

CPLR 213(2): MVAIC Uninsured Motorist Endorsement Makes Six-Year Contract Statute of Limitations Applicable

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the defendant which was barred by the statute of limitations.¹⁰ The court recognized the fraud cause of action, holding that whenever the fraud is extraneous to the barred cause of action it may be the basis for a separate claim, with the benefit of the discovery provisions of the CPLR.¹¹

In *DeVito*, the court properly sustained the cause of action for fraud since the misrepresentation was directed at preventing the commencement of the action for personal injuries. Such fraud is separate and distinct from the original tort; one inflicting personal injuries, the other preventing just recompense for such injuries. This is unlike *Brick v. Cohen-Hall-Marx Co.*,¹² where royalties under a sales contract were fraudulently computed. Such a misrepresentation of royalties due under a sales contract was held to be so integral a part of the contract, however fraudulent, that the essence of the action was in contract. Thus in *Brick*, the fraud was not extraneous to the original grounds for relief.

Running of six-month extension to statute of limitations after prior termination of same cause.

In *Dinerman v. Sutton*,¹³ the court refused to allow plaintiff the benefit of the CPLR 205(a) extension holding that the six-month period runs from the entering of the order terminating the prior action and not from service on plaintiff of the order.¹⁴ Furthermore, the court rejected plaintiff's argument that the filing of notice of appeal tolls the six-month extension, stating that mere filing of a notice of appeal is of no effect where there was no disposition of the merits on appeal.¹⁵ If the appeal is prosecuted, the six-month extension runs from the date of entry of the order determining the appeal or, in the alternative, from the entry of judgment on remittitur.¹⁶

CPLR 213(2): MVAIC uninsured motorist endorsement makes six-year contract statute of limitations applicable.

The Insurance Law dictates that every automobile liability insurance contract must include a statement by the carrier that the

¹⁰ CPLR 214(5).

¹¹ CPLR 213(9). The plaintiff will have two years from the discovery of the fraud or six years from its perpetration which ever is longer. Compare CPLR 213(9), with CPLR 203(f).

¹² 276 N.Y. 259, 11 N.E.2d 902 (1937).

¹³ 45 Misc. 2d 791, 258 N.Y.S.2d 13 (Sup. Ct. Queens County 1965).

¹⁴ Cf. *Troiano v. Kinney Motors, Inc.*, 276 App. Div. 869, 93 N.Y.S.2d 368 (2d Dep't 1949).

¹⁵ *Accord*, *Taylor v. G.P. Putnam's & Son*, 41 Misc. 2d 1003, 247 N.Y.S.2d 80 (Sup. Ct. 1964).

¹⁶ 7B MCKINNEY'S CPLR 205, supp. commentary 21 (1965).

insured may recover from MVAIC for injuries caused by an uninsured or unidentified motorist.¹⁷ Such a provision is known as the uninsured motorist endorsement. In *MVAIC v. McDonnell*,¹⁸ the plaintiff's insurance policy contained such a clause and, as required by the Insurance Law, the deceased's executor demanded arbitration on the wrongful death claim.¹⁹ MVAIC contended that the two-year statute of limitations for wrongful death²⁰ barred plaintiff's demand for arbitration. The court, however, concluded that the claim was based on the uninsured motorist endorsement as provided in the insurance contract rather than on the unidentified motorist's negligence which caused the automobile accident, and therefore, the six-year statute of limitations for contract actions was applicable.²¹ It is important to note that a "qualified person," *i.e.*, one who does not have automobile liability insurance, would not have the benefit of the breach of contract statute of limitations since the claim will not have arisen out of an insurance contract. Therefore, the two-year statute of limitations for a wrongful death action or the three-year statute of limitations for personal injury actions would be applicable.

General Municipal Law Section 50-e: Statutory or judicial stay of an action as extending the statute of limitations and its applicability to the Public Authorities Law.

CPLR 204(a) provides that where commencement of an action is stayed by a court or by statutory prohibition, the duration of that stay is not included in computing the time within which the action must be commenced. In *Barchet v. New York City Trans. Auth.*,²² the defense of the statute of limitations was raised since the action had not been commenced within one year and thirty days after the accrual of the claim.²³ The plaintiff, pointing out that the court had taken fifty-three days to adjudicate the request to file a late notice of claim, contended that such time should not be computed in the running of the statute.²⁴ Furthermore,

¹⁷ N.Y. INS. LAW § 167(2-a).

¹⁸ 23 App. Div. 2d 773, 258 N.Y.S.2d 735 (2d Dep't 1965).

¹⁹ Note, *MVAIC Six Years Later—A Practical Appraisal*, 39 ST. JOHN'S L. REV. 321, 335-37 (1965).

²⁰ N.Y. DECED. EST. LAW § 130.

²¹ CPLR 213.

²² 46 Misc. 2d 414, 259 N.Y.S.2d 470 (Sup. Ct. N.Y. County 1965).

²³ N.Y. PUB. AUTH. LAW § 1212(2); *Forstad v. New York City Trans. Auth.*, 13 App. Div. 2d 836, 216 N.Y.S.2d 116 (2d Dep't 1961); *Hernandez v. New York City Trans. Auth.*, 41 Misc. 2d 123, 245 N.Y.S.2d 43 (Sup. Ct. 1963), *aff'd*, 20 App. Div. 2d 968, 251 N.Y.S.2d 415 (1st Dep't 1964).

²⁴ N.Y. PUB. AUTH. LAW § 1212(2). This section demands compliance with § 50-e of the General Municipal Law which requires a notice of claim to be filed within ninety days after the accrual of the claim.