

STATE OF MICHIGAN
COURT OF APPEALS

HARRISON H. RICHARDSON,

Plaintiff-Appellant,

December 14, 1993

v

No. 150076
LC No. 91-126663-CZ

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a Michigan
corporation,

Defendant-Appellee.

Before: Brennan, P.J., and Corrigan and R. C. Anderson,* JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the Wayne Circuit Court that granted the defendant insurer's motion for summary disposition, brought pursuant to MCR 2.116(C)(7). Plaintiff's "motion for declaratory judgment" was denied. We affirm.

Defendant was injured by an uninsured motorist on May 15, 1989. Notice of the injury was given to defendant shortly thereafter, and plaintiff returned an application for no-fault benefits to defendant on July 31, 1989. On November 13, 1989, defendant paid plaintiff wage loss benefits for the period between May 15, 1989 and November 10, 1989, and stated that "no further wages will be honored" until defendant received medical documentation of plaintiff's injuries and disabilities.

On April 10, 1990, plaintiff made a claim for uninsured motorist coverage. Not until March 20, 1991 did plaintiff submit medical documentation to defendant along with a specific reference to an additional wage loss claim. The next day, defendant denied the claim and requested additional documentation of plaintiff's alleged wage losses between November 1989 and July 1990. Defendant also sent plaintiff a copy of MCL 500.3145; MSA 24.13145. On March 27, 1991, plaintiff, a physician who had treated himself for some of his injuries, sent defendant an affidavit that swore to his disability from May 15, 1989 to April 1, 1990, and a second period of disability from May 1, 1990 to July 1, 1990. Defendant, believing that any claim for wages lost before March 25, 1990 was barred by the one-year back rule, eventually paid plaintiff benefits for the wages claimed lost between March 25 and June 30, 1990.

MCL 500.3145; MSA 24.13145 provides, in part, that a "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." The one-year back rule's limitation period on recovery is tolled from the date of a specific claim for benefits to the date of a formal denial of liability. Lewis v DAIE, 426 Mich 93, 101; 393 NW2d 167 (1986). A claim must be specific; mere notice of an injury is insufficient to toll the running of the period. Welton v Carriers Ins Co, 421 Mich 571, 579; 365 NW2d 170 (1984). In the present case, plaintiff failed to provide notice of his specific claim for wage loss benefits between November 1989 and March 1991. The correspondence between the parties during this period concerned uninsured motorist coverage, not wage loss benefits. Plaintiff did give notice of a specific claim for wages lost between the date of the accident and November 1989, and these benefits were paid. This notice is insufficient, however, to toll the period for all future wage loss claims.

*Circuit Court Judge, sitting on the Court of Appeals by assignment.

Until a specific claim is made, an insurer has no way of knowing what expenses have been incurred, whether those expenses are covered losses and, indeed, whether the insured will file a claim at all. It is therefore illogical to expect the insurer to formally "deny" an as yet unperfected claim.

Plaintiff also argues that defendant is estopped from asserting the bar of the one-year back rule in defense of his claim. A review of the trial court record shows that, although the concept of estoppel was mentioned in plaintiff's motion, it was not argued in his brief in support, not discussed at the hearing on the parties' motions, and not decided by the trial court. This argument is therefore unpreserved for appellate review, and we decline to address it. Berry v J & D Auto Dismantlers, Inc, 195 Mich App 476, 480; 491 NW2d 585 (1992); American States Ins Co v Auto Club Ins Ass'n, 193 Mich App 248, 256; 484 NW2d 1 (1992).

Affirmed.

/s/ Thomas J. Brenna
/s/ Maura D. Corrigan
/s/ Robert A. Anderson