

Jim's Perspective...

Statute of limitations for underinsured motorist coverage

Recently, the Nebraska Supreme Court issued an opinion dealing with the question of the time limit within which a policyholder must bring a legal action for recovery of underinsured motorist benefits.¹

Teresa Rose, of Carter Lake, Iowa, was injured when the vehicle she was driving was struck by an underinsured motorist on February 3, 2018. The accident occurred in Omaha where Rose worked. The car Rose was driving belonged to her boyfriend, Christopher Stark, a Nebraska resident. The car was licensed in Nebraska. Rose was an insured under her sister's American Family auto policy at the time of the accident. Rose lived with her sister, at her sister's house. Rose settled with the at-fault motorist's insurer (minimum B.I. limit of \$25,000), and Stark's insurer (minimum UIM limit of \$25,000). Rose then claimed underinsured motorist benefits under her sister's policy with American Family. The amount of coverage was not provided in the court opinion. On November 15, 2019, American Family determined that Rose had been fully compensated by her prior settlements and denied her claim for additional underinsured motorist benefits.

Rose then sued American Family in the district court for Douglas County, Nebraska on September 3, 2020. American Family asserted in the district court lawsuit that it was entitled to an order providing for a summary judgment in favor of American Family, because the auto policy stated, "any suit against [American Family] will be barred unless commenced within two years from the date of the accident." In addition to the two-year limitation, the policy contained a choice of law provision that stated any disputes would be governed by the laws of the state shown in the declaration of residence, which in this case, was Carter Lake, Iowa. The Douglas County district court determined that Iowa courts have expressed a strong public policy in favor of freedom to contract, including enforcing an underinsured motorist policy provision that contained a two-year limitation on filing a lawsuit for coverage under the insurance policy. The court determined that Rose's action was time barred, and entered judgment in favor of American Family. Rose appealed to the Nebraska Supreme Court.

On appeal, Rose argued that because this matter flowed from an auto accident, Nebraska's four-year statute of limitations for torts controls the outcome of this case. Also, Nebraska's Uninsured and Underinsured Motorist Insurance Coverage Act provides for a four-year statute of limitations.

In affirming the judgment of the district court, the Nebraska Supreme Court said:

We have recognized that persons residing in different states may select the law of either state to govern their contract and the parties' choice of law will ordinarily govern. Thus, the express choice of law in the [American Family] policy applies

¹Rose v. American Family Insurance Company, 315 Neb. 302 (2023).

to the 2-year contractual limitation period if this 2-year provision is permitted under Iowa law.

Under Iowa statutes, a breach of contract claim for underinsured motorist benefits is subject to the 10-year statute of limitations for written contracts. Importantly, however, Iowa law recognizes the rights of insurers to limit time for claims, "irrespective of a legislative imprimatur on such provisions." Iowa courts have held that "to declare a contractual deadline for uninsured motorist or underinsured motorist claims unenforceable is an extraordinary remedy, and that such an outcome is unpalatable." Iowa courts have explicitly held that 2-year limitation clauses for uninsured or underinsured motorist disputes are valid and enforceable.

Based on the above, the Nebraska Supreme Court affirmed the district court judgment in favor of American Family.

The Rose case reminds me of an old Farmers Mutual of Nebraska case, Schrader v. Farmers Mutual Insurance Company of Nebraska, 259 Neb. 1, 727 N.W.2d 206 (2000). Schrader was a passenger in a vehicle which was involved in an accident caused by another negligent driver. Schrader brought suit against the negligent driver within the four-year statute of limitations applicable to that tort claim. Schrader settled the bodily injury liability claim with the auto liability insurer. Schrader sued Farmers Mutual for underinsured motorist benefits. The date of the accident was December 18, 1992. Schrader filed suit against Farmers Mutual December 5, 1997, nearly four years and eleven months after the accident. Farmers Mutual asserted that Schrader's lawsuit was time-barred because Nebraska's Uninsured and Underinsured Motorist Coverage Act has a four year statute of limitations which states:

The uninsured motorist and underinsured motorist coverages provided in the Uninsured and Underinsured Motorist Coverage Act shall not apply to:
(e) Bodily injury, sickness, disease, or death of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist. (44-6413(1)(e).

The Nebraska Supreme Court held that Schrader's underinsured motorist claim was valid and was not time-barred by the above underinsured motorist statute of limitations. The Court reasoned that Schrader filed suit for his tort claim against the negligent driver well within the four-year statute of limitations for a tort claim. Consequently, the four-year tort claim statute of limitations never expired. Since it never expired, the underinsured motorist claim can still be pursued so long as it does not violate the five-year statute of limitations applicable to contracts. Schrader's "insurance contract claim" was brought within the five-year statute of limitations.

What a surprise. I always thought the reference to the four-year tort claim statute of limitations clearly established that the statute of limitations for UM/UIM claims was four-years, period.

But the story is not over. In another Nebraska Supreme Court case, Reimers-Hild v. State of Nebraska, 274 Neb. 438, 741 N.W.2d 155 (2007), the state argued that Reimers could not recover underinsured motorist benefits because, unlike Schrader, Reimers failed to file a

lawsuit against the negligent driver prior to the four-year statute of limitations for a tort claim. The Court held that it was not necessary to file a lawsuit. Once the tort claim is settled within the four-year statute of limitations, the statute of limitations will never expire. It is important to also note that pursuant to Nebraska's Uninsured and Underinsured Insurance Coverage Act, the insured is required to give notice to the insurer that the insured is going to settle the underlying tort claim, so there is a process where the insurer can protect its subrogation claim.

James B Dobler

Jim Dobler, CPCU

PIA Legislative Coordinator

Questions or Comments? Please email jbdobler@outlook.com

