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Gallagher Sharp Newsflash: Ohio Supreme Court Upholds 3-yr UIM Limit

Today, September 29, 2011, the Supreme Court of Ohio upheld a provision requiring a policyholder to sue an insurer for underinsured motorist coverage within three years of an accident, even where the insufficiency of the tortfeasors' insurance is not determined within that three-year period.

In *Barbee v. Nationwide Mut. Ins. Co.*, Slip Opinion No. 2011-Ohio-4914, the Barbees were involved in a chain-collision motor vehicle accident in Wisconsin on October 12, 2002. Nationwide insured their vehicle, which included UM/UIM coverage. The Nationwide policy required any lawsuit for UIM coverage be filed within three years of the date of the accident. The policy also contained an exhaustion provision stating that no payment will be made until the limits of all other liability insurance and bonds that apply have been exhausted by payments. The Barbees put Nationwide on notice of a potential UIM claim within one year of the accident, and timely sued the tortfeasors in Wisconsin. That Wisconsin litigation, which was not concluded until more than three years after the accident, apportioned liability and fixed damages. There was insufficient insurance to cover the damages awarded to the Barbees, so they sued Nationwide, but that suit was not filed until more than four years after the accident.

Nationwide raised the three-year limitation period as a defense. The Barbees argued that the Wisconsin litigation against the tortfeasors was not adjudicated until more than three years after the accident, so they did not know if there was a viable UIM claim within the three-year period. Moreover, they asserted that the Nationwide policy was ambiguous because there was a conflict between the three-year limitation provision and the exhaustion provision. The Barbees won in the trial court and court of appeals, but the Supreme Court reversed.

Justice Cupp, writing for the five-person majority, stated that the policy provisions, when read together, plainly require an insured to fully comply with the terms and conditions of the policy, which include but are not limited to protecting Nationwide's subrogation rights, and filing suit within three years of the date of the accident. The high court found no ambiguity in the policy and concluded that Nationwide was entitled to summary judgment.

Justices Pfeiffer and McGee Brown dissented because they concluded that the interplay of the various insurance-policy provisions resulted in ambiguity.

The full opinion can be found at:

<http://www.supremecourtohio.gov/rod/docs/pdf/0/2011/2011-ohio-4914.pdf>

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