



**STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004**

**George E. Pataki
Governor**

**Gregory V. Serio
Superintendent**

The Office of General Counsel issued the following opinion on December 9, 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 for three years from the date that each claims payment was made?

Conclusion:

Yes. Claims for loss transfer arbitration are timely for statute of limitations purposes if made within the three year period from the date of each claims payment. Therefore, while earlier claims beginning from the first date of payment may be arbitrable, later claims may be time-barred by the statute, depending upon the date that each claim was paid and when arbitration was requested.

Facts:

On July 30, 2004, the Office of General Counsel of this Department opined that, based on New York case law, the statute of limitations for requesting No-Fault inter-company loss transfer arbitration began to run three years from the date of the first claims payment, and not from the date of the motor vehicle accident. That opinion was premised on the factual situation when inter-company loss transfer arbitration was requested for all claims paid and the date of the first payment, as well as the accompanying subsequent claims paid, all fell within the three year commencing from the date of the first claim paid to the date of the last claim paid. That opinion did not address situations where the first arbitration request is timely but subsequent requests for arbitration were more than three years from the date of payment, although the first request for arbitration has less than three years from the date of the first payment.

Analysis:

This question was addressed by the Appellate Division, 4th Dept. in Matter of Arbitration Between Liberty Mutual Insurance Company and Hanover Insurance Company, 307 A.D. 2d 40 (2003). In this case, the court concluded that a loss transfer claim between insurers is statutorily created under the No-Fault statutory and regulatory scheme (i.e., N.Y. Ins. Law § 5105 (McKinney 2000)), and subject to a three-year statute of limitations, which accrues based upon the date of No-Fault benefits paid to the claimant. Specifically, the court concluded that:

[W]here several payments are made to the claimant over a period of time, the timeliness of loss-transfer claims for such payments is individually measured from the date of each payment to the date of the demand for arbitration of the loss-transfer claim. In other words, a loss transfer claim is timely if the demand for arbitration of such claim is made within three years of the payment for which reimbursement is sought. Thus, all claims for payments made 'more than three years before the date of the demand' are time-barred, while those made within three years of the demand are timely asserted.

Matter of Budget Rent-A-Car/State Ins. Fund, 237 A.D.2d 153, 153, 654 N.Y.S.2d 757, quoting Motor Veh. Acc. Indem. Corp., 89 N.Y.2d at 222, 652 N.Y.S.2d 584, 674 N.E.2d 1349; see Matter of Progressive Ins. Co. v. Motor Veh. Acc. Indem. Corp., 248 A.D.2d 390, 669 N.Y.S.2d 853; see also Matter of State Ins. Fund/Country-Wide Ins. Co., 276 A.D.2d 432, 715 N.Y.S.2d 15.

Please note that the Liberty Mutual decision was recently cited by Judge Bernice D. Siegal on September 20, 2004 in Allcity Insurance Company v. Eagle Insurance Company, 782 N.Y.S.2d 623 (N.Y. Civ. Ct., Queens County). The court, in reversing a loss-transfer award, cited the fact that the award was contrary to established case law in that it misapplied the statute of limitations as running from three years after the date of the accident. In rejecting the award, the court affirmed the Liberty Mutual holding that the statute of limitations "accrues on the date of payment of No-Fault benefits."

Therefore, to clarify the previous opinion, for purposes of meeting the statute of limitations to request loss transfer arbitration, the three year period must run from the date that each claim was paid until the date that arbitration would be demanded.

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