IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.:
DCA 3 No.: 94-02424

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

vs.

KUNBOK LEE and GISUN LEE,

Respondents.
_____/

PETITIONERS' BRIEF IN REPLY TO AFTL'S AMICUS CURIAE BRIEF

On review from the District Court
of Appeal, Third District
State of Florida

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INTRODUCTION

Portions of the Amicus Curiae Brief of the Academy of Florida Trial Lawyers (AFTL) will be cited to hereinafter as "A.B." followed by the appropriate page number.

ARGUMENT

The AFTL argues on the one hand that the statute of limitations in a PIP action should be five years long, but on the other hand that this five-year period should not even begin to run "until the injured party has made a written claim for PIP benefits and the insurer has failed to pay the claim within the time required by statute [§ 627.736(4)(b)]" (A.B. at 12) (emphasis supplied). This all-or-nothing position, if adopted by this Court, would place absolutely no limit on the amount of time an injured party can wait to make its written claim after the accident -- the event which, after all, caused the loss in the first place. Indeed, under the AFTL's argument, even after the injured party does make its written claim, the limitations period would still not begin to run until the insurer either does not pay within thirty days of the written claim or stops paying on the claim no matter how long the insurer had been paying the requested benefits -- even if the insurer had been honoring the claim for fifty years!

The AFTL offers no good policy reasons to justify such a broad extension of the statute of limitations. The AFTL's proposed unlimited time period in which to make a written claim for benefits after the accident would in fact violate the spirit and intent of the PIP statute, which is to encourage quick and voluntary

adjustment of claims caused by an accident. Allowing an infinite time to make a claim for PIP benefits would not encourage the claim to be made in the first place. Rather, an insured would be free to (1) wait forever to seek PIP benefits with no legal repercussions for the delay, (2) make a written request for PIP benefits and perhaps receive the benefits for an unlimited amount of years, and then (3) get five additional years to sue in the event that the insurer decides that enough is enough.

The AFTL also argues that injured parties should be given five years after the denial of a claim because such parties would be simply oblivious of their legal rights to collect the benefits until the denial is made:

> Not until the insurer denies the claim or the claim becomes overdue will the insured have any reason to know that the insurer has breached its contract or have any reason to take legal action.

(A.B. at 14-15). However, an injured party certainly would have the unique advantage of knowing that an accident occurred resulting in a loss and that a PIP policy is available to cover that loss. In view of the injured party's unique advantage in knowing about the extent, cause, and time of the injury, the burden should not fall upon the insured to defend a suit arising out of an accident which potentially occurred decades ago. The AFTL's argument that the insured has no reason to know of its legal rights until there is a denial of the claim is, therefore, is disingenuous. The AFTL's extreme position in this regard actually illustrates the Petitioner's public policy argument that the limitations period should begin with the date of the accident so that claimants will

be encouraged to timely file claims and not be dilatory. To extend the period of limitation will encourage claimants and litigants to procrastinate.

The AFTL's argument that the statutory thirty-day requirement of § 627.736, Florida Statutes, triggers the claim upon expiration of thirty days (A.B. at 12-14), is essentially an argument that PIP actions are governed by a "statutorily mandated accrual date." This exact argument was rejected by this Court in Department of Transportation vs. Soldovere, 519 So. 2d 616, 617 (Fla. 1988): "We find no merit to the Fourth District's distinguishing [Kilbreath] because Soldovere involved a 'statutorily mandated accrual date' rather than one determined by contract."

The AFTL does not ask this Court to recede from the rule announced by this Court in State Farm Mutual Automobile Ins. Co. v. Kilbreath, 419 So. 2d 632 (Fla. 1982), that a cause of action against an insurance company for uninsured motorist benefits commences to run on the date of the accident, rather than on the date that the insured requests payment from the insurer or upon the violation of the conditions precedent to the claim. Nor do they contest the clear rule of law announced by this court in Lumbermen's Mutual Casualty Co. v. August, 530 So. 2d 293 (Fla. 1988), that a UM action is governed by contract law for statute of limitations purposes, not by tort law. It is inconsistent to argue that there is one set of rules for a UM breach of contract action, in which the statute of limitations commences upon the date of the accident rather than upon the conditions precedent to the claim,

but that there should be another set of rules for a PIP breach of contract action by requiring the limitations period to commence upon a violation of the conditions precedent to the cause of action.

The AFTL attempts to distinguish a PIP action from a UM action by arguing that a PIP action is essentially a pure a breach of contract action and that in all pure breach of contract actions the date of the breach triggers the statute of limitations. However, neither UM actions nor PIP actions are pure breach of contract actions. Both UM policies and PIP policies are forms of automobile accident insurance which depend upon the existence of an automobile accident. The automobile accident is the sine qua non of the right to collect the insurance benefits under the insurance contract. It is this event which places the insured on notice of the right to collect automobile insurance benefits, not the request for the benefits itself or the subsequent denial of the benefits. It is, therefore, logical that the limitations period begin with the accident.

The AFTL also argues that UM actions are distinguishable from PIP actions because UM actions "derive from the existence of a cause of action against a potential tortfeasor," whereas PIP actions do not require a tortfeasor (A.B. at 18). A UM action does not "derive" from the right to sue the tortfeasor. This Court has already ruled that a UM action involves merely "some aspects of a tort action," but that the rights and obligations derive from the contract of insurance. August, 530 So. 2d at 295 ("[T]he rights

and obigations of the parties" in a UM action "arise out of an insurance contract."). If the right to bring a UM action truly "derived" from a the cause of action against the tortfeasor, then the insured would be foreclosed from suing the insurance company four years after the tort and would be required to name the tortfeasor as a co-party. The fact that a UM action can be brought five years after the accident, however, even after the limitations period for suing the tortfeasor has run, clearly indicates that the right to seek UM benefits does not depend on the right to sue the tortfeasor; it depends upon the fact that there was an automobile accident for which the insured was not solely responsible. This is further supported by the fact that an insured need not even be able to identify the tortfeasor in some circumstances, e.g., in cases of the "phantom" driver. Under both a UM policy and a PIP policy, the fact that an automobile accident occurs -- as opposed to some other type of accident -- is what triggers the right to collect the benefits and thus the right to sue for the benefits. Accordingly, the date of the automobile accident should trigger the statute of limitations.

Whereas the AFTL has taken an all-or-nothing position, giving no circumstances under which the five-year statute of limitions should not start on the date that the insurer denies a claim for PIP benefits, Petitioners have offered a middle-ground approach in the Initial Brief. Under the Petitioners' suggested approach, the date of the accident would trigger the statute of limitations, but such period would be tolled in cases where the insurer lulled the

insured into a false sense that it would pay for the benefits and then turned around and denied the claim after the limitations period expired. This approach would provide fairness to both insured and insurer and would encourage diligent resolution of PIP claim.

CONCLUSION

Logic and public policy dictate that the automobile accident should be the event from which the statute of limitations begins to run in a PIP case. Floridians are required to purchase no-fault benefits by statute as a result of the legislature's strong public policy purpose of ensuring that the medical and wage losses are quickly and efficiently resolved. This public policy is served by discouraging purchasers from dragging out the litigation process. If the claims process is allowed to extend without a reasonable cut-off period, the insurance industry and, eventually, Florida residents who purchase PIP insurance, must bear the added expense for overhead, adjusters' salaries and benefits, secretarial salaries and benefits, attorneys' fees and litigation costs. No valid public policy argument has been presented in the Amicus Curiae Brief to extend the statute of limitations indefinitely, yet certainly purchasers of no-fault insurance would have an interest in halting the litigation process for no-fault claims, and stopping the additional expense of processing the claims and defending dilatory lawsuits. For the foregoing reasons, Petitioners respectfully request this Court to quash the Third District's reversal of the lower court's order of dismissal and to reinstate the lower court's order of dismissal.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 14th day of June, 1996, to: **ROBERT ROSENBLATT, ESQUIRE,** Attorney for Respondents, Concord Building, PH Suite, 66 West Flagler Street, Miami, Florida 33130, (305)536-3300; and **EDWARD S. SCHWARTZ, ESQUIRE,** Law Offices of Philip Gerson, P.A., Attorneys for the Academy of Florida Trial Lawyers, Suite 1310, Miami Center, 100 Chopin Plaza, Miami, Florida 33131-4324, (305)371-6000.

Respectfully submitted,

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