



Case Study

**Advance Payment
Tolling of the
Statute of Limitations**

— by Jennifer Krumm

Blanton v. Beiswenger, ___ Or. App. ___ (9/15/04).

In Oregon, the statute of limitations period tolls if an insurer makes an advance payment of a bodily injury or property damage claim and does not provide notice of the statute of limitations within 30 days of the first payment.

In Blanton v. Beiswenger, the plaintiff was injured in a car accident in December 2000. The other driver was Melanie McGrath. In August 2001, McGrath's insurer sent the plaintiff an advance payment. However, the insurer did not send McGrath notice of the applicable statute of limitations.

In November 2002, the plaintiff filed a lawsuit against Ardis Beiswenger, wrongly alleging that Beiswenger was the driver of the other car. Two months later, she amended her complaint to properly allege that McGrath was the other driver and name McGrath as a defendant.

McGrath filed a motion for summary judgment, arguing that the lawsuit was barred by the 2-year statute of limitations. The plaintiff responded that the suit was not time-barred because the insurer's advance payment had tolled the statute of limitations since it was not accompanied by notice of the limitations period. The defendant argued that the advance payment was irrelevant because the plaintiff had known about the applicable statute of limitations, as evidenced by her timely suit against Beiswenger.

The Oregon Court of Appeals held that the plaintiff's lawsuit against McGrath was **not** time-barred because McGrath's insurer made an advance payment without giving notice of the statute of limitations. It concluded that a plaintiff's knowledge that a suit must be timely filed against another defendant is irrelevant to whether the plaintiff knew that an action against the current defendant is time-barred --- even if, as here, the allegations against both defendants are substantially identical. ❖

ADJUSTING POINTER: ALWAYS send a claimant notice of the applicable statute of limitations when making an advance payment.

— For additional information, please visit our website at www.smithfreed.com.

— This article is intended to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.