

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of Samuel Lee Davis,  
Petitioner, vs. Minnesota Automobile  
Assigned Claims Bureau, Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter was heard before Administrative Law Judge George A. Beck on June 16, 2000 at 9:30 a.m. at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, in the City of Minneapolis, Minnesota. The record in this matter closed on June 21, 2000, upon receipt of the final written memorandum.

William O. Bongard, Esq. of the firm of Sieben, Grose, VonHoltum and Carey, Ltd., 900 Midwest Plaza East, 800 Marquette Avenue, Minneapolis, Minnesota 55402-2842, appeared representing the Petitioner, Samuel Davis. J. Mark Catron, Esq. of the firm of Hansen, Dordell, Bradt, Odlaug and Bradt, PLLP, Suite 250, 3900 Northwoods Drive, St. Paul, Minnesota 55112-6973, appeared on behalf of the Respondent, Minnesota Automobile Assigned Claims Bureau. Sarah Walter, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, attended the hearing on behalf of the Department of Commerce, however the Department did not participate as a party in this case.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James C. Bernstein, Commissioner Minnesota Department of Commerce, 133 East 7<sup>th</sup> Street, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUE**

Does the Petitioner's delay in filing a claim under the Minnesota Automobile Assigned Claims Plan make the Petitioner ineligible for benefits under the plan?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Petitioner, Samuel Davis, was fishing at Smith Bay on Lake Minnetonka with several friends on May 4, 1993.

2. As he was sitting by the shore, Mr. Davis was struck and knocked over by a pick-up truck that was backing out of a parking spot. After getting out from underneath the tailgate portion of the vehicle, Mr. Davis was struck and knocked over again. The truck then left the scene without stopping. The driver appeared to be of Asian descent.<sup>[1]</sup>

3. Mr. Davis' friends took down the license plate number of the truck which was 009CZD. It was determined that this vehicle was a 1986 Mazda pickup truck owned by Tuan Anh Ha, 2713 Second Avenue South, Apartment #305, Minneapolis, MN.

4. Later on the day of the accident Mr. Davis proceeded to the emergency room of Midway Hospital in St. Paul where he complained of left shoulder pain, left lateral chest wall pain and left hip pain. He gave an address of 325 Laurel, #613, in St. Paul. This is his mother's address. Mr. Davis was x-rayed and released with a diagnosis of left shoulder contusion, left chest wall contusion, abdominal tenderness, and left hip strain.<sup>[2]</sup>

5. Mr. Davis began treating with the Jepson Chiropractic Clinic on June 25, 1993, at which time he complained of left shoulder pain, right elbow pain, neck pain and low back pain. He gave his address as 699 Fuller Avenue in St. Paul.<sup>[3]</sup>

6. Mr. Davis, who is employed as a painter, was off work for four days following the accident and then returned to work. In June of 1993 he reported to the chiropractor that he had a throbbing sensation in his left shoulder as he painted.

7. Mr. Davis began treating with the Arvidson Chiropractic Clinic in September of 1993 at which time he complained of pain in his shoulder, back and elbow. He gave his address as 325 Laurel in St. Paul. He continued to treat with this clinic through November of 1993.<sup>[4]</sup> The Arvidson Clinic later obtained a judgment against the Petitioner for his unpaid medical bill.<sup>[5]</sup>

8. In September of 1993 Mr. Davis retained the law firm of Sieben, Grose, VonHoltum, McCoy and Carey to represent him regarding the accident. The law firm investigated to determine who was responsible.

9. According to the Division of Motor Vehicles, American Family was the insurer of the vehicle owned by Tuan Anh Ha with the license plate number 009CZD.<sup>[6]</sup> The law firm then contacted American Family.

10. On January 5, 1994 American Family advised the law firm that the policy number indicated on the motor vehicle form did not correspond to any American Family policy and furthermore that American Family never bound coverage on any vehicle owned by Tuan Anh Ha.<sup>[7]</sup>

11. American Family located Mr. Ha, however, he failed to show up for a scheduled meeting with American Family and American Family closed its file regarding the matter on February 9, 1994.<sup>[8]</sup>

12. Mr. Davis incurred medical bills of \$1,412.92 with Health East/Midway Hospital; \$166.00 with the Jepson Chiropractic Clinic and \$1,468.00 with the Arvidson Chiropractic Clinic for a total of \$3,046.92.

13. On April 3, 1999 Mr. Davis filed an application for benefits with the Minnesota Automobile Assigned Claims Bureau concerning the May 4, 1993 accident. He indicated that his address at the time of the accident was 699 Fuller in St. Paul.<sup>[9]</sup> He lived alone there at the time of the accident.

14. Mr. Davis' claim was assigned to State Farm Insurance by the claims bureau. In a letter dated June 24, 1999 State Farm denied the claim because it was submitted almost six years after the accident. State Farm stated that this delay made investigation into the eligibility nearly impossible.<sup>[10]</sup>

15. Mr. Davis told State farm's adjustor that he only recently learned of the Arvidson Clinic judgment which prompted the filing with the Claims Bureau.<sup>[11]</sup>

16. Mr. Davis appealed this determination to the governing committee of the Minnesota Automobile Assigned Claims Bureau. In a letter dated October 22, 1999 the plan administrator advised Mr. Davis' attorney that the governing committee was upholding the denial of benefits by State Farm.<sup>[12]</sup>

17. Mr. Davis then exercised his right to appeal the decision of the Claims Bureau to the Commissioner of Commerce and this contested case proceeding followed.

18. Minnesota law permits insurers to include a six month notice requirement in their policies for insureds to be entitled to benefits. State Farm's automobile policy contains a six month notice provision and requires full cooperation by the insured.<sup>[13]</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. That the Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter.<sup>[14]</sup>

2. The Department of Commerce gave proper notice of the hearing and has complied with all relevant substantive and procedural requirements of statute and rule.

3. Persons injured in an automobile accident by an uninsured motorist are entitled to economic loss benefits under Minnesota law.<sup>[15]</sup>

4. The Petitioner was not the owner of a private passenger motor vehicle nor did he reside with someone who owned an uninsured vehicle at the time of the accident.<sup>[16]</sup>

5. Minn. Stat. § 65B.65, subd. 1 requires a claimant to “notify the bureau of the claim within the time that would have been allowed for commencing an action for those benefits if there had been identifiable coverage in effect and applicable to the claim.”

6. That the Petitioner’s late filing does not violate Minn. Stat. § 65B.65, subd. 1 and is timely under the circumstances.

7. That the Petitioner is entitled to economic loss benefits through the Assigned Claims Plan for the injuries incurred on May 4, 1993.

8. Any Findings of Fact that are more appropriately described as Conclusions are adopted as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the decision of the Assigned Claim Bureau to deny economic loss benefits to the Petitioner be reversed.

Dated this 13th day of July 2000.

S/ George A. Beck  
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GEORGE A. BECK  
Administrative Law Judge

Reported: Tape-recorded. No Transcript Prepared.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Petitioner was injured in an automobile accident in 1993 by an uninsured driver and incurred medical expenses in connection with his injuries at a hospital and two chiropractic clinics. There is little dispute as to the facts of the accident or the medical treatment. However, the Respondent argues that Petitioner is not entitled to no

fault benefits under the Minnesota Automobile Assigned Claims Plan because of his nearly six year delay in submitting the claim. The applicable statute provides that the claimant must notify the bureau of the claim “within the time that would have been allowed for commencing an action for those benefits if there had been identifiable coverage in effect and applicable to the claim.”<sup>[17]</sup>

Under the language of the statute it seems clear that the claimant is not bound by State Farm’s policy containing a six month notice provision. In fact, at first blush, it would appear that the statute most likely refers to the six year statute of limitations on court actions as the limit on filing with the claims bureau. The only available judicial interpretation of the statute, however, states that:

“Since Minn. Stat. Sec. 65B.55, as noted above, merely authorizes a six month notice period, but does not require it, it is not clear that appellant was required to notify the bureau of his claim within six months. The trial court must determine whether, under the circumstances, appellant’s notice to the bureau was timely, bearing in mind that no six month requirement was in effect and the timeliness must therefore be judged according to reasonableness.”<sup>[18]</sup>

The Court in Sullivan determined that the claimant was not automatically precluded from benefits because his claim was not filed with the Assigned Claims Bureau within six months of his injuries. It directed the trial court to make a determination on whether the notice to the bureau was timely under the circumstances. It did not apply the six year statute of limitations nor mention prejudice to the insurer.

Generally, it is reasonable to require that an insurer be given an opportunity for prompt investigation so as to protect itself against fraudulent or exorbitant claims and, while the matter is fresh in the minds of all, to appraise and determine a disposition by way of settlement or defense.<sup>[19]</sup> However, mere failure to give notice required by a policy is not fatal to a claim as long as the insurer is not prejudiced by the delay. The matter is usually determined based upon the individual circumstances of the case.<sup>[20]</sup>

As the parties have noted, prejudice to the insurer is normally a relevant consideration in interpreting other notice provisions.<sup>[21]</sup> In this case the Respondent asserts prejudice due to its inability to conduct a contemporaneous investigation. Under the Assigned Claims Plan a claimant is not eligible for benefits if he is the owner of an uninsured motor vehicle or if he resides with the owner of an uninsured motor vehicle.<sup>[22]</sup> The Respondent claims prejudice because the owner of the duplex in which the Petitioner resided at the time of the accident is now deceased. He cannot, therefore, be interviewed to determine if claimant had an automobile or lived with someone who did. The Respondent argues that Petitioner’s actual residence is uncertain and that records of the Department of Public Safety are unreliable to determine ownership of vehicles.

However, the Respondent has taken the deposition of the Petitioner and that testimony, as well as the contemporaneous records, indicates that the Petitioner lived in a duplex at 699 Fuller in St. Paul, although he gave his mother’s address on occasion.

The available records indicate that the Petitioner did not own a motor vehicle and his testimony is that he lived alone at the time of the accident. In short, it appears that from the investigation that Respondent was able to conduct, that the claimant is eligible. There is no indication that evidence to defeat this claim might have been uncovered if an investigation had been done earlier.

The Respondent also argues that it is entitled to contemporaneous monitoring of the medical treatment of the claimant as well as an earlier adverse medical examination. This is not a case, however, where the medical expenses appear to be unreasonable.<sup>[23]</sup> It is difficult to see how monitoring by the insurer would have made a significant difference here in terms of benefits to be awarded.

Respondent also argues that its subrogation rights under the statute are adversely affected. Attempts to speak with the uninsured driver by American Family at the time of the accident were unsuccessful. Nor was the Petitioner's attorney able to contact the driver. It seems unlikely that State Farm would have had a viable subrogation claim that could be collected even if it had received notice earlier.

The Respondent has not demonstrated sufficient actual prejudice to deny benefits. There is, of course, a strong potential for prejudice in a delay of this length, however the statute and case law requires some indication that the insurer has suffered in terms of the outcome of a claim. In this case there does not seem to be an indication in the record that facts may have existed that would sustain a denial of the claim under the statute. The Respondent sees some confusion on addresses in the record and some conflicting statements about the injuries as creating doubt about the accuracy of the Petitioner's testimony. However, these discrepancies are not unusual and are not sufficient to cast doubt on the facts as testified to and as contained in relevant documents.

Even if a stronger case for prejudice could be made, the Sullivan decision seems to present a more lenient standard by requiring that notice to the Assigned Claims Bureau be only timely under the circumstances or reasonable. The only indication in the record of why the Petitioner delayed in filing is his statement to the claims adjuster that he only recently discovered a judgment against him in favor of the chiropractic clinic that treated his injuries. Considering all of the facts and circumstances surrounding this accident and the subsequent medical treatment, it is determined that the Petitioner's claim was timely filed under the circumstances. Particularly persuasive in this regard is the fact that little prejudice has been shown, the six month notice is simply inapplicable and that the statute that applies to filing claims with the Assigned Claims Plan appears to refer to the six year tort statute of limitations.

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<sup>[1]</sup> Pet. Ex. A-4, A-13.

<sup>[2]</sup> Resp. Ex. 3.

<sup>[3]</sup> Pet. Ex. A-2.

<sup>[4]</sup> Pet. Ex. A-2.

<sup>[5]</sup> Pet. Ex. B.

- [\[6\]](#) Pet. Ex. A-4.
- [\[7\]](#) Pet. Ex. A-7.
- [\[8\]](#) Pet. Ex. A-7.
- [\[9\]](#) Resp. Ex. 2.
- [\[10\]](#) Resp. Ex. 6, Pet. Ex. A-13.
- [\[11\]](#) Pet. Ex. B.
- [\[12\]](#) Resp. Ex. A-12.
- [\[13\]](#) Resp. Ex. 1.
- [\[14\]](#) Minn. Stat. § § 14.55, 64B.63.
- [\[15\]](#) Minn. Stat. § 65B.44.
- [\[16\]](#) Pet. Ex. A-13, Ex. B.
- [\[17\]](#) Minn. Stat. § 65B.65, subd. 1.
- [\[18\]](#) Sullivan v. Grain Dealers Mutual Insurance Company, 361 N.W. 2d. 495, 497 (Minn. Ct. App. 1985).
- [\[19\]](#) Sterling State Bank v. Virginia Surety Company, 173 N.W. 2d, 342, 346 (Minn. 1969).
- [\[20\]](#) Ryan v. ITT Life Insurance Corp., 450 N.W. 2d. 126, 130 (Minn. Ct. App. 1990).
- [\[21\]](#) Andros v. American Family Mutual Insurance Company, 359 N.W. 2d. 46 (Minn. Ct. App. 1984); Minn. Stat. § 65B.55, subd. 1.
- [\[22\]](#) Minn. Stat. § 65B.64, subd. 3.
- [\[23\]](#) Dairyland Insurance Company v. Clementson, 431 N.W.2d, 895, 898 (Minn. Ct. App. 1998).