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Nicole J. Benjamin, Esq.

Rhode Island Insurance Law Update: Rhode Island Supreme Court Voids Contractual Limitations Period in Insurance Policy as Against Public Policy.

In a case of first impression that has important ramifications for insurers, the Rhode Island Supreme Court held this term that a contractual limitations period contained in an uninsured/underinsured ("UM/UIM") provision of an insurance contract was void as against public policy. American States Insurance Company v. LaFlam, No. 2012-80-M.P. at 21.

The clause in the policy at issue (1) shortened the period in which a UM/UIM claim could be asserted to three years and (2) provided that the three-year period began to run on the date of the accident for which coverage is sought. The clause provided:

> Any legal action against us under this Coverage Form must be brought within three years after the date of the "accident." However, this [p]aragraph * * * does not apply to an "insured" if, within three years after the date of the "accident," we or the "insured" have made a written demand for arbitration in accordance with the provisions of this Coverage Form.

Id. at 3.

Setting the stage for its analysis, the Supreme Court detailed the history of Rhode Island's UM/UIM statute, which, since 1962, has required "'insurance carriers to provide protection for those claimants who voluntarily contract with licensed carriers for liability coverage as against uninsured operators.'" *Id.* at 5 (quoting *Henderson v. Nationwide Insurance Co*, 35 A.3d 902, 906 (R.I. 2012) (interpreting R.I. Gen. Laws § 27-7-2.1)). The statute is premised on the notion that "responsible motorists who carry liability insurance should not be uncompensated when they are without recourse against an uninsured tortfeasor." *Id.*

Under Rhode Island law, insurers cannot restrict the coverage that is afforded by the UM/UIM statute and any provisions that attempt to do so are void as a matter of public policy. *Id.* at 7

(citing *Nationwide Mutual Ins. Co. v. Viti*, 850 A.2d 104, 107 (R.I. 2004)). Likewise, provisions that purport to deny UM/UIM coverage on impermissible grounds are void as a matter of public policy. *Id.* at 8. Insurers are, however, permitted to place reasonable restrictions on UM/UIM coverage and such reasonable restrictions will not be void. *Id.*

Thus, in considering the propriety of the contractual limitations period at issue, the Supreme Court examined whether such restriction constituted a reasonable restriction in light of the state's UM/UIM statute and the limitations period that would apply absent a contractual limitations provision.

R.I. Gen. Laws § 27-7-2.1 does not include a limitations period for UM/UIM claims and it does not specify when a UM/UIM claim begins to accrue. *Id.* at 10-11. However, the Rhode Island Supreme Court previously held that because an insured's suit against his insurer over a policy contract is akin to a contract action, the statute of limitations applicable to contract actions governs. *Id.* at 11 (citing *Pickering v. American Employers Insurance Co.*, 282 A.2d 584, 588 (R.I. 1971)).

The contractual limitations period in the policy at issue shortened the ten-year limitations period otherwise applicable to UM/UIM claims to three years. In addition, the policy specified that the three-year period begins to run on the date of the accident. Both the Supreme Court and the First Circuit noted that such a provision runs the risk of barring claims before the insured had an opportunity to learn that he or she had a UM/UIM claim. *Id.* at 12. Indeed, in some cases the insured might not learn that he or she has a UM/UIM claim until after he or she has attempted to obtain compensation from the tortfeasor. *Id.*

After considering case law from other jurisdictions, the public policy behind UM/UIM claims and the manner in which UM/UIM claims arise, the Rhode Island Supreme Court joined "the overwhelming majority of [its] sister states and [held] that a UM/UIM cause of action . . . accrues on the date that the UM/UIM contract allegedly is breached, which . . . is the date on which the UM/UIM insurer denies the claim or clearly rejects a demand for payment or arbitration under the UM/UIM policy." *Id.* at 21.

Having determined that a UM/UIM cause of action does not accrue until the date on which the UM/UIM insurer denies the claim, the Court deemed it illogical and unreasonable for an insurance policy to contractually provide that the limitations period for a UM/UIM claim begins to run *before* the insured has a justiciable cause of action against the insurer. *Id.* at 22 (relying on *McDonnell v. State Farm Mutual Automobile Ins. Co.*, 299 P.3d 715, 733 (Alaska 2013)).

Thus, the Court concluded the provision at issue was problematic because the combined effect of the shortened limitations period and the triggering date for that limitations period "attempted to force insureds . . . to file suit or make a written demand for arbitration before a justiciable cause of action may even exist." *Id.* at 22. In the Supreme Court's opinion, the combined effect of the

provision impermissibly restricted UM/UIM coverage and frustrated the state's public policy with respect to UM/UIM claims. *Id.*

In so concluding, the Supreme Court made clear that its holding was limited to the contractual limitations period in the policy at issue. The Court did not express any opinion with respect to whether an insurance policy may contain a contractual limitations period for an UM/UIM claim after the UM/UIM claim accrues. *Id.* at 23. However, the Court reiterated its prior explanation that "'reasonable limitations will be imposed on the construction of the uninsured-motorist statute to afford insurers some financial protection from unwarranted claims.'" *Id.* (quoting *Henderson v. Nationwide Insurance Co.*, 35 A.3d 902, 906 (R.I. 2012)). Although the Supreme Court did not pass judgment on the permissibility of a three-year limitations period for UM/UIM claims, it emphasized in its decision that it was "most trouble[d]" by "the selection of the triggering date." *Id.* at 12.

For more information, please contact Nicole Benjamin, Esq. at nbenjamin@apslaw.com or 401-274-7200.