PLUNKETT COONEY

Appellate Court Clarifies New Tolling Provision of Michigan No-Fault Act

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Is the one-year back rule really the one-back rule anymore?

Prior to the reformation of the Michigan No-Fault Act, the law was clear dating back to 2005: If a claimant or their provider did not file suit within one year of a service being provided or product being dispensed, payment for that service or product was barred under the "one-year back rule." MCL 500.3145 did not include a tolling mechanism; that is, until 2019, when the Legislature amended the No-Fault Act by adding a tolling provision.

In *Encompass Healthcare, PLLC v Citizens Ins Co*, No. 357225, 2022 WL 17070670 (Mich Ct App, November 17, 2022), the Michigan Court of Appeals held that where a request for reimbursement is not formally denied, the application of the one-year back rule remains tolled until a lawsuit is filed.

In the underlying *Encompass* case, Citizens Insurance Company paid benefits to Encompass Healthcare, PLLC for services it provided to its patient following a motor vehicle accident, but not all claimed benefits. Encompass filed a lawsuit, as an assignee of its patient, and conceded that its expenses were incurred more than a year before it filed its lawsuit but argued that reimbursement was nevertheless warranted because of the recently adopted tolling provision within MCL 500.3145.

Citizens countered that MCL 500.3145(2) requires strict compliance and is not subject to tolling under MCL 500.3145(3). The trial court partially granted Citizens' motion, reasoning as follows:

> Pursuant to MCL 500.3145(2), "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." [Encompass's] Complaint was filed on November 4, 2019. Therefore, [Citizens] argues that pursuant to the "one-year-back[ ]rule," as set forth in MCL 500.3145(2), supra, any portion of the loss incurred by [Encompass] before November 4, 2018 is not recoverable.
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> However, the Court finds that MCL 500.3145(3) acts to toll the limitations period in 500.3145(2) for any losses which were not formally denied by [Citizens] prior to November 4, 2018. The Court finds that [Citizens'] [Explanation of Review (EORs)] serve as formal denials within the purview of MCL 500.3145(3) because [Citizens] denied portions of [Encompass's] claims. The Court finds that summary disposition is appropriate regarding all claims that were denied via an [EOR] prior to November 4, 2018. However, summary disposition is inappropriate as to any claims that were

> denied via an [EOR] dated on or after November 4, 2018.

The court later clarified the ruling at Encompass's request, stating:

> The Court's May 14, 2020 Opinion & Order was clear. All claims which were denied by an [EOR] prior to November 4, 2018 are barred by the limitations period in MCL 500.3145(2). The Court's ruling made it clear that an [EOR] serves as a formal denial within the purview of MCL 500.3145 (3). Therefore, the limitations period in MCL 500.3145(2) began[, for each reimbursement claim,] upon the issuance of the first [EOR] denying the claim in whole or in part.

Encompass appealed, arguing that the EORs did not constitute "formal denials" as contemplated under MCL 500.3145(3) and that a formal denial is a legal term of art demanding that such expressions be explicit and unequivocal – requirements that were allegedly lacking in the EORs, thereby tolling the one-year back rule.

Citizens argued that the No-Fault Act does not define "formal denial," and Citizens' EORs met the standard based on the normal dictionary definitions of "formal" and "denial."

The appellate court concluded that that Citizens EORs did not provide the explicit and unequivocal expression of "finality" required to constitute formal denials. The EORs included no language clearly stating that the claims were denied, but instead included language of "'[a]llowed" versus "[r]educed" with little additional detail." The EORs lacked information that "explicitly indicat[ed] that the insurer [wa] s denying all liability in excess of what it ha[d] paid."

In light of the *Encompass* decision, insurers should use direct and forthright denial of coverage language, putting the claimant or provider on notice that the clock is ticking. Language in an EOR that benefits are terminated and denied based upon an independent medical examination would constitute a formal denial. Better yet would be a denial letter accompanying the EORs.

Relying on inferred denials invites disagreements and litigation, undermining one of the main goals of the No-Fault Act: to avoid litigation.