

Supreme Court Reverses Landmark Case On One-Year-Back Rule

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Not all plaintiffs injured in auto accidents will be limited by the one-year-back rule's limitation on the period of recovery set forth in *Cameron v Auto Club Ins Ass'n*, 476 Mich 55 (2006), according to a recent decision by the Michigan Supreme Court.

A sharply divided court, in the case of *Regents of the University of Michigan and the University of Michigan Health System v Titan Insurance Company*, held that MCL 600.5821(4) exempts the state entities it lists from the one-year-back rule. The court reviewed a series of decisions preserving claims by minors or incompetent persons despite the expiration of the statute of limitations on the theory that MCL 600.5851(1) allowed for such claims even though they would otherwise be barred. In the court's view, MCL 600.5821 and MCL 500.3145 must be read together, not in isolation. The court concluded from this manner of reading the two statutes that 600.5851 "supersedes all limitations in MCL 500.3145(1), including the one-year-back rule's limitation on the period of recovery."

The Supreme Court considered whether *stare decisis* should apply to maintain the *Liptow* (a case which held that the one-year-back rule governs actions to which MCL 600.5821(4) applies because the statute does not exempt state entities from its limitation on damages) and *Cameron* decisions as good law. However, the court concluded that they should be overruled. Specifically the court decided that *Cameron* defied practical workability because it created an indefensible paradox by "ostensibly protecting an injured party's right to file suit" while leaving MCL 600.5851 and similar provisions "void of effect in many cases...."

The court held that *Cameron* was wrongly decided and overruled the decision in that case and held that MCL 600.5821(4), which preserves a plaintiff's right to bring an action, also preserves the plaintiff's right to recover damages incurred more than one year before the suit is filed. The Supreme Court majority stated:

In summary, *Cameron* is often unworkable, has not engendered valid reliance interests, has caused serious detriment prejudicial to public interests, and represented an abrupt and largely unexplained departure from precedent. Accordingly, we conclude that a compelling justification exists for overruling it.

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The practical implication of the Supreme Court's decision is that the one-year-back rule contained in MCL 500.3145(1), which states: "However, the claimant may not recover benefits for any portion of the loss incurred more than one year before the date on which the action was commenced" does not limit all plaintiff's recovery of PIP benefits to those PIP expenses incurred within one year of the filing of the personal protection lawsuit.

Rather, the majority opinion in *Regents of The University of Michigan and University of Michigan Health System v Titan Insurance Company* has ruled that the one-year-back rule contained in MCL 500.3145(1) does not eliminate governmental agencies' immunity provisions, nor the tolling provisions for minors and mental incompetents.

Plunkett Cooney appellate attorneys, Mary Massaron Ross and Hilary A. Ballentine had filed an *amicus brief* on behalf of Insurance Institute of Michigan in support of defendant-appellee, Titan Insurance Company's position to uphold the *Cameron* decision.