



no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

8.3.05

Supreme Court Enforces Insurance Contract Limitations

By Michael Updike

In *Shirley Rory and Ethel Woods v. Continental Insurance Company*, 4__ Mich __; __ NW2d __ (Supreme Court No. 126747, *rel'd* 7/28/05), the Michigan Supreme Court held that contract terms in an insurance policy are binding on both the insurer and the insured, regardless of whether the term may be viewed by some as unreasonable or unfair, and whether or not the insurance policy itself is regarded as a contract of adhesion.

In *Rory*, the plaintiff was involved in a motor vehicle accident. The plaintiff had an insurance policy with the defendant, which included uninsured motorist coverage. The plaintiff sued the driver of the other vehicle involved in the accident, but discovered the driver and vehicle were uninsured. The plaintiff filed a claim for uninsured motorist coverage with the defendant. Who denied the claim because its policy required all claims for uninsured motorist benefits to be filed within a year of an accident, and the claim was filed more than a year after the accident. The plaintiff sued the defendant, seeking to reform the insurance policy and an order allowing plaintiff more time to file a claim for uninsured motorist benefits with the defendant. Both the trial court and the Court of Appeals [the Court of Appeals in a published decision reported at 262 Mich App 679; 687 NW2d 304 (2004)] held that the one-year contractual limitation following an accident for filing an uninsured motorist coverage claim was unfair and unreasonable, and that the insurance policy itself was a contract of adhesion. The Court of Appeals imposed a

SECRET WARDLE NOTES:

This decision is of significant benefit to insurers because it makes the terms in their policies, even ones that limit the contractual remedies of their insureds, less likely to be successfully challenged in the courts. However, insurers must take care to make sure that whatever policies they issue in Michigan have been properly approved by the Commissioner. Insurers must also take steps to prevent or at least reduce the risk of any challenge to a contract term based on unconscionability, waiver or fraud.

CONTINUED...

three-year period of limitations for the filing of an uninsured motorist claim, despite the specific contract limitation of a year for the filing of a claim following an accident.

The Supreme Court granted leave and reversed both the trial court and the Court of Appeals. The Supreme Court remanded the case for entry of an order granting the defendant insurer summary disposition. The Supreme Court decision in the case was closely decided, with Justice Young, joined by Chief Justice Taylor and Justices Corrigan and Markman, forming the majority, while Justices Cavanagh, Weaver and Kelly all filed separate dissents.

The Supreme Court issued three key holdings in *Rory*: (1) An insurance contract, whether it is styled or regarded as a contract of adhesion, is still a contract and is subject to exactly the same rules of construction as any other contract; (2) unless a specific term in an insurance policy violates the law or is unenforceable because of a traditional contract defense such as waiver, fraud or unconscionability, it is to be enforced as written and courts are not free to modify the term or refuse to enforce it; and (3) the Legislature has made the Commissioner of the Office of Financial and Insurance Services responsible for deciding whether or not an insurance policy, or a term within a policy, is reasonable—if the Commissioner has approved a policy or a term within a policy, it is *per se* reasonable and not subject to challenge.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2005 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Carlesimo

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newslines, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at ccarlesimo@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowners' Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability