defense to the enforceability to a contract, the Court rejected the Plaintiff's claim that State Farm had to show that it had been prejudiced by the Plaintiff's failure to meet the notice requirement before coverage could be denied on that basis.

**EQUITABLE ESTOPPEL DOES NOT BAR APPLICATION OF  
THE STATUTE OF LIMITATIONS APPLICABLE TO PROPERTY  
PROTECTION CLAIMS WHEN DEFENDANT ADMITS LIABILITY,  
BUT DOES NOT INDUCE PLAINTIFF TO FORESTALL FILING SUIT**

***James C. Wright<sup>2</sup> – Contributor***

On January 12, 2006 the Michigan Court of Appeals issued an unpublished opinion in the case of *Federated Mut Ins Co v Empire Fire and Marine Ins Co*, Court of Appeals No. 264553 (Jan. 12, 2006) holding that equitable estoppel did not bar a defendant from asserting the one-year statute of limitations that applies to property protection claims pursuant to MCL 500.3145(2).

That case involved a motor vehicle crash that occurred on November 27, 2002, when Defendant Corrigan Oil Corporation's employee drove his truck into a building insured by Federated. The insurer for Corrigan, Empire, admitted liability for the loss. However, Federated apparently dragged its feet in responding and in May of 2004, Empire informed Federated that it was denying the claim based on MCL 500.3145(2) (the one-year statute of limitations that applies to property protection insurance claims).

Of course, Federated filed suit immediately thereafter. Federated admitted that the applicable statute of limitations had run, however, it claimed that due to Empire's "intentional and negligent representations" that Federated was entitled to equitable estoppel as a basis for tolling the statute of limitations. Empire filed a motion for summary disposition arguing that equitable estoppel did not apply to this case as it did not induce Federated to forestall filing suit, and the trial court granted its motion.

Federated appealed arguing that the trial court erred in concluding that the Empire was not equitably estopped from relying on the one-year statute of limitations. The Court of Appeals in affirming the lower court's decision defined equitable estoppel as arising where one party knowingly conceals or falsely represents a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position.

Federated cited *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263 (1997) in support of its position. In that case the Michigan Supreme Court held that equitable estoppel applied when an automobile insurer induced a subrogated real property insurer to delay in presenting its claim until all aspects of the loss were thoroughly assessed. The Court of Appeals noted that the decision in *Citizens* was distinguishable from the case at hand. The court noted that, although the automobile insurers in both cases assured the subrogated property insurer that it was liable and was merely awaiting documentation to process the claim, Empire did not make any special requests that hindered Federated's investigation. In fact, Empire had asked Federated to expedite its investigation, and even went as far as initiating its own investigation to help resolve the matter.

Furthermore, the Court of Appeals held that Federated failed to show any promise or inducement by Empire, beside its initial admission of liability, designed to induce Federated to not file suit until the statute of limitations had lapsed. Empire had never promised that it would not use the statute of limitations as a defense. The court noted, citing *Devillers v Auto Club Ins Ass'n*, 473 Mich 562 (2005) that the fact that an insurer admits liability in the first instance (and even pays a portion of a claim) does not deprive the

---

<sup>2</sup>Mr. Wright is an Associate in the Firm's Ann Arbor office and can be reached at (734) 930-5600 or [jwright@garanlucow.com](mailto:jwright@garanlucow.com).

insurer from invoking protection under MCL 500.3145. As Federated delayed pursuing its claim for reasons not attributable to Empire, Empire was justifiably permitted to invoke the statute of limitations defense.