

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIN ANDERSON, : CIVIL ACTION
 :
 Plaintiff, :
 : NO. 00-4518
 v. :
 :
 STATE FARM MUTUAL AUTOMOBILE :
 INSURANCE COMPANY, :
 :
 Defendant. :

MEMORANDUM

BUCKWALTER, J.

November 29, 2001

Presently before the Court is Defendant's Motion for Partial Summary Judgment pursuant to Fed. R. Civ. P. 56. For the reasons stated below, Defendant's Motion is granted with respect to Plaintiff's claims for benefits for losses incurred more than one year before the commencement of this suit as set forth in detail below.

I. BACKGROUND

Plaintiff Erin Anderson ("Anderson" or "Plaintiff") was involved in a car accident on October 4, 1998. Anderson was an authorized operator of the automobile she was driving at the time of the accident under an insurance policy issued by Defendant State Farm Mutual Automobile Insurance Company ("State Farm" or "Defendant"). The subject insurance policy was issued and delivered in Michigan to Plaintiff's father, a Michigan resident.

Plaintiff is a Pennsylvania resident and garaged and drove her father's car in Pennsylvania.

As a result of the accident, Anderson sustained various personal injuries and submitted her medical bills to State Farm. State Farm denied certain of Anderson's claims for benefits after Plaintiff underwent an independent medical examination which determined that the injuries sustained by Plaintiff had resolved and there existed no objective evidence to support her ongoing complaints. The instant breach of contract action is brought by Anderson as a result of State Farm's denial of these medical bills.¹

Defendant asserts it is entitled to summary judgment with respect to many of Plaintiff's claims for insurance benefits which State Farm has previously denied pursuant to a provision contained in the auto insurance policy which, in effect, establishes a one-year statute of limitations for suits against Defendant for personal injury protection benefits. The relevant policy provision states:

1. Only the breach of contract claim is before the Court for consideration. Plaintiff's Complaint originally included three counts. Count I demanded judgment for State Farm's breach of its contract of insurance. Count II was a statutory cause of action brought pursuant to Pennsylvania's Motor Vehicle Financial Responsibility Law. Count III was a bad faith claim brought pursuant to Pennsylvania's Consumer Protection Law. However, on April 11, 2001, Plaintiff and Defendant entered into a stipulation and Counts II and III of the Complaint were withdrawn with prejudice.

Suits Against Us

There is no right of action against us:

. . . .

e. under the personal injury protection coverage unless the action is begun within one year from:

(1) the date of the accident; or

(2) the date on which the most recent expense or loss has been incurred, if we have either received written notice of the **bodily injury** within one year from the date of the accident, or have made a payment under this coverage for **bodily injury**.

NO ACTION MAY SEEK BENEFITS FOR LOSS INCURRED MORE THAN ONE YEAR BEFORE THE ACTION IS BROUGHT.

Def.'s Motion for Summary Judgment, Ex. D, at 24 (emphasis in original).

The policy provision cited above is identical to a Michigan statute known as the "one year back" rule.² The Michigan law, as interpreted by Michigan courts, provides for tolling of the one-year statute of limitations between the date the insurer is given notice of a claim for benefits and is

2. The Michigan statute provides:

(1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the 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. Mich. Comp. Laws. § 500.3145(1) (1993).

alerted to the extent of its potential exposure, and the date when the insurer formally denies the insured's claim. State Farm concedes that tolling is also appropriate under the terms of the car policy, allowing some of Anderson's claims to proceed.

Plaintiff does not dispute that a court action to recover most of her outstanding medical expenses submitted to State Farm would be barred if the one-year back rule applied. Instead, Plaintiff asserts that Michigan law does not apply to the instant action and that her claims should be governed by Pennsylvania's Motor Vehicle Financial Responsibility Law, which provides a four-year statute of limitations. See 75 Pa. Cons. Stat. § 1721 (1996).

II. DISCUSSION

A. Choice of Law

In her Memorandum of Law in opposition to Defendant's Motion for Summary Judgment, Plaintiff seeks application of Pennsylvania's Motor Vehicle Financial Responsibility Law and its corresponding four-year statute of limitations. Plaintiff avers that "[c]hoice of law principles clearly compel application of the Pennsylvania statute and, therefore, denial of Defendant's Motion."

Defendant, on the other hand, contends that the law of Michigan is properly applied to interpret the insurance agreement which it issued to Plaintiff's father and that the condition

placed upon Plaintiff's ability to bring suit against it are governed in accordance with Mich. Comp. Laws. § 500.3145 and the so-called "one-year back" rule. Accordingly, we must first decide whether Pennsylvania or Michigan law is applicable here.

A federal district court in a diversity action must apply the choice of law rules of the forum state in determining which state's law will be applied to the substantive issues before it. See Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97, 61 S. Ct. 1020, 1021, 85 L. Ed. 1477 (1941). Thus, Pennsylvania's choice of law rules apply.

The Court is guided in its resolution of the choice of law issue in this case by the Third Circuit's decision in Assicurazioni Generali, S.P.A. v. Clover, 195 F.3d 161 (3d Cir. 1999). The insurance policy in that case did not contain a choice of law provision, however, the Court of Appeals noted it was drafted in accordance with Indiana law because it included the underinsured endorsement required by that state. Finding that Pennsylvania in large measure followed the Restatement (Second) Conflict of Laws, which holds that a contract's references to the laws of a particular state may provide persuasive evidence that the parties to the contract intended for that state's law to apply, the Third Circuit concluded that the district court should have considered the content of the endorsement itself rather than an interest analysis as

determinative of the choice of law question. Thus, the Third Circuit reasoned, Indiana law should have been applied. See Clover, 195 F.3d at 164-65.

In this case, there is no specific "choice of law" provision contained in State Farm's automobile insurance contract. The Court, nevertheless, must agree with Defendant that the contract, as written, implicitly selects Michigan law as the law to be applied in interpreting the policy. The policy issued to the Plaintiff's father contains a provision, which by Plaintiff's own admission, is identical to the one-year limitations period set forth in the Michigan No-Fault Act and presumably evidences the intent of the parties to the insurance contract to incorporate Michigan law. As the Third Circuit found in Clover, the Court also finds that this language clearly determines the outcome of the choice of law issue and I see no need to undertake an interest analysis. Accordingly, the Court will apply Michigan law in interpreting the State Farm insurance policy to determine which of Plaintiff's claims are barred by the one-year limitations period.

B. Plaintiff's Right of Action Against State Farm

Under the Michigan statute, "an action to recover personal protection insurance benefits must be commenced not later than one year after the date of the accident, unless the insured gave written notice of injury to the insurer within one

year after the accident or unless the insurer has previously paid personal protection insurance benefits for the injury." Johnson v. State Farm Mut. Auto. Ins. Co., 455 N.W.2d 420, 422 (Mich. Ct. App. 1990). Here, State Farm does not dispute that Anderson timely brought her action because, although the accident occurred on October 4, 1998 and Plaintiff did not bring the instant action until July 24, 2000, Anderson did give notice of the accident within one year thereafter and State Farm has made benefit payments for Anderson's injuries under the policy.

However, pursuant to the statute's one-year-back rule³, "even where the period of limitations is tolled under the notice of injury or payment of benefits exceptions, an insured can only recover benefits for losses incurred within one year preceding the commencement of the action." Id. at 424. Therefore, even though Anderson's suit is timely, any specific claim that dates back prior to one-year from the date which she filed suit is barred.

However, the one-year back rule includes a distinct tolling provision which is applied to each specific claim for insurance benefits that may allow a claim for insurance benefits to be heard despite the fact that the loss was incurred more than one year prior to the commencement of the suit. The Michigan

3. "However, the 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." Mich. Comp. Laws. § 500.3145(1) (1993).

Supreme Court has held that the "one-year back rule" is tolled "from the date of a specific claim for benefits to the date of a formal denial of liability." Lewis v. Detroit Auto. Inter-Insurance Exch., 393 N.W.2d 167, 171 (Mich. 1986). Thus, in determining which of Plaintiff's claims are barred and which will be permitted to go forward, the Court must apply the one-year back rule with its corresponding tolling provision, if appropriate, for any period of time which State Farm investigated Anderson's claims prior to issuing a formal denial.

C. Plaintiff's Specific Claims

Anderson alleges that the following outstanding expenses have been submitted to State Farm and remain unpaid due to Defendant's denial of her claims⁴:

Dr. J. Lee Rutenberg	\$3,925.50
Philadelphia Orthopaedic Group	\$1,355.00
Jefferson Bala Cynwyd	\$1,150.00
Body Synergy Institute, Inc.	\$2,160.00
Michael M. Cohen, M.D.	\$3,265.00
OUTSTANDING MEDICAL BALANCES TO DATE	\$11,855.50
Plus future Medical Bills	

Plaintiff brought suit on July 24, 2000, therefore, that is the date from which the one-year back rule and appropriate tolling will be measured.

4. Plaintiff's original complaint also included a claim for wage loss, which was subsequently voluntarily withdrawn by Plaintiff.

**1. Dr. J. Lee Rutenberg/Valley Forge
Chiropractic Center**

This provider submitted bills to State Farm under the name Valley Forge Chiropractic Center and is currently owed the sum of \$3,925.00 for services rendered between June 28, 1999 and August 30, 1999. Clearly, any specific claim for benefits occurring after July 24, 1999 will not be barred. This includes claims for services rendered on (1) August 6, 1999 in the amount of \$52.00; (2) August 20, 1999 in the amount of \$72.00; and (3) August 30, 1999 in the amount of \$52.00.

As to the specific claims arising more than one-year prior to Plaintiff's filing suit, the Court notes that State Farm issued a formal denial of benefits to Plaintiff and to Valley Forge Chiropractic Center on February 23, 1999 in the form of a letter advising Anderson that on the basis of the independent medical examination Plaintiff attended, no further bills from this provider would be paid by State Farm. Thus, although formal denials were not again issued to Plaintiff after State Farm subsequently received Dr. Rutenberg's bills for services rendered between June 28, 1999 and August 30, 1999, Anderson and Valley Forge Chiropractic Center were already on notice that State Farm was denying liability and that Anderson would have to resort to pursuing relief in court if she desired to contest State Farm's denial determination. Therefore, as to this provider, Anderson does not benefit from any tolling of the one-year limitations

period because State Farm's February 23, 1999 denial was in effect a contemporaneous denial with the later submission of Valley Forge Chiropractic Center's bills.

Accordingly, Defendant's Motion for Summary Judgment is granted with respect to the bills of Dr. J. Lee Rutenberg/Valley Forge Chiropractic Center except for the claims for services rendered on (1) August 6, 1999 in the amount of \$52.00; (2) August 20, 1999 in the amount of \$72.00; and (3) August 30, 1999 in the amount of \$52.00.

2. Philadelphia Orthopedic Group

This provider is currently owed the sum of \$1,355.00 for services rendered between February 22, 1999 and August 30, 1999. Again, any specific claim for benefits occurring after July 24, 1999 will not be barred. This includes a claim for services rendered on August 30, 1999 in the amount of \$100.00.

All other claims with respect to this provider are barred, even taking into account the tolling of the one-year limitation. The most recent claim prior to the August 30, 1999 bill was for services rendered June 21, 1999. This bill was not received by Defendant until July 7, 1999, at which point State Farm investigated the claim and denied payment on July 21, 1999. Because the "insured [is] charged with the time spent reducing his losses to a claim for specific benefits," Welton v. Carriers Ins. Co., 365 N.W.2d 170, 173 (Mich. 1984), the one-year clock is

only suspended for the period of time while the insurer is investigating the claim, in this case 14 days, as opposed to measuring a full one-year back from the date of the insurer's denial. Therefore, with respect to the claim for services rendered June 21, 1999, Plaintiff's ability to bring suit against State Farm is extended 14 days until July 5, 2000, i.e., one year and fourteen days after the date of loss. Because Plaintiff did not bring suit until July 24, 2000, these claims, other than the August 30, 1999 claim, which the Court has already determined may proceed, are barred. The Court assumes that claims for medical bills with earlier dates of services would similarly be barred.

Apparently, Plaintiff is also in possession of a bill for services rendered on July 19, 1999 which was never submitted to State Farm. Thus, tolling is not appropriate in that the claim was never under investigation by State Farm. Furthermore, "the insured must seek reimbursement with reasonable diligence or lose the right to claim the benefit of a tolling of the limitations period." Lewis, 393 N.W.2d at 172.

Accordingly, Defendant's Motion for Summary Judgment is granted with respect to the bills of Philadelphia Orthopedic Group except for the claims for services rendered on August 30, 1999 in the amount of \$100.00.

3. Jefferson Bala Cynwyd

This provider is currently owed the sum of \$1,150.00. Defendant does not address this provider in its Motion for Summary Judgment, therefore, the Court assumes that State Farm does not believe the one-year back rule will bar the claims of this provider and further, does not object to Plaintiff going forward with these claims.

Accordingly, Defendant's Motion for Summary Judgment is denied with respect to all bills of Jefferson Bala Cynwyd.

4. Body Synergy Institute, Inc.

This provider is currently owed the sum of \$2,160.00 for services rendered March 16, 1999 through June 23, 1999. These bills were not received by Defendant until September 20, 1999, at which point State Farm investigated the claims and denied payment on October 19, 1999. As mentioned above, the insured is charged with the time spent reducing his losses to a claim for specific benefits and the one-year clock is only suspended for the period of time while the claim is being investigated by the insurer, in this case 29 days. Therefore, with respect to these claims, Plaintiff's ability to bring suit (as measured by the most recent claim, June 23, 1999) is extended 29 days to July 22, 2000. Because Plaintiff did not bring suit until July 24, 2000, these claims are barred.

Accordingly, Defendant's Motion for Summary Judgment is granted with respect to the bills of Body Synergy Institute.

5. Michael M. Cohen, M.D.

This provider is currently owed the sum of \$3,265.00 for services rendered May 18, 1999 and August 23, 1999. The claim for services rendered August 23, 1999, in the amount of \$1,475.00 will be permitted to go forward as that falls within one-year of Plaintiff filing suit.

The May 18, 1999 bill in the amount of \$1,790.00 was received by State Farm on May 28, 1999 and denied on June 9, 1999. Therefore, this particular claim was under investigation by State Farm for a period of 12 days. Accordingly, Plaintiff is entitled to a 12 day extension in which to bring suit on this specific claim. Because Plaintiff brought suit after May 30, 2000, this claim is barred.

Accordingly, Defendant's Motion for Summary Judgment is granted with respect to the bills of Michael M. Cohen M.D. except for the claims for services rendered on August 23, 1999 in the amount of \$1475.00.

III. CONCLUSION

For the foregoing reasons: (1) Defendant's Motion for Partial Summary Judgment is granted with respect to the bills of Dr. J. Lee Rutenberg/Valley Forge Chiropractic Center except for the claims for services rendered on (a) August 6, 1999 in the

amount of \$52.00; (b) August 20, 1999 in the amount of \$72.00; and (c) August 30, 1999 in the amount of \$52.00; (2) Defendant's Motion is granted with respect to the bills of Philadelphia Orthopedic Group except for the claims for services rendered on August 30, 1999 in the amount of \$100.00; (3) Defendant's Motion is granted with respect to the bills of Body Synergy Institute; (4) Defendant's Motion is granted with respect to the bills of Michael M. Cohen M.D. except for the claims for services rendered on August 23, 1999 in the amount of \$1475.00; and (5) Defendant's Motion is denied with respect to all bills of Jefferson Bala Cynwyd.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIN ANDERSON, : CIVIL ACTION
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 Plaintiff, :
 : NO. 00-4518
 v. :
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 STATE FARM MUTUAL AUTOMOBILE :
 INSURANCE COMPANY, :
 :
 Defendant. :

ORDER

AND NOW, this 29th day of November, 2001, upon consideration of Defendant's Motion for Partial Summary Judgment (Docket No. 23), Plaintiff's reply in opposition thereto (Docket No. 24) and Defendant's rebuttal to Plaintiff's reply (Docket No. 25) it is hereby **ORDERED** that Defendant's motion is **GRANTED** with respect to Plaintiff's claims for losses incurred more than one year before the commencement of this suit.

More specifically it is **ORDERED** that Defendant's motion is **GRANTED** with respect to:

1. The bills of Dr. J. Lee Rutenberg/Valley Forge Chiropractic Center **except for** the claims for services rendered on (a) August 6, 1999 in the amount of \$52.00; (b) August 20, 1999 in the amount of \$72.00; and (c) August 30, 1999 in the amount of \$52.00;

2. The bills of Philadelphia Orthopedic Group **except for** the claims for services rendered on August 30, 1999 in the amount of \$100.00;

3. The bills of Body Synergy Institute;

4. The bills of Michael M. Cohen M.D. **except for** the claims for services rendered on August 23, 1999 in the amount of \$1475.00.

Defendant's Motion for Partial Summary Judgment is **DENIED** with respect to all bills of Jefferson Bala Cynwyd.

BY THE COURT:

RONALD L. BUCKWALTER, J.