COA Opinion: Communications with fire insurance company raised question of fact as to whether initial denial of coverage was "formal" denial for the purposes of the statute of limitations

1. July 2010 By Jason Byrne

On June 29, 2010, the Court of Appeals published Judge Shapiro's majority opinion in *McNeel v. Farm Bureau Insurance Company of Michigan*, No. 285008. This case arose out of a denial of insurance coverage for a house that was destroyed by fire on March 18, 2003. On April 17, 2003, the insurer denied coverage on the grounds that the house was vacant and/or unoccupied. The insurer contends that the trial court erred in denying its motion for summary disposition on the statute of limitations. The relevant statute requires such an action "be commenced within 1 year after the loss . . . The time for commencing an action is tolled from the time the insured notifies the insurer until the insurer formally denies liability." MCL § 500.2833(1)(q). Here, the insurer argues that the claim filed in October 2004 was untimely, based on its formal denial of coverage via letter in June 2003. The majority of the Court of Appeals disagreed, finding that there was a question of fact as to whether the June letter constituted a "formal denial" because, subsequent to the denial, the insured (through its independent claims adjuster) communicated with the insurer challenging the basis for the denial and the insurer considered the evidence and arguments, and then issued another denial letter in October 2003. Specifically, the Court found that, under these circumstances, it was reasonable to infer that the insurer "withdrew its formal denial while it reinvestigated the claim." Thus, the Court upheld the denial of summary disposition to the insurer, and also made ancillary rulings about the jury instructions, interest, and costs. Judge Kelly dissented from the majority's opinion on the statute of limitations, arguing that it was undisputed that the insurer never withdrew its denial of coverage and, in fact, maintained that denial in writing several times. Additionally, Judge Kelly argued that the affidavit from the independent adjuster that the carrier's representative was reconsidering the claim in light of subsequent information was hearsay insufficient to create a question of fact.