

Supreme Court Ruling Affords Insurance Companies Greater Protection From Late Uninsured-Motorist Benefit Claims

June 21, 2012

As a result of a recent Michigan Supreme Court ruling, insurance providers no longer have to show prejudice in order to properly deny an Uninsured-Motorist Benefits (UM Benefits) claim when a claimant fails to provide notice of the claim as required by an unambiguous policy provision setting forth a specified notice period. Following this ruling, which takes immediate effect, companies should review pending UM Benefit claims, and ensure their UM Benefit policies include an unambiguous, specific, notice requirement, such as 30 days.

In *DeFrain v State Farm Mutual Automobile Insurance Company*, a pedestrian suffered severe head injuries as a result of a hit-and-run car-accident. DeFrain's insurance policy contained a provision requiring a claimant seeking UM Benefits to report the accident "to the police within 24 hours and to [State Farm] within 30 days." State Farm did not receive notice of the accident until 86 days after its occurrence.

Based on the lack of notice, State Farm denied the claim for UM Benefits and Defrain (plaintiff) filed suit. State Farm moved for dismissal of the claim, arguing that the failure to comply with the 30-day notice provision required dismissal of the complaint. The plaintiff maintained that the notice-of-claim provision was both ambiguous and unenforceable unless State Farm could show that the failure to comply with the provision prejudiced State Farm. The trial court agreed with both arguments, and denied State Farm's motion for dismissal.

Relying on *Koski v Allstate Ins Co*, a 1998 Michigan Supreme Court decision that carved out a narrow prejudice requirement for all insurance contracts, the Michigan Court of Appeals upheld the trial court's decision finding that the 30-day notice provision did not preclude the plaintiff's claim because there was no showing that the failure to comply with the provision prejudiced State Farm. The appellate court did not address the plaintiff's argument that the provision was also ambiguous.

In a split decision on May 30, the Michigan Supreme Court reversed the appellate decision holding, that an unambiguous notice-of-claim provision setting forth a specified period of time, within which notice must be provided, is enforceable without a showing that the failure to comply with the provision prejudiced the insurer. In so doing, the Supreme Court stated that the appellate court misapplied the

SUPREME COURT RULING AFFORDS INSURANCE COMPANIES GREATER PROTECTION FROM LATE UNINSURED-MOTORIST BENEFIT CLAIMS Cont.

Koski decision by reading into the notice provision a “prejudice requirement” where none existed.

The major distinction was that contractual notice provision in *Koski* involved an imprecise temporal requirement “requiring notice immediately or within a reasonable time,” whereas *Defrain* involved a specific, clear 30-day notice requirement. The court stated that imposing a prejudice requirement into the specific, unambiguous contract provision “frustrated the parties’ right to contract freely,” and was irrelevant to the decision of whether or not the plaintiff complied with the policy’s conditions.

In light of the *Defrain* decision, insurance providers should ensure that UM Benefit clauses are clear and specific as to how long a claimant has to provide notice of an accident or claim. Doing so will not only protect the insurer from the unfair prejudice associated with late claims, but they will also increase their substantive rights and ability to dispose of claims failing to adhere to such notice requirements.

For further information on UM Benefits or if you have questions relative to how this important decision may affect your business, please contact the authors of this Rapid Report or any member of Plunkett Cooney’s Trucking and Transportation or Litigation practice groups.

Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Mary Catherine Rentz or any other members of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2012. All rights reserved PLUNKETT COONEY, P. C.