

Parisi v. State Farm
C.A. No. K11C-10-007 JTV
June 13, 2012

OPINION

This is an action for underinsured vehicle coverage. The defendant, State Farm Mutual Automobile Insurance Company, has filed a Motion for Summary Judgment. It contends that the action is barred by a policy provision which requires that any claim for underinsured vehicle coverage be brought within two years of the date of the accident. The issue is whether such a policy provision is enforceable. For the reasons which follow, I find that it is not.

FACTS

Plaintiff Mark T. Parisi was injured in an automobile accident on May 3, 2009. He filed suit against the driver of another vehicle involved in the accident alleging that the driver of the other vehicle negligently caused his injuries. The plaintiffs' vehicle was insured by the defendant.

On February 24, 2011 counsel for the plaintiffs wrote a letter to the defendant, addressed to a Frederick, Maryland address, putting the defendant on notice that they would be asserting an underinsured vehicle claim under the policy. The Frederick, Maryland address is a State Farm address, but State Farm has no record of receiving the letter. State Farm indicates that the absence of any record of receipt of the letter may be due to the fact that the letter did not contain any policy number, claim number or adjuster reference.

On June 2, 2011 the plaintiffs settled their claim with the negligent driver for \$25,000. On the same date, counsel for the plaintiffs wrote a second letter to State Farm informing the defendant that they were asserting an underinsured vehicle claim.

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By letter dated September 23, 2011, State Farm informed counsel for the plaintiffs that it denied the underinsured vehicle claim because “the loss was not presented to State Farm within two years immediately following the date of the accident as required pursuant to your client’s policy.”

This action was then filed on October 4, 2011.

The plaintiffs’ policy requires that an insured must both present a claim for underinsured vehicle coverage to State Farm and file a lawsuit filed thereon within two years of the date of the accident.

CONTENTIONS

The defendant contends that the above-mentioned policy term is valid and enforceable; that an insured has a duty to read the policy; that the policy behind such a contractual limitations period is sound; that a plaintiff has only two years to file suit against the alleged tortfeasor, and that such a limitations period is adequate to develop any and all tort claims and to give the defense an opportunity to defend such claims; that with the passage of more than two years, the defense effort becomes increasingly difficult; that after that time the alleged tortfeasor may be difficult to locate and even less subject to cooperate with the underinsured vehicle coverage carrier; that the benefit of having an independent medical examination quickly loses impact, particularly if treatment ended some time ago, or where complaints are largely subjective; that witnesses disappear and memories fade as more time lapses from the date of the accident; that there is no reason, if an insured believes his underinsured vehicle claim has merit, that he cannot bring timely suit against the underinsured vehicle coverage carrier; that there is nothing to prevent the insured from including

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such a claim with the tort suit; that allowing the defendant to participate in the claim within two years, in conjunction with the tort claim, prevents the often highly prejudicial situation of determining the merits of the plaintiff's injury claim in the absence of the underinsured vehicle coverage carrier, which is then bound by a result established in its absence; and that Delaware case law is supportive of a contractual limitations period.

The plaintiffs contend that their cause of action is governed by contract law; that their cause of action for underinsured vehicle coverage did not accrue until the claim was denied by State Farm on September 21, 2011; that the governing limitations period is the three year statute of limitations at 10 *Del. C.* § 8106(a); that they filed their lawsuit less than a month after the cause of action accrued; and that their lawsuit is, therefore, timely.

DISCUSSION

Uninsured vehicle coverage and underinsured vehicle coverage are treated the same under 18 *Del. C.* § 3902.¹

In *Allstate Ins. Co. v. Spinelli*, the Delaware Supreme Court concluded that an uninsured vehicle claim is a contract claim subject to the three year statute of limitations at 10 *Del. C.* §8106.² It held that a cause of action for an uninsured vehicle claim does not accrue , and the limitation of 10 *Del. C.* § 8106 does not begin

¹ *Castillo v. Clearwater Ins. Co.*, 8 A.3d 1177, 1180 (Del. 2010).

² 443 A.2d 1286 (Del. 1982).

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to run, until the insurer denies the claim and notifies the insured of its denial.³ It further reasoned that until there is a breach, there is no justiciable controversy under the insurance contract.⁴ The court disagreed with a trial court finding that the action accrued upon the insured's "ascertainment of the uninsured status of the tortfeasor."⁵

The Superior Court case of *Goodyear v. Fleece* involved an uninsured vehicle claim made against a policy which contained a clause similar to the one involved here.⁶ The policy clause required that an arbitration or legal action asserting an uninsured vehicle claim be commenced within the time allowed for a bodily injury claim against the tortfeasor, i.e. two years from the date of the accident.⁷ Following *Spinelli*, the court concluded that the uninsured vehicle claim did not accrue until the insurance company denied the claim.⁸

I follow *Spinelli* and *Goodyear* and conclude that the plaintiffs' cause of action against State Farm did not accrue until State Farm denied coverage and informed the plaintiffs of its denial on September 21, 2011.

The Supreme Court has also held that policy provisions which limit uninsured/underinsured vehicle coverage are narrowly construed and in some cases

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 1988 WL 130470, at *1 (Del. Super. Nov. 16, 1988).

⁷ *Id.*

⁸ *Id.* at, *2; see *Spinelli*, 443 A.2d 1286 (Del. 1982).

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void altogether. In *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, the court invalidated a clause which required physical contact between the insured's vehicle and an uninsured vehicle, holding that clauses "designed to reduce or limit [UM] coverage to less than that prescribed by statute are void."⁹ The court similarly invalidated an "other motor vehicle" clause in *Frank v. Horizon Assurance Co.*¹⁰ In *State Farm Mut. Auto. Ins. Co. v. Washington*, the court held that an insurer could not deny an underinsured vehicle claim based on a named driver exclusion.¹¹ In *Castillo v. Clearwater Ins. Co.* the court invalidated an exclusion for transporting business property.¹²

The policy provision involved here bears no relationship to the time when the underinsured vehicle claim accrues. For this reason, and by analogy to the above-mentioned Supreme Court cases which invalidated specific exclusions, I find that the limitations provision is inconsistent with the public policy considerations mandating the availability of underinsured motorist coverage. I therefore conclude that it will not be enforced. It follows that the three year statute in 10 *Del. C.* § 8106(a) applies.

In *Goodyear*, after concluding that the limitations provision could not run from the date of the accident, the court construed it to run from the date the claim

⁹ 386 A.2d 670, 672 (Del. 1978).

¹⁰ 553 A.2d 1199, 1200 (Del. 1989).

¹¹ 641 A.2d 449, 450 (Del. 1994).

¹² 8 A.3d 1177 (Del. 2010).

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accrued.¹³ I am not inclined to so re-write the clause involved in this case. In addition, the court in *Goodyear* reasoned that a policy provision reducing the period within which an underinsured vehicle claim must be brought was not invalid. I need not consider that question to decide the motion before me.

Therefore, the defendant's Motion for Summary Judgment is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

cc: Prothonotary
Order Distribution
File

¹³ 1988 WL 130470, at *2.