

Published Opinion Warns Insurers That Medical Claims can Survive MCL 500.3145 Indefinitely Without an Appropriate Denial

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In a recently published decision, *Girimonte v Liberty Mutual Ins Co, et al*, the Michigan Court of Appeals confirmed that the tolling provision in MCL 500.3145(3) does not apply to claims incurred prior to the enactment of the No-Fault reform on June 11, 2019.

This may seem like a repetitive holding because the appellate court held similarly in *Spine Specialists v MemberSelect Ins Co* in February 2023. *Girimonte* differs, however, by supporting a major argument that we have seen repeatedly proffered by plaintiffs' counsel in similar situations.

As discussed in the opinion, the first appellate case regarding the application of the "tolling provision" of the amended statute was *Encompass Healthcare, PLLC v Citizens Ins Co*, which was decided in November 2022. In *Encompass Healthcare*, the appellate court stated, "the one-year-back period is tolled until the insurer's formal denial of a claim." Various plaintiffs' counsel have latched onto this one sentence to argue that the appellate court ruled that the tolling provision applied to *any* claim for benefits – even those incurred after the statute was reformed. Criticizing the *Encompass Healthcare* decision, the appellate court in *Girimonte* ruled that the analysis was flawed because the parties in *Encompass Healthcare* did not challenge the application of the reformed statute on a pre-reform loss. Therefore, the statement above was not applicable to any other case.

In doing so, the appellate court confirmed its analysis in *Spine Specialists* where it held that, based on the Andary court's determination that MCL 500.3157(7) and (10) could not be applied retroactively, any other amendments of the statutory scheme could not be applied retroactively.

But, as mentioned above, the *Girimonte* decision went a step further than *Spine Specialists*. Specifically, one footnote of the court's opinion changes the analysis of medical benefits claimed today from accidents that occurred before June 11, 2019. The appellate court held "MCL 500.3110(4) provides that '[p]ersonal protection insurance benefits payable for accidental bodily injury accrue not when the injury occurs but as the allowable expense, work loss or survivors' loss is incurred.'" In a blow to insurers, the *Girimonte* appellate court reversed the trial court's decision that all benefits were time barred. Instead, the appellate court held that any claim incurred after June 11, 2019 (e.g., a doctor's invoice, attendant care claim or replacement services) would be subject to tolling under MCL 500.3145(3).

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This distinction is significant. For example, if a person was injured in an accident in 1988 but continued to seek medical treatment, any charges incurred after June 11, 2019 could be subject to the tolling provision. Therefore, if there is not a formal denial in place (i.e., denial letter or explanation of benefits), a claimant could file a lawsuit today to claim medical benefits incurred on June 12, 2019. Although tolling is not automatic (MCL 500.5145(3) specifically states that “[tolling] does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence”), it is imperative that insurers place appropriate denials in a timely fashion or else they could be exposed to years old medical claims based on the Girimonte appellate court decision.