

New York State
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**STATE OF NEW YORK
INSURANCE DEPARTMENT**

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George E. Pataki
Governor

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Superintendent

The Office of General Counsel issued the following opinion on July 30, 2004 representing the position of the New York State Insurance Department.

RE: Statute of Limitations/No-Fault Subrogation & Inter-company Loss Transfer Arbitration

Question Presented:

Does the statute of limitations for requesting No-Fault subrogation and inter-company loss transfer arbitrations, pursuant to Section 5105 of the Insurance Law, begin to run from the date of the motor vehicle accident or the date the first claim payment is made?

Conclusion:

Based upon New York caselaw, the statute of limitations for New York inter-company loss transfer arbitration begins to run is on the date that the first claim payment is made to the applicant for benefits.

Facts:

A number of arbitrator decisions deem the date of a motor vehicle accident as the date commencing the statute of limitations on requesting loss transfer arbitration. These decisions had been sharply rebuked by a number of New York Courts. This office has been asked to opine as to which date should govern.

Analysis:

Two recent lower court decisions, Matter of Empire Insurance Company v. Eagle Insurance Company, 2004 WL 1048572 (N.Y. Sup. App. Term) (May 4, 2004) and Security Indemnity Insurance Co. v. Merchant's Insurance Group, N.Y.L.J. May 28, 2004, found that the statute ran from the date of first payment. It should be noted that in a concurring opinion by Justice Golia in the Empire case, Justice Golia chastised an arbitration forum for persisting in consciously disregarding court rulings and continuing to dismiss inter-company no-fault arbitrations on statutes of limitations grounds, based upon the demand for arbitration being made more than three years from the date of the accident, rather than three years from the date of the first no-fault payment.

Most significantly, the Court of Appeals recently issued a decision in Allstate v. Stein (2004 WL 3060403) on February 19, 2004 which would seem to be determinative of this issue. In that case, involving a subrogation claim for additional personal injury protection claims paid under No-Fault by an insurer, the statute of limitations was found to run from the date of the accident since the insurer's claim arose from "a traditional equitable subrogation, not liability created by statute." The court further noted that the insurer would have had a subrogation action even absent an explicit subrogation clause in the insurance policy, based upon traditional equity principles.

In reaching its decision, the court distinguished the case before it from its previous holdings in Aetna Life & Casualty v. Nelson, 67 N.Y.2d 169 (1986) and MVAIC v. Aetna Casualty & Surety Co., 89 N.Y.2d 214 (1996), where the Court of Appeals had held that the No-Fault law did not codify common-law principles but, rather, created new and independent statutory rights and obligations, so that the statute of limitations requirements in New York required that an entitlement to No-Fault benefits based upon the commencement of a liability action created by statute would be subject to a three year statute of limitations running from the date that the first payment of No-Fault benefits is made.

Applying the court's rationale and consistent with the Aetna and MVAIC decisions, cited above, the right to inter-company No-Fault loss transfer under specific circumstances, which were explicitly created under N.Y. Ins. Law § 5105(a) (McKinney 2000), would require an opposite conclusion than was reached by the Allstate court. N.Y. Ins. Law § 5105(a) permits an insurer to pursue a loss transfer claim against the insurer of an at-fault (tortfeasor) vehicle when one of the vehicles involved in the accident weighs over 6500 pounds or is a vehicle used principally for the transportation of persons or property for hire. Since the court specifically indicated that in liability actions arising under the No-Fault law, the statute of limitations for an action would commence as of the first day that benefits were paid, mandatory inter-company loss transfer arbitration created under N.Y. Ins. Law § 5105(b) (McKinney 2000) would fall within this category.

Therefore, it is the opinion of the Department of Insurance that, pursuant to the above-cited cases, the statute of limitations for requests for loss transfer arbitrations under Section 5105 should commence from the date of first payment of No-Fault benefits.

For further information you may contact Supervising Attorney Lawrence M. Fuchsberg at the New York City Office.