

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 110702-U

Order filed August 13, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

COUNTRY PREFERRED INSURANCE)	Appeal from the Circuit Court
COMPANY,)	of the 10th Judicial Circuit
)	Tazewell County, Illinois
Plaintiff-Appellee,)	
)	Appeal No. 3-11-0702
v.)	Circuit No. 10-MR-102
)	
JASON CHASTAIN,)	Honorable
)	Jerelyn D. Maher
Defendant-Appellant.)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Insured failed to comply with a valid provision of his insurance policy requiring him to seek arbitration of an underinsured motorist claim within two years of an accident where he did not notify insurer of underinsured motorist claim until over three years after the accident occurred.

¶ 2 Plaintiff, Country Preferred Insurance Company, filed a complaint for declaratory judgment against defendant, its insured, alleging that defendant was barred from seeking arbitration of his underinsured motorist claim because he did not timely notify plaintiff of his claim. Plaintiff filed

a motion for summary judgment, which the trial court granted. We affirm.

¶ 3 In December 2006, defendant, Jason Chastain, purchased an automobile insurance policy from plaintiff, Country Preferred Insurance Company. The policy contained a clause under section 2, uninsured/underinsured motorist coverage, which provided for a two year limitation to commence an arbitration claim and required a written demand for arbitration to commence. Defendant purchased the insurance policy in Illinois for a vehicle garaged in Illinois. He was an Illinois resident when he purchased the policy.

¶ 4 On January 23, 2007, defendant was involved in a motor vehicle accident with another vehicle in Delaware. Defendant sustained injuries from the accident. In March 2008, defendant's attorney contacted plaintiff seeking medical payments under defendant's insurance policy. Defendant's attorney wrote a total of 20 letters to plaintiff regarding defendant's medical bills. Plaintiff made medical payments to defendant pursuant to his policy totaling \$32,786,81.

¶ 5 In December 2008, defendant filed suit in Delaware against the driver of the other vehicle involved in the January 23, 2007 accident. One month later, defendant sent a letter notifying plaintiff that he was filing a lawsuit against the other driver and that a passenger in the other vehicle was making a claim against defendant. Defendant's claim against the other driver was arbitrated in Delaware in September 2010. The arbitrator entered an award of \$216,328.98 in favor of defendant. This award exceeded the other driver's insurance policy limits of \$100,000.

¶ 6 On September 21, 2010, defendant's attorney sent a letter notifying plaintiff that defendant would be pursuing an underinsured motorist claim against plaintiff for \$116,328.98. On October 1, 2010, plaintiff notified defendant that it was denying his underinsured motorist claim because it was untimely. Plaintiff then filed a complaint for declaratory judgment, alleging that defendant was

barred from making an underinsured claim because it was untimely under the terms of his insurance policy. Thereafter, plaintiff filed a motion for summary judgment.

¶ 7 The trial court granted plaintiff's motion for summary judgment. The court ruled that Illinois law applied and held that "the underinsured motorist claim presented by defendant to plaintiff is barred by the 2 year contractual provision for commencing arbitration."

¶ 8 ANALYSIS

¶ 9 Summary judgment is appropriate where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. 735 ILCS 5/2-1005© (West 2008). We employ a *de novo* standard when reviewing a trial court's grant of summary judgment. *In re Estate of Harn*, 2012 IL App (3d) 110826, ¶ 25.

I. Choice of law

¶ 10 Defendant first argues that Delaware law should apply to his underinsured motorist claim and extend the two-year limitation period contained in the insurance policy. Plaintiff responds that the trial court properly applied Illinois law to defendant's claim.

¶ 11 Before applying a choice of law analysis to determine which state's law applies to a dispute, a court must first determine if there is a conflict in the laws of the two states. *SBC Holdings, Inc. v. Casualty & Surety Co.*, 374 Ill. App. 3d 1, 13 (2007). A conflict exists if the difference in laws will result in a difference in outcome. *Id.*

¶ 12 Here, a conflict in laws exists. Under Illinois law, the two-year limitation contained in the insurance policy would begin to run on the date of the accident and would expire on January 23, 2009. See *Hale v. Country Mutual Insurance Co.*, 334 Ill. App. 3d 751, 754 (2002); *Hannigan v.*

Country Mutual Insurance Co., 264 Ill. App. 3d 336, 340 (1994). Under Delaware law, the two-year period would not commence until plaintiff denied plaintiff's underinsured motorist claim and would, therefore, expire on October 1, 2012. See *Allstate Insurance Co. v. Spinelli*, 443 A.2d 1286, 1292 (Del. 1982). Thus, the letter sent by defendant's attorney on September 21, 2010, notifying plaintiff of defendant's uninsured claim, is timely under Delaware law but not under Illinois law.

¶ 13 Since we have identified a conflict in laws, we must now determine which state's law applies. When an insurance policy does not contain a choice of law provision, the general choice-of-law rules of the forum state control. *SBC Holdings*, 374 Ill. App. 3d at 13. Since Illinois is the forum state, we look to its choice of law rules.

¶ 14 In Illinois, actions seeking to enforce the uninsured motorist provisions of an automobile insurance policy, though derived from the underlying tort, are based on the insurance contract. *Shelton v. Country Mutual Insurance Co.*, 161 Ill. App. 3d 652, 657-58 (1987). Under Illinois choice-of-law rules for insurance contracts, Illinois courts use "the most significant contacts" test. *United Farm Family Mutual Insurance Co. v. Frye*, 381 Ill. App. 3d 960, 965 (2008). Pursuant to this test, insurance policies are "governed by the location of the subject matter, the place of delivery of the contract, the domicile of the insured or of the insurer, the place of the last act to give rise to the contract, the place of performance, or other place bearing a rational relationship to the general contract." *Westchester Fire Insurance Co. v. G. Heileman Brewing Co.*, 321 Ill. App. 3d 622, 629 (2001).

¶ 15 In a suit involving underinsured motorist coverage, the state where the parties entered into the insurance policy and where the car principally covered by the policy is located are the most significant factors in determining which state has the most significant contacts. *Costello v. Liberty*

Mutual Fire Insurance Co., 376 Ill. App. 3d 235, 241 (2007). This is true even if the accident and subsequent arbitration occurred in a different state. *Id.* Unless some other state has a more significant relationship to the transaction, an automobile policy will be governed by the state where the car was intended to be principally located. *Id.*

¶ 16 Here, defendant was an Illinois resident when he entered into the insurance contract and was involved in the Delaware accident. The automobile defendant insured through plaintiff was licensed, registered and garaged in Illinois. The insurance contract was entered into in Illinois. Even though the accident and arbitration with the other driver occurred in Delaware, Illinois has more significant contacts to the policy. See *Costello*, 376 Ill. App. 3d at 241. Therefore, the trial court correctly determined that Illinois law applies to defendant's underinsured motorist claim.

¶ 17 II. Public Policy

¶ 18 Defendant next argues that if Illinois law applies, the two-year limitation provision violates Illinois public policy.

¶ 19 An insurance policy is a contract between the company and the policyholder. *Parish v. Country Mutual Insurance Co.*, 351 Ill. App. 3d 693, 696 (2004). Where provisions in an insurance contract do not violate law or public policy, courts must enforce them as written. *American Service Insurance Co. v. Pasalka*, 363 Ill. App. 3d 385, 390 (2006). However, courts will not enforce a contractual term that is against public policy. *Id.* Declaring a policy provision void as against public policy is an extraordinary remedy. *Parish*, 351 Ill. App. 3d at 696.

¶ 20 The legislative purpose behind underinsured motorist coverage is to " 'place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance.' " *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 57 (2011) (quoting *Sulser v. Country Mutual Insurance Co.*,

147 Ill. 2d 548, 555 (1992)). The legislature has put the insurer in the shoes of the underinsured tortfeasor. See *Shelton*, 161 Ill. App. 3d at 660. Accordingly, the insured should be afforded rights that are no less or greater than those he would have enjoyed against the tortfeasor. *Id.* It would be inequitable to require an insurer "to suffer a longer period of limitations than that which would have been applicable to the person whom it succeeds." *Id.*

¶ 21 Illinois courts have uniformly held that contractual two-year limitations for underinsured motorist claims do not violate public policy. See *Parish*, 351 Ill. App. 3d at 699; *Hale*, 334 Ill. App. 3d at 754; *Flatt v. Country Mutual Insurance Co.*, 289 Ill. App. 3d 1097 (1997); *Wancho v. Country Mutual Insurance Co.*, 275 Ill. App. 3d 936 (1995); *Vansickle v. Country Mutual Insurance Co.*, 272 Ill. App. 3d 841, 842-43 (1995); *Hannigan*, 264 Ill. App. 3d at 342; *Shelton*, 161 Ill. App. 3d at 660. "Insurance companies are entitled to reasonably limit their exposure from an insurance contract." *Vansickle*, 272 Ill. App. 3d at 843. A two-year provision is reasonable because an insured can sufficiently allege a cause of action for underinsured motorist benefits within that time period. See *id.*

¶ 22 Nevertheless, defendant argues that the two-year limitation violates public policy in this case because the two-year limit would be extended pursuant to Delaware law. Defendant cites to our recent decision in *Country Preferred Insurance Co. v. Whitehead*, 2011 IL App (3d) 110096, *appeal allowed*, No. 113365 (Ill. Jan. 25, 2012), as support for his position.

¶ 23 In *Whitehead*, we ruled that a provision requiring an insured to bring an uninsured motorist claim within two years violated public policy when it was applied to a motorist injured in a state with a three-year statute of limitations for personal injury claims. *Whitehead*, 2011 IL App. (3d) 110096, ¶ 12-14. In so ruling, we explained that the public policy of the uninsured motorist statute, to place

the injured in substantially the same position she would have been in if the uninsured driver had been insured, could only be accomplished if the injured party were allowed the same amount of time to file an uninsured motorist claim as she would have to file a complaint against the tortfeasor. *Id.* at ¶ 14. The two-year limitation in the policy violated public policy because it placed the defendant in a substantially different position than he would have been in had the tortfeasor been insured. *Id.* at ¶ 12.

¶ 24 *Whitehead* is distinguishable. Here, both Illinois and Delaware have a two-year statute of limitations for personal injury claims. 735 ILCS 5/13-202 (West 2006); 10 Del. Code § 8119 (2006). Unlike the defendant in *Whitehead*, who had three years to file suit against the tortfeasor, defendant in this case was required to file his personal injury claim against the tortfeasor within two years, which he did. Thus, he was not placed in a substantially different position than if the tortfeasor had been adequately insured. In *Whitehead*, we applied Wisconsin tort law to achieve the goals of the Illinois uninsured motorist statute.

¶ 25 Defendant is asking us to apply Delaware contracts law to his underinsured motorist claim in order to extend plaintiff's liability beyond the two-year limitation set forth in the insurance contract. However, as we have stated, Illinois contract law applies to the contract at issue. See *Costello*, 376 Ill. App. 3d at 241. Under Illinois law, it would be inappropriate to require plaintiff to be exposed to liability for a period longer than that applicable to the tortfeasor. See *Shelton*, 161 Ill. App. 3d at 660. Thus, the two-year limitation to file an underinsured claim is not contrary to Illinois public policy and must be enforced as written.

¶ 26

III. Notice

¶ 27 Finally, defendant argues that even if the two-year limitation period applies, he complied with

it by seeking medical payments under his policy within two years of the accident.

¶ 28 The pertinent provision of the insurance policy provides:

"No suit, action or arbitration proceedings for recovery of any claim may be brought against us until the insured has fully complied with all the terms of this policy. Further, any suit, action or arbitration will be barred unless commenced within two years after the date of the accident. Arbitration proceedings will not commence until we receive your written demand for arbitration."

Courts examining this provision have found that it is clear and unambiguous. See *Hale*, 334 Ill. App. 3d at 754; *Vansickle*, 272 Ill. App. 3d at 842; *Hannigan*, 264 Ill. App. 3d at 340. Its purpose is to notify the insurer of an underinsured motorist claim. See *Hale*, 334 Ill. App. 3d at 755.

¶ 29 In order to comply with the provision, an insured must file suit, a proof of claim, or a demand for arbitration against the insurer within two years of an accident. See *Vansickle*, 272 Ill. App. 3d at 842. At a minimum, the insured must send a letter notifying the insurer of an underinsured motorist claim within two years. See *Hale*, 334 Ill. App. 3d at 755. While a letter notifying an insurer of an underinsured claim need not contain specific language, it must notify the insurer that the insured has an underinsured motorist claim. See *id.* at 754-55.

¶ 30 In this case, within two years of defendant's accident, defendant's attorney sent letters to plaintiff seeking medical payments under defendant's insurance policy and notifying plaintiff of defendant's suit against the other driver and a potential suit against defendant by a passenger in the other driver's vehicle. However, none of those letters mentioned an underinsured motorist claim. It was not until September 2010, over three-and-half years after the accident, that defendant first notified plaintiff of his underinsured motorist claim. Because defendant failed to put plaintiff on

notice of an uninsured motorist claim until after the two year limitation period expired, defendant did not comply with the provision. See *Hannigan*, 264 Ill. App. 3d at 340. The trial court properly granted plaintiff's motion for summary judgment.

¶ 31 The order of the circuit court of Tazewell County is affirmed.

¶ 32 Affirmed.