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04.06.06

Uninsured Motorist Arbitration Demand Unenforceable in Specific Cases of Liquidation

By Jennifer L. Smith

In *American Service Insurance Company v. Pasalka*, the Illinois Court of Appeals for the First District was called upon to decide whether a two year limitation on uninsured motorist arbitration demands were unenforceable after a tortfeasor's insurance company goes into liquidation more than two years after the accident. 2006 Ill. App. LEXIS 41 (2006). The court held that in specific fact patterns such as this, the provision is a violation of Illinois law and public policy.

American Service Insurance ("American Service") brought a declaratory action against twenty-two of its policyholders and their passengers after they filed uninsured motorist arbitration demands two or more years after their accident dates. Each of the insureds' policies with American Service contained a provision stating that such demands be made within two years of the accidents. After bringing personal injury actions within two years of the accidents, each insured later learned that the tortfeasor's insurance company had entered into liquidation. The insureds then sent demands for uninsured motorist arbitration to American Service within two years of the insolvency, but anywhere from two years to nearly seven years after the accident date. American Service alleged that the insureds were not entitled to benefits under their policies based upon their failure to demand arbitration within the time parameters set forth in the policies.

The trial court granted the insureds' motion for summary judgment, finding that the time limitation provision in the insurance policies was ambiguous. They construed the provision in favor of the insureds finding that they "could not possibly have anticipated an uninsured motorist coverage claim that did not exist at the time of the accident." American Service was

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In a case of first impression, the Illinois Court of Appeals found a provision mandating that a demand for arbitration involving uninsured motorist coverage be made within two years of an accident was unenforceable where a tortfeasor's insurance company goes under liquidation. In this particular factual situation, where an insured discovered the liquidation more than two years after an accident, the provision violates Illinois' public policy of mandating uninsured motorist coverage in every automobile insurance policy. The court did insinuate that they would have upheld the provision had it contained an exception for an insured that could not have discovered the insolvency of the tortfeasor's insurer before the two-year limitation had passed.

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directed to appoint an arbitrator and proceed to arbitrations according to the policy provisions. American Service appealed.

Upon review of the policy provision in question, the court of appeals found no ambiguities. The provision clearly stated that if an insured failed to demand arbitration within two years of an accident, American Service may deny coverage. The court of appeals then went on to find that the time limitation provision violated Illinois' public policy of mandating uninsured motorist coverage. By Illinois statute, insurers are required to provide uninsured motorist coverage, and such coverage "shall be applicable when the tortfeasor's insurer becomes insolvent, subject to the 'terms and conditions' established by the insurer." 215 ILCS 5/143a. The court stated that the provision clearly is intended to defeat uninsured motorist coverage and, as applied in this factual situation, is a violation of Illinois law and public policy to provide uninsured motorist coverage in every automobile insurance policy.

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We welcome your questions and comments.

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