

LEGAL ALERT

March 25, 2008

COURT OF APPEALS REFUSES TO ENFORCE MINORITY/INSANITY TOLLING PROVISION CONTAINED IN INSURANCE CONTRACT

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In February 2008, the Michigan Court of Appeals ruled that contractual limitation periods found in insurance contracts cannot be enforced against minors.

In this case, Katie Klida was injured in a motor vehicle accident when she was 15 years old. After turning 18, she filed suit against Farm Bureau for underinsured motorist benefits. However, the Farm Bureau policy contained a provision that barred lawsuits against it for underinsured motorist benefits filed more than one year after the date of the accident. Farm Bureau asked that the lawsuit be dismissed because it was filed outside the contractually agreed upon limitation period. Ms. Klida countered, however, arguing that the minority/insanity tolling provision which tolls the statute of limitations with respect to minors until they turn 19, controlled in this case and that her lawsuit was timely. The minority/insanity tolling provision provides:

Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring **an action under this act** is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have one year after the disability is removed through death or

otherwise, to make the entry or bring the action although the period of limitations has run.

The Court noted that previous cases have suggested that breach of contract actions wherein the contract contained an agreed upon limitations period were not brought “under this act” and, therefore, were barred if filed after the agreed upon limitations period. The Court concluded that the language “an action under this act” was ambiguous and embarked on a judicial interpretation of the legislative intent.

The Court concluded that “a reasonable construction of the phrase ‘under this act’ contained within the minority tolling provision that best accomplishes the statute’s purpose is that **all civil actions are brought ‘under’ the Revised Judicature Act** including Plaintiff’s breach of contract action.” As a result, and until the Supreme Court has an opportunity to review this case and possibly overturn it, all civil lawsuits brought by minors or other insane persons may be brought within one year after the minor turns 18 or the insanity is resolved, regardless of any contractually agreed upon limitation period.

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