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COURT OF APPEALS

STATE OF NEW YORK

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CONTACT CHIROPRACTIC, P.C.,

Respondent,

-against-

No. 39

NEW YORK CITY TRANSIT AUTHORITY,

Appellant.

-----

20 Eagle Street  
Albany, New York  
March 21, 2018

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The first appeal on this  
2 afternoon's calendar is appeal number 39, Contact  
3 Chiropractic v. New York City Transit Authority.  
4 Counsel.

5 MS. NEIGER: May it please the court, good  
6 afternoon. My name is Agnes Neiger. I'm an attorney with  
7 Jones Jones for the appellant, New York City Transit  
8 Authority. The issue that is presented before this court  
9 today - - -

10 CHIEF JUDGE DIFIORE: Counsel, may I interrupt a  
11 moment?

12 MS. NEIGER: Sure.

13 CHIEF JUDGE DIFIORE: Would you like some  
14 rebuttal time?

15 MS. NEIGER: Oh, I'm sorry. Yes. Please allow  
16 me three minutes?

17 CHIEF JUDGE DIFIORE: Yes, of course.

18 MS. NEIGER: Thank you. So the issue that we're  
19 asking the court to address today is whether the three-year  
20 statutory limitation or the six-year contractual limitation  
21 applies in no-fault actions against the New York City  
22 Transit Authority as a self-insured entity.

23 JUDGE WILSON: Why should it be different for  
24 self-insured entities?

25 MS. NEIGER: Well, simply there is no contract of



1 insurance so there's no relationship between the parties.

2 JUDGE WILSON: Aren't you required to have a  
3 five-million-dollar excess policy of insurance?

4 MS. NEIGER: The Transit Authority is supposed to  
5 - - - well, they're exempted from filing a certificate of  
6 self-insurance by Vehicle and Traffic Law as well as Public  
7 Authorities Law. I - - - I'm sorry. I can't answer it in  
8 terms of the five million excess. But even if that were to  
9 be the case, I don't know if that would necessarily imply  
10 No-fault Law which is a statutory requirement. So it's - -  
11 - you can't - - - you know, there's no point to put a  
12 statute into - - - nevertheless, it's not a contract, Your  
13 Honor.

14 JUDGE GARCIA: You - - - I'm sorry, you are not  
15 required to have a certificate of insurance?

16 MS. NEIGER: Correct. According to VTL, I  
17 believe it's 370 - - -

18 JUDGE GARCIA: But I thought there was another  
19 VTL provision that required you to do so?

20 MS. NEIGER: Well, common carriers - - - so the  
21 Transit Authority has two functions, both as the common  
22 carrier as well as a subdivision of the - - - of the state.  
23 So according to the Public Authorities Law, as a  
24 subdivision of a state they're exempted from the sections  
25 requiring self-insurance.



1 JUDGE GARCIA: So you do not have one?

2 MS. NEIGER: Correct.

3 JUDGE STEIN: So even - - - even if the statute  
4 required you to have this excess policy of insurance if the  
5 statute was removed would there be any legal provision  
6 requiring that you provide no-fault insurance of any sort?

7 MS. NEIGER: No, which is exactly the point.  
8 It's - - - it's a purely statutory obligation. And if the  
9 - - - if the No-Fault statute were repealed tomorrow the  
10 Transit Authority would have - - - would not have this  
11 obligation to provide no-fault benefits.

12 JUDGE STEIN: How do you interpret what we said  
13 in Elrac v. Exum?

14 MS. NEIGER: Well, Elrac v. Exum addressed the  
15 issue of the exclusivity of Section 11 of the Workers'  
16 Compensation Law. So, you know, to distinguish it first,  
17 it didn't address a statute - - - a statute of limitations  
18 issue. And in that case, the court - - - I believe the  
19 court, this court, they - - - it viewed Elrac as both an  
20 employer where it was required whether there was this  
21 exclusivity that all claims against the employer go to the  
22 workers' compensation board, but then it was also the owner  
23 self-insured and just - - - you know, the - - - there's a  
24 lot of precedent that states that just because you choose  
25 to self-insure doesn't mean that you provide any less



1 benefits. And so in this case, all the benefits are  
2 exactly the same, and that's mandated by statute. So there  
3 is no lesser benefit that an injured party is getting.

4 JUDGE GARCIA: But assume - - - let's assume here  
5 that if you have an insurance company in Aetna, one of the  
6 insurance companies, and you're providing no-fault  
7 benefits, you know, the owner of that vehicle gets in an  
8 accident, there's a dispute, they file against the company  
9 that's insuring them for the no-fault benefits, that would  
10 be a six-year statute of limitations. Let's assume that -  
11 - -

12 MS. NEIGER: Okay.

13 JUDGE GARCIA: - - - under the contract. Why  
14 should a self-insured - - - what is a policy reason that a  
15 self-insurer should get three? Because a rental company  
16 can provide a proof of financial ability to pay, right. So  
17 in essence, aren't you saying you can buy a three-year  
18 statute of limitations?

19 MS. NEIGER: Well, it's not that you can buy it.  
20 You know, the - - - the legislature gives - - - gives you  
21 the option to self-insure. And the whole - - - you know,  
22 the purpose of insurance - - -

23 JUDGE GARCIA: This has nothing to do with a  
24 limitations period. It really is - - - only has to do with  
25 financial ability in - - - or a municipality issue which is



1 really a financial ability. So why aren't you saying if  
2 you can prove your financial aid, well, you get a three-  
3 year statute of limitations?

4 MS. NEIGER: Well, I - - - I mean it comes down  
5 to the fact that, you know, one is a substantive right  
6 where you - - - you have to give this benefit versus a  
7 procedural right. And the statute of limitation of - - -  
8 you know, the purpose of the statute of limitations is to  
9 prevent - - - prevent self - - - a defendant from - - -

10 JUDGE GARCIA: In the case of a rental company  
11 you're giving that three-year statute of limitation based  
12 solely on your ability to pay, their financial ability.

13 MS. NEIGER: Right. I mean I - - -

14 JUDGE GARCIA: What would be the policy reason  
15 for us to do that?

16 MS. NEIGER: Because of the fact that they could  
17 issue payment.

18 JUDGE GARCIA: Right. But why should they get a  
19 shorter statute of limitations?

20 MS. NEIGER: Well, I mean, you know, the argument  
21 very well could be made and should be made that all no-  
22 fault should be three years because the purpose of no-fault  
23 - - - the reason they, you know, took it out of the general  
24 liability was to create this prompt resolution of claims  
25 that accident victims - - -



1 JUDGE GARCIA: But - - -

2 JUDGE FEINMAN: But couldn't the argument - - -  
3 I'm sorry.

4 JUDGE GARCIA: Go ahead.

5 JUDGE FEINMAN: But that's not necessarily before  
6 us as to, you know, those who have contracts of insurance  
7 today.

8 MS. NEIGER: Correct.

9 JUDGE FEINMAN: Right. So if we were to rule the  
10 way you want we would have this dichotomy going on, and I  
11 think that's what's troubling Judge Garcia, you know, with  
12 three and six between two different class - - - I mean and  
13 then it's just the vagaries of chance as to who you get in  
14 the accident with.

15 MS. NEIGER: I - - - I believe that, you know, a  
16 statute of limitations is a purely - - - it's a procedural  
17 issue. And - - - and it has to be viewed separate from - -  
18 - from the substantive, you know, rights that a person has.  
19 The rights are exactly the same, so is there no benefit of  
20 a shorter period. You know, a person gets the exact same,  
21 you know, medical treatment, the 50,000-dollar, you know,  
22 maximum amount. All of that is - - - the - - - and self-  
23 insurer has the same time to issue a denial. All the  
24 substantive benefits are the same. It's the fact that  
25 there is no contract between the parties and the - - -



1 JUDGE RIVERA: But again, you're missing, I  
2 think, the point that you're being asked about which is you  
3 have the opportunity to shorten the time frame by self-  
4 insuring. Which putting aside what you may be arguing  
5 about the statute of limitations, seems to be at odds and  
6 undermine the statutes that create the no-fault insurance  
7 regime. And that's where I'm having difficulty really  
8 appreciating the - - - the strength of your argument.

9 MS. NEIGER: Well, I don't - - - I mean I - - -  
10 you know, I think the - - - or the questions that the court  
11 is posing is - - - is this fairness idea. And what I'm  
12 trying to say is I don't - - - you know, it's not an issue  
13 of fairness.

14 JUDGE STEIN: Is it different from other  
15 provisions that we have where in order to sue a municipal -  
16 - - municipality you have to file a notice of claim within  
17 a shorter period of time or anything like that?

18 MS. NEIGER: No, all those other benefits are the  
19 same.

20 JUDGE STEIN: At least not for something like - -  
21 - like the - - -

22 MS. NEIGER: For no-fault it's the same.

23 JUDGE RIVERA: Let me ask you when did they  
24 demand payment?

25 MS. NEIGER: When did who demand payment?





1 JUDGE RIVERA: When did Contact Chiropractic  
2 demand payment?

3 MS. NEIGER: I - - - can I look at the - - - I  
4 mean I don't know the exact date.

5 JUDGE RIVERA: No, your time is up.

6 MS. NEIGER: It's an old - - - this thing's been  
7 going on for - - -

8 JUDGE RIVERA: You can answer on the rebuttal.

9 MS. NEIGER: It's been going on for a long time.

10 JUDGE RIVERA: You can answer it on the rebuttal.  
11 Maybe your adversary knows.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 MS. NEIGER: Thank you.

14 CHIEF JUDGE DIFIORE: Counsel.

15 MS. SMITH: Good afternoon.

16 CHIEF JUDGE DIFIORE: Good afternoon.

17 MS. SMITH: May it please the court, my name is  
18 Tricia Smith. I'm here for the respondent. Okay. Just to  
19 respond, she said that they're not required to have a  
20 certificate of self-insurance. That's incorrect. If you  
21 look at New York City Transit Authority v. Thom, T-H-O-M,  
22 which this court affirmed, it just said that the New York  
23 City Transit Authority is exempt from VTL, Vehicle and  
24 Traffic Law, Article 6 and 7. It's not exempt from 8. And  
25 if you look at 6 and 8, they have same requirements for - -



1 - just for 316 - - - or under Article 6 it's for private  
2 enterprises where - - - and rental companies, I believe,  
3 and 370 is - - - applies to common carriers. And it said  
4 that 373 applies to - - - 371, subdivision (1) and (3)  
5 applies to New York City Transit Authority. So they are  
6 required to get a form of financial security, same as any  
7 vehicle owner.

8 JUDGE FAHEY: Well, but the point is is that  
9 there's not a contract between them and someone else in  
10 implementing their no-fault benefits as there is with a - -  
11 - with a personal carrier, and it's a relatively - - - I  
12 think that's - - - that's the primary distinction here.  
13 It's the contract. And the certificate of insurance  
14 doesn't affect that one way or the other.

15 MS. SMITH: Well, the - - - I - - - the  
16 difference is - - - there is a contract. Our argument is  
17 there is a contract.

18 JUDGE FAHEY: You're saying there's a contract  
19 for no-fault benefits?

20 MS. SMITH: For no - - - so the contract is to  
21 provide insurance.

22 JUDGE FAHEY: Well, but there's not a contract -  
23 - -

24 MS. SMITH: Okay.

25 JUDGE FAHEY: I don't - - - it's not - - - we're



1 getting down a rabbit hole here.

2 MS. SMITH: Okay.

3 JUDGE FAHEY: Because there's not really a  
4 contract that says the City of New York has a contract with  
5 Aetna to provide no-fault benefits.

6 MS. SMITH: Correct. No. It - - -

7 JUDGE FAHEY: Just like I - - - if somebody got  
8 in an accident with me, my carrier would cover it.

9 MS. SMITH: Right.

10 JUDGE FAHEY: It goes - - - we'd go forward from  
11 there. That's not the situation here.

12 MS. SMITH: It - - - it's - - -

13 JUDGE FAHEY: There's on con - - - contract that  
14 does it. And - - - and there's no common law right to this  
15 either, is there? This is purely a creature of statute?

16 MS. SMITH: No fault? The - - - the - - -

17 JUDGE FAHEY: Of course.

18 MS. SMITH: - - - requirements that provide no  
19 fault is a creature of statute.

20 JUDGE FAHEY: Right.

21 MS. SMITH: But anyone that - - - the insurer of  
22 a vehicle is statutorily mandated to provide no fault, but  
23 that doesn't take away the coexisting common law right.  
24 You can contract to provide something that's unknown at  
25 common law, same as UM benefits, uninsured motor - - -



1 JUDGE STEIN: But isn't that the point - - -

2 MS. SMITH: Yes.

3 JUDGE STEIN: - - - is that there - - - that if  
4 you take away this statute what contract is there between  
5 the Transit Authority and these - - - and these injured  
6 people - - -

7 MS. SMITH: So - - -

8 JUDGE STEIN: - - - to provide no-fault benefits?

9 MS. SMITH: I would say the contractual agreement  
10 was entered into between the self-insured when it was just  
11 a registrant. Prior to it becoming a self-insured it's a  
12 uninsured vehicle owner. In order to switch from an  
13 uninsured vehicle owner to a self-insured entity, they have  
14 to enter into an agreement. And if you look on the DMV  
15 website, which I put in my last brief, they agreed to  
16 provide coverage. It says - - - it calls it an agreement.  
17 They agree to provide no-fault coverage.

18 JUDGE RIVERA: You mean this is like our case  
19 that says you're insuring yourself?

20 MS. SMITH: Correct. So I would say - - -

21 JUDGE RIVERA: You have a statutory requirement.  
22 You have to meet that in a certain way. Some people meet  
23 that through policies that are based on a contract. I take  
24 it your argument is others, like, New York City Transit  
25 Authority, meets that through this oth - - - other avenue



1 that's available to them which is to identify themselves as  
2 a "self-insured". But what they're doing is again  
3 promising that they're going to comply with the statute by  
4 promising to themselves to pay?

5 MS. SMITH: Well, they promised to the  
6 Commissioner of Motor Vehicles. They - - - they're the  
7 promissory. They promise that they will - - - and in  
8 exchange for the consideration of not having to issue a  
9 policy for each individual - - -

10 JUDGE FAHEY: Right.

11 MS. SMITH: Okay.

12 JUDGE FAHEY: But the - - - but the key point is  
13 there's no contract there.

14 MS. SMITH: Well, I disagree.

15 JUDGE FAHEY: Okay.

16 MS. SMITH: Under the insurance law general  
17 provisions it defines a contract - - - if I may - - -

18 JUDGE FEINMAN: But - - - but if the - - - well,  
19 I'll let you finish answering Judge Fahey's question.  
20 Sorry.

21 MS. SMITH: Okay. Under the general provisions  
22 of the insurance law, it defines an insurance contract:  
23 "It's an agreement or other transaction whereby one the  
24 party, the insurer, is obligated to confer benefit  
25 pecuniary value upon another party dependent on the



1 happening of a fortuitous event," et cetera. They obligate  
2 themselves when - - - in that application. That's where  
3 the agreement lies.

4 JUDGE FEINMAN: That promise then is made to the  
5 Commissioner as you say.

6 MS. SMITH: Yes.

7 JUDGE FEINMAN: And - - - and then, you know,  
8 people like Contact Chiropractic really are becoming third-  
9 party beneficiaries - - -

10 MS. SMITH: Correct.

11 JUDGE FEINMAN: - - - of this contract.

12 MS. SMITH: Exactly.

13 JUDGE FEINMAN: All right. So it's not that they  
14 are in a contract - - - in privity of contract with all of  
15 - - -

16 MS. SMITH: Correct.

17 JUDGE FEINMAN: - - - these unknown providers of  
18 medical services.

19 MS. SMITH: Correct. But as is the case with a  
20 pedestrian with a normal insurance carrier, they're not in  
21 privity of contract with - - - with the pedestrian.

22 JUDGE FEINMAN: Okay.

23 MS. SMITH: They never have a pre-existing  
24 relationship.

25 JUDGE FEINMAN: So - - - and I just want to



1 understand the argument.

2 MS. SMITH: Yes.

3 JUDGE FEINMAN: So you're not saying that this is  
4 an implied contract. You're saying this is an expressed  
5 contract when they sign up with the Commissioner as self-  
6 insured?

7 MS. SMITH: Yeah, it - - - I guess the word  
8 "implied" was probably misused. As it's implied to every  
9 individual injured from the use and operation of these  
10 insured vehicles.

11 JUDGE STEIN: I sort of come back to - - -

12 MS. SMITH: Sure.

13 JUDGE STEIN: - - - the problem of if you take  
14 away the statute - - -

15 MS. SMITH: Right.

16 JUDGE STEIN: - - - what is there? You know, I -  
17 - - I don't recall if this was argued but I noticed that  
18 Insurance Law 5103(h) says that: "Any written policy of  
19 insurance that fails to contain appropriate no-fault  
20 provisions will be construed as if those provisions were  
21 embodied" in - - - "in the contract." Right. It sounds to  
22 me like the contract is really irrelevant and particularly  
23 where - - - I mean obviously we have some - - - some law  
24 that - - - that has been treating insurers differently - -  
25 - and whether that's good or bad, we're - - - we're not



1 talking about here. But I mean particularly where here  
2 you're trying to - - - you're drawing in a contract by  
3 virtue of the fact that you're saying that this entity has  
4 promised the Commissioner that it will comply with the - -  
5 - with the statute, that it really is coming right back  
6 down to the statute that is the basis for this liability.  
7 There is - - - in this particular situation there is no  
8 basis for liability in anything other than the statute.

9 MS. SMITH: And I think that's where it needs to  
10 be distinguished between the obligation - - - the - - - you  
11 know, a compulsory auto insurance, every vehicle owner has  
12 to get insurance. But vehicle owners don't have to insure  
13 their own vehicle. They don't have to pay out the  
14 pecuniary value of no-fault benefits if they get into an  
15 accident unless you're the insurer of that vehicle. And  
16 the difference can be seen in the penalties. If you don't  
17 get insurance for your car, you'll, you know, get your  
18 registration revoked, you have to pay fines. But you're  
19 not going to get a judgment against you that says you owe  
20 Article 51 no-fault benefits. What - - - I just lost my  
21 train of thought. Sorry. Whereas, if you're the insurer  
22 and you make that agreement, whether by a policy of  
23 insurance or through the program of self-insurance with the  
24 Commissioner of Motor Vehicles, that agreement is what  
25 triggers the obligation.





1 JUDGE STEIN: But if you have a policy of  
2 insurance with an insured, right, that - - - that's a  
3 contract. It doesn't involve the State of New York, right?  
4 So arguably, that's different. If you have this so-called  
5 contract with the Commissioner and the only basis that the  
6 Commissioner has to require you to abide by that contract  
7 is a statute and the statute is removed, then what's - - -  
8 then, you know, I - - -

9 MS. SMITH: But - - - okay.

10 JUDGE STEIN: - - - so what's the basis of the  
11 liability?

12 MS. SMITH: I would say in the same way that if  
13 the statute was removed that an insurer has - - - the right  
14 becomes vested. The insurer - - -

15 JUDGE STEIN: But the regular insurance can  
16 refuse to - - - to put that in the next year's insurance  
17 contract. But it - - - it still - - -

18 MS. SMITH: Right.

19 JUDGE STEIN: - - - has a contract.

20 MS. SMITH: But it's carried out throughout that  
21 term of that contract. I would say the same applies to the  
22 certificate of self-insurance. In that application, you're  
23 agreeing to provide that insurance. That continues until  
24 that expires regardless if the statute was repealed.

25 CHIEF JUDGE DIFIORE: Counsel, circle back to the



1 policy implications. And doesn't a shorter three-year  
2 statute of limitations better comport with the  
3 considerations behind the no-fault scheme?

4 MS. SMITH: Actually, I think it's the opposite.  
5 They - - - they do use the term "prompt", compensation but  
6 the - - - the whole point of no-fault was it was supposed  
7 to benefit the insured - - - the injured person. They were  
8 losing their right to sue and tort for minor injuries, so  
9 they were given in exchange a right for prompt, immediate  
10 compensation. It - - - to use it against them and use the  
11 prompt language, that was supposed to benefit them, not cut  
12 their time under half.

13 JUDGE STEIN: If they sued under tort wouldn't  
14 they have a three-year statute of limitations?

15 MS. SMITH: Yes, but if they sued under - - -  
16 yeah, but that's - - - that's a personal injury set - - -  
17 that's set forth by the legislature, three-year statute of  
18 - - -

19 JUDGE RIVERA: So - - - so when was a demand  
20 made?

21 MS. SMITH: I don't remember off - - -

22 JUDGE RIVERA: You don't remember? Okay.

23 MS. SMITH: But may I ask the relevance of - - -

24 JUDGE RIVERA: Well, I'm just curious to - - -  
25 well, all right, let's ask the other question that I'm



1 really trying to get to which is how long - - - or were  
2 there any point in time after the demand that New York City  
3 Transit Authority explained why it wasn't paying?

4 MS. SMITH: I mean I - - - I believe it was  
5 medical necessity, if I'm correct. The - - - the usual  
6 course of events if you submit the bill within thirty days.  
7 They have thirty days to pay. The - - -

8 JUDGE RIVERA: Was the bill submitted within  
9 thirty days?

10 MS. SMITH: Yeah. Excuse me, yes. It was  
11 timely. It was denied. And then it was brought to court  
12 as any no-fault action would be.

13 CHIEF JUDGE DIFIORE: Thank you, counsel.

14 MS. SMITH: Thank you.

15 CHIEF JUDGE DIFIORE: Counsel.

16 MS. NEIGER: So - - - so first I just wanted to  
17 address what I believe Your Honor was asking me about - - -  
18 or Your Honors were asking me about the - - - the fairness  
19 notion of why there should be three and - - - you know,  
20 versus six and for - - - for like an insurer versus a self-  
21 insurer. And I just wanted to point out that that does  
22 exist also in - - - in personal injury actions where  
23 municipalities and the Transit Authority have a shorter - -  
24 -

25 JUDGE GARCIA: That's by statute, right? They -



1 - - that was a deal made in the legislature, wasn't it?

2 MS. NEIGER: Yes.

3 JUDGE GARCIA: This would be we're implying this  
4 from the terms of a statute that has no overt implications  
5 for statute of limitations purposes. It wasn't that they  
6 designed the statute to give self-insurers this ability  
7 having in mind we're going to give municipalities a shorter  
8 statute of limitations. I mean that was a deliberate  
9 decision by the legislature to shorten the statute of  
10 limitations based on certain policy considerations and  
11 tradeoffs.

12 MS. NEIGER: Okay. I understand the point.  
13 Withdrawn.

14 JUDGE WILSON: Have you found any - - -

15 JUDGE FAHEY: Well - - - well - - - I'm sorry.  
16 Go ahead.

17 MS. NEIGER: I mean it's - - - yeah.

18 JUDGE WILSON: Have you found anything in the  
19 legislative history that would suggest any reason why there  
20 should be or whether the legislature thought there might be  
21 - - - put aside the wording of the statute?

22 MS. NEIGER: I don't know if the legislative  
23 history talks about it in terms of the statute of  
24 limitations for the Transit Authority. Obviously - - -

25 JUDGE WILSON: Or for - - - for any self-insurer?



1 MS. NEIGER: I think - - - I think the  
2 legislative history was that, you know, had more to do with  
3 treating all people equally and providing the same type of  
4 coverage. And that's not the issue here.

5 JUDGE WILSON: That suggests six and six, no, or  
6 three and three perhaps?

7 MS. NEIGER: Or - - - I mean it - - - again,  
8 going to the substantive benefits of the time within which  
9 to pay a claim, the time - - - you know, the - - -

10 JUDGE RIVERA: But - - - but you're saying you  
11 don't see a difference between saying well, it's all the  
12 same benefits but you get it for one week and you get it  
13 for one hour? You don't see that that would mean a  
14 different treatment of those two classes?

15 MS. NEIGER: I think the - - - the No-fault Law  
16 in and - - - in and of itself has sections were, you know,  
17 they toll a statute of limitations if an applicant doesn't  
18 commence their - - - commence their action within 30 days  
19 of denial. So the statute itself is trying to create this  
20 quick and - - - quick and prompt resolution of claims which  
21 is the purpose - - -

22 JUDGE RIVERA: Well, quick and prompt would have  
23 been if you had paid, but - - - but that's not before us,  
24 right?

25 MS. NEIGER: Right, unfortunately.



1 JUDGE FAHEY: you see - - - you see the problem  
2 is - - -

3 JUDGE FEINMAN: Isn't - - - isn't your best  
4 argument that it should be three and three?

5 MS. NEIGER: I mean I believe, you know, the - -  
6 - the court - - - this Court of Appeals has held that no-  
7 fault is a new and independent statute - - - created a new  
8 and independent statutory right and obligation. And so if  
9 you look at no-fault in general, then, yes, I posit that it  
10 should be three.

11 JUDGE RIVERA: But as I see the real problem with  
12 that argument is that you're basically saying when  
13 government through statute, or even regulation but we'll  
14 stay with the statute, imposes obligations but allows  
15 different ways to satisfy those obligations that we  
16 continue to only look at the statute, the regulation rather  
17 than the way in which the individual responds, which is  
18 what we have done in this area. Is there a contract? If  
19 there's a contract, it gets a particular statute of  
20 limitations. It seems to me the question before us is when  
21 - - - when you have a particular option to respond to the  
22 requirement to be self-insured, does that fall on the line  
23 of the contract or something else? But other - - -  
24 otherwise, your particular view has quite dramatic  
25 implications for our regulatory state.



1 MS. NEIGER: Well, I believe that if this court  
2 were - - - you know, doesn't have to consider the  
3 implications all across the board because there is the  
4 distinction between an insurer and a self-insured.

5 JUDGE FAHEY: One - - - one of the - - - one of  
6 the policy implications that jumps out against me is I'm a  
7 passenger in a car, the car runs into a bus in New York  
8 City, and I've got a three-year statute of limitations  
9 under your theory then, right?

10 MS. NEIGER: It's a little - - - well, the - - -  
11 the vehicle that you occupy is the - - - is the provider of  
12 the benefits?

13 JUDGE FAHEY: You're - - - you're right. So I'm  
14 a passenger on the bus - - -

15 MS. NEIGER: So if you were a passenger, correct.  
16 Then - - -

17 JUDGE FAHEY: - - - and a car runs into it then -  
18 - - then the three-year statute of limitations applies?

19 MS. NEIGER: The three-year statute of  
20 limitations happens after your benefits for some reason  
21 have been withheld. But your benefits are - - - you - - -  
22 you're entitled to medical treatment, you get that medical  
23 treatment.

24 JUDGE FAHEY: But the statute applies?

25 MS. NEIGER: Correct. Under - - -



1 JUDGE FAHEY: Because I'm a passenger on the bus?

2 MS. NEIGER: Correct.

3 JUDGE FAHEY: If I'm a passenger in the car it  
4 would be six years?

5 MS. NEIGER: Correct, because there is a no  
6 contract of insurance.

7 JUDGE FAHEY: That's the policy problem. That -  
8 - - that seems entirely arbitrary.

9 MS. NEIGER: I - - - I believe that the CPLR is a  
10 procedural tool, and it doesn't take into, you know,  
11 consideration - - -

12 JUDGE FAHEY: No, I understand that. But you  
13 understand that's the core of the policy problem?

14 MS. NEIGER: I - - - I mean I do appreciate - - -  
15 appreciate that.

16 JUDGE FAHEY: All right.

17 JUDGE RIVERA: Well, but - - - but your argument  
18 incentivizes - - - and this is question raised before,  
19 being self-insured, the trying to buy the shorter statute  
20 of limitations. So it's not just merely the fortuitousness  
21 of it. It's the opportunity to incentivize, right? To  
22 self-insure to avoid a six-year statute of limitations.  
23 That also is bound up in this argument.

24 MS. NEIGER: I mean I understand. I mean to - -  
25 - to remove that incentive, though, a three-year statute





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could be found across the board. And - - -

JUDGE STEIN: Which the legislature could also do.

MS. NEIGER: Correct. They could have.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MS. NEIGER: Thank you, Your Honors.

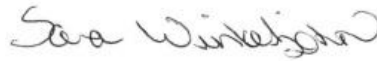
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Contact Chiropractic, P.C. v. New York City Transit Authority, No. 39 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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