

NO. A07-929

State of Minnesota
In Supreme Court

SERGEY OGANOV,

Appellant,

vs.

AMERICAN FAMILY INSURANCE GROUP,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF LEGAL ISSUES

1. **Whether the definition of “uninsured motor vehicle” found in Minn. Stat. § 65B.43, Subd. 16, includes a motor vehicle for which liability insurance was available at the time of the accident but which becomes unavailable at some time thereafter as a result of an insurer’s insolvency?**

Trial Court’s Ruling:

The trial court did not rule on this issue.

Apposite Statutes: Minn. Stat. §65B.43, Subd. 16.

2. **Whether a cause of action for uninsured motor vehicle benefits accrues at the date of the accident giving rise to the claim or at a later date when the liability insurer becomes insolvent?**

Trial Court’ Ruling:

The trial court held that a cause of action for uninsured motor vehicle benefits accrues at the date of the accident giving rise to the claim.

Apposite Cases:

Weeks v. American Family Mut. Ins. Co., 580 N.W.2d 24 (Minn. 1998)

Oanes v. Allstate Ins. Co., 617 N.W.2d 401 (Minn. 2000)

INTRODUCTION

Appellant asks this court to adopt a special rule for the accrual of a cause of action for uninsured motorist benefits, where an insurer becomes insolvent after the date of the motor vehicle accident giving rise to a claim. This is a case of first impression in Minnesota, one which requires that the court also address another threshold question of first impression, not ruled on by either the trial court or the Minnesota Court of Appeals: Is a motor vehicle which was insured at the time of an accident but for which liability insurance later becomes unavailable due to the insolvency of an insurer an uninsured motor vehicle as defined by Minn. Stat. § 65B.43, Subd. 16?¹ If not, then the issue presented by Appellant is moot. If there is no uninsured motor vehicle, then no uninsured motor vehicle claim ever accrues.

At this juncture, the options appear to be to reserve the threshold issue for resolution on remand, should the court adopt a special rule governing accrual of a cause of action for an uninsured motor vehicle claim which results in a reversal of the lower courts, or to resolve that question now so as to avoid rendering what may be an advisory opinion. In light of the possibility that the court will find it expedient to address this issue now, Respondent will address the question in this brief.

STATEMENT OF THE CASE

Respondent American Family Insurance Group (“American Family”) accepts Appellant’s Statement of the Case.

¹ This issue was implicit in the question whether Respondent’s policy definition of an uninsured motor vehicle barred Appellant’s claim, because his insurer became insolvent more than one year after the involved accident, or, as contended by Appellant, was invalid as contrary to the No Fault Act.

SUPPLEMENTAL STATEMENT OF FACTS

On January 18, 1999, Plaintiff Sergey Oganov was traveling to work at Bob Ryan Oldsmobile & Mazda (“Ryan Olds”) in Brooklyn Center, MN, when a snowplow, owned by the dealership and driven by a dealership employee, backed into Oganov’s car.

Application for Benefits (Ex. 1) and Automobile Accident Loss Report (A-1); S. Oganov depo at 29-33. Appellant claims neck and back injuries as a result of this accident. Id.

The snowplow was insured by Legion Insurance Company under policy number CP 10700018.

Appellant was insured by American Family under policy number 0723 5047 01 65 FPPA MN. A-22, et seq. The American Family policy provides \$100,000 in uninsured motorist coverage and defines an uninsured motor vehicle so as to include a vehicle insured at the time of the accident but which becomes uninsured because the liability insurer “becomes insolvent within one year of the accident.” A-28. (Uninsured Motorist Coverage, Additional Definitions. 4.d.) The policy further provides that American Family “may not be sued under the Uninsured Motorist coverage on any claim that is barred by the statute of limitations.” A-30. (Part VI, General Provisions, 4. Suit Against Us.)

Appellant was represented by counsel in connection with this accident not later than October 22, 2001. A-3. A settlement demand had been presented to Legion on Appellant’s behalf sometime before that date. Id. That demand was declined by Legion on November 2, 2001, on the ground that Mr. Oganov’s “need for treatment did not result from the above accident but rather pre-dated [the] accident.” A-5.

By May 27, 2003, Appellant was represented by his third and current counsel, Griffel & Dorshow, Chartered. See, A-6. Appellant's counsel was advised, as his two earlier counsel had been, that his claim was denied. A-6. Appellant's counsel also was advised at that point that Legion Insurance had been placed into "Rehab" by the Pennsylvania court more than one year earlier, effective April 1, 2002, and that a stay had been issued staying all negotiations and litigation until June 30, 2003. A-6. As of May 27, 2003, approximately four years, four and one-half months had elapsed since the January 18, 1999, accident.

On July 25, 2003, Legion Insurance Company was declared insolvent and ordered liquidated by the Commonwealth Court of Pennsylvania. A-7. As of that date, approximately four and one-half years had elapsed since the accident.

On July 14, 2004, Appellant had served a Summons and Complaint on Bob Ryan Oldsmobile by delivering copies to Robert Ryan, Sr., identified in the affidavit of service as CEO. A-19.

By July 18, 2005, six and one-half years after the accident, Appellant had made demand on American Family for payment of UM benefits. A-45.

Seven years and eight months after the accident, on August 17, 2006, Plaintiff commenced this UM action against American Family. A-52-54. There is no record of Appellant ever having given notice to American Family of his suit against Ryan Oldsmobile at any time prior to service of this action. There is no evidence in the record as to what may have happened in that litigation.

American Family answered Appellant's Complaint, alleging, among other things, that the UM claim was time-barred. Answer, para 14.

American Family later moved for summary judgment on the Complaint, on the grounds that there was no "uninsured motor vehicle" (as defined by the policy) and that the action was barred at both common law and under the terms of the policy by Appellant's failure to commence an action for UM benefits against American Family within six years of the date of the accident. A-57, et seq. American Family withdrew the tort statute of limitations argument based on the policy terms at the hearing on its motion, in recognition of the claim that Ryan Olds had been served. T. 3.

The trial court granted American Family's motion, holding that the applicable statute of limitations was six years from the date the cause of action accrued, that the cause of action for UM benefits had accrued on the date of the accident, and that the claim was time-barred as a result. A-85-87. The trial court's ruling was based on the common law and did not address the application of the policy terms prohibiting suit on any claim barred by the statute of limitations. See, *id.* The trial court declined to rule on whether the involved vehicle was an "uninsured motor vehicle", holding that the issue was moot in light of its ruling on the statute of limitations. A-87.

THE STANDARD OF REVIEW

Whether summary judgment was properly granted is a question of law reviewed *de novo*. Prior Lake Am. v. Mader, 642 N.W.2d 729, 735 (Minn. 2002). The court reviews whether there are any genuine issues of material fact and whether the district court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4

(Minn. 1990). It views the evidence in the light most favorable to the party against whom judgment was granted. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn.1993).

ISSUES

1. **Whether the definition of “uninsured motor vehicle” found in Minn. Stat. § 65B.43, Subd. 16, includes a motor vehicle for which liability insurance was available at the time of the accident but which becomes unavailable at some time thereafter as a result of an insurer’s insolvency?**
2. **Whether a cause of action for uninsured motor vehicle benefits accrues at the date of the accident giving rise to the claim or at a later date when the liability insurer becomes insolvent?**

ARGUMENT

1. **An “uninsured motor vehicle” is “a motor vehicle * * * for which a plan of reparation security * * * is not in effect.”**

Minn. Stat. § 65B.43, Subd. 16, defines an “uninsured motor vehicle” in the present tense, i.e., as “a motor vehicle * * * for which a plan of reparation security * * * is not in effect.” (Emphasis added.) The No-Fault Act does not define an uninsured motor vehicle by reference to the solvency of a driver’s insurer. There is, in fact, no direct reference to insolvency in any portion of the Act relating to uninsured motorist coverage. This court, however, recognized that an automobile insured by an insurer which was insolvent at the time of an accident was effectively not insured at all and held that, under these circumstances, such an automobile is an uninsured motor vehicle. See, Gudvangen v. Austin Mut. Ins. Co., 284 N.W.2d 813, 815 (Minn. 1978), rehearing denied September 7, 1979, appeal dismissed by 444 U.S. 1062 (1980).

The language of Minn. Stat. § 65B.43, Subd. 16, raises the question: “At what point in time are we to determine whether a vehicle is uninsured?” In other words, when does “is not in

effect” apply: At the time of the accident? At some time thereafter at which a party may seek to make a claim against the involved owner or driver? If so, for how long after?

Absent ambiguity or a context which clearly requires a specialized meaning, we are required to read statutes in accordance with the plain meaning of their words. Vlahos v. R&I Construction, 676 N.W.2d 672, 679 (Minn. 2004) (Citation omitted.) Because the Act is silent with respect to insolvency and because the statutory definition is cast in the present tense, we reasonably can read the statute to mean “a motor vehicle * * * for which a plan of reparation is not in effect *at the time of an accident causing injury*.” No other reading makes sense in the context of the various coverages mandated by the No Fault Act.

Had the legislature intended the definition of “uninsured motor vehicle” to extend to situations in which insurance which was in effect at the time of an accident becomes unavailable sometime thereafter, it easily could have said so, simply by stating that an uninsured motor vehicle is one for which a plan of reparation security “is not in effect *at or after the time of the accident giving rise to the claim*”. It did not. A similar result was accomplished by the North Carolina legislature, by defining an uninsured motor vehicle as one which “is or becomes uninsured within 3 years” of the date of the accident in question. See, North Carolina Insurance Guaranty Assoc. v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364, 369 (1994).²

Respondent’s reading of the Act is simply a recognition of its express language and the operation of the other coverages required by the Act. Respondent recognized and responded to this time limitation in its own policy, by defining an uninsured motor vehicle so as to include a vehicle insured at the time of the accident but which becomes uninsured when the liability insurer “becomes insolvent within one year of the accident.”

² Relied upon by Appellant before the trial court. See, A-96.

This case exposes a major failing of the No Fault Act: its failure to anticipate and address the possibility of a motor vehicle losing coverage after the date of an accident, by virtue of an insurer's insolvency. The Minnesota Legislature may well decide to address any gap in coverage created by the limited definition contained in the Act. This court, however, may not add to the statute "what the legislature purposely omits or inadvertently overlooks." Welfare of S.J.J., 755 N.W.2d 316 319 (Minn. Ct. App. 2008), citing Ullom v. Indep. School Dist. No 112, 515 N.W.2d 615, 617 (Minn. Ct. App. 1994).

If, as Respondent contends, the statutory definition of "uninsured motor vehicle" does not extend to a vehicle for which insurance becomes unavailable sometime after the accident in question, then the question of when a cause of action for uninsured motorist benefits arises under these circumstances is moot.

2. The present rule, holding that a cause of action for uninsured motorist benefits accrues at the time of the accident, was properly applied.

The rules governing accrual of causes of action under the Minnesota No Fault Act differ according to the benefits at issue. Only one, the rule governing accrual of a cause of action for personal injury protection benefits, reflects a traditional "breach of contract" accrual date. Accrual of causes of action for the other two No Fault coverages, uninsured and underinsured motorist coverage, are governed by court-developed rules which do not follow the traditional model for accrual of a cause of action based on contract. Instead, this Court has adopted rules which it determined best balanced the needs and interests of the parties to the contract, affording insureds a reasonable opportunity to bring their claims while preserving the rights of insurers to exercise their rights under the contract and against third-parties.

Appellant asks this Court to disregard well-established law on the accrual of a cause of action for uninsured motorist insurance benefits and to adopt a special rule to fit his particular circumstances. He does not ask the Court to adopt the conventional accrual date for a breach of contract action; that formulation was rejected by this Court for both uninsured and uninsured motorist claims.

Appellant's requested special rule ignores both precedent and its rationale. It ignores the nature of uninsured motorist coverage in Minnesota: a statutorily mandated insurance contract which affords benefits on the basis of tort law. It completely ignores the insurer's rights, such as the right of subrogation, which, while created by laws of equity and by contract, also are governed by tort law.

This court has determined that the six-year statute of limitations governing contract actions applies to UM claims, generally. Miklas v. Parrott, 684 N.W.2d 458, 460-61 (Minn. 2004). It also has held that a cause of action for UM benefits, like a claim against the uninsured motorist, accrues on the date of the accident. Weeks v. American Family Mut. Ins. Co., 580 N.W.2d 24, 27 (Minn. 1998), overruled in part on other grounds by Oanes v. Allstate Ins. Co., 617 N.W.2d 401 (Minn. 2000). In doing so, the court established a single, readily identifiable six-year period in which a party claiming injuries as the result of an auto accident may take action to recover for his injuries, whether that be in the form of an action against the alleged tortfeasor or a UM carrier, which effectively stands in the tortfeasor's shoes for that purpose.

Appellant's technical argument against this well understood and readily applied rule is limited to the fact that he could not bring an action for UM benefits until the

liability insurer was in receivership. That is true. But, like a situation in which the alleged tortfeasor dies before suit is commenced and the injured party sues the estate in his place, the existing rule permits an insured to simply sue his UM carrier, rather than the uninsured driver, so long as the statute of limitations has not already run on the claim against the driver. The rule, therefore, requires only that the insured be as diligent in the enforcement of his policy rights as he must be in the enforcement of his rights against the alleged tortfeasor.

Where suit against the alleged tortfeasor was commenced before the liability carrier becomes insolvent, the insured has at least two options available. First, he may give his UM carrier notice of the pendency of the action against the uninsured motorist, permitting the insurer to intervene in the action to protect its interests or be bound by the verdict in that action. See, Kwong v. Depositors Insurance Company, 627 N.W.2d 52 (Minn. 2001), invalidating an “insurer-not-bound” clause in a UM policy and applying the policy concerns and procedures of Malmin v. Minn. Mut. Fire & Cas. Co., 552 N.W.2d 723 (Minn. 1996) to UM claims. If he wishes, the insured also may join his UM carrier as a defendant in the pending action. See, Minn. R. Civ. P. 19 and 20. Either approach more than adequately protects the insured’s interest in UM benefits without the need for adoption of a special rule for accrual of a cause of action for UM benefits under these circumstances.

The Oanes court changed the accrual date for underinsured motorist (UIM) claims but specifically declined to address the accrual date for UM claims. In fact, the Oanes court went out of its way to explain that there are reasons to leave the accrual date for

UM claims alone. See, 617 N.W.2d at 406, fn. 2. UM claims are contract claims that arise from tort. They are unique in that they substitute for insurance the tortfeasor should have had but didn't. In a UM case, the uninsured tortfeasor's "liability . . . is the underlying substantive issue." Weeks, 580 N.W.2d at 27. That liability attaches as soon as the accident happens.

UM coverage is mandatory coverage which balances the interests of insured and insurer. See, Minn. Stat. Sec. 65B.49; Subd. 3a. The UM insurer has a right of subrogation against all tortfeasors whose liability caused the insured's injury. See, Weber v. Sentry Ins. Co., 442 N.W.2d 164 (Minn. Ct. App. 1989); American Family policy at A-30 (Form U-5 at 5, para. 5.) The preservation of the UM insurer's subrogation rights is an essential component of the No-Fault insurance system. See, State Farm Ins. Co's v. Galajda, 316 N.W.2d 564 (Minn. 1982).

The statute of limitations on any tort claim against Ryan Olds is six years. See, Minn. Stat. 541.05 (5). Under existing law, Appellant was required to bring any claim against American Family for UM benefits within that time frame. He had ample opportunity to do so. He could have made such a claim against American Family as early as April 1, 2002, the effective date of the stay on all negotiations and litigation affecting Legion Insurance, the liability carrier for Ryan Olds. See, Gudvangen v. Austin Mut. Ins. Co., 284 N.W.2d 813, 815 (Minn. 1978), rehearing denied September 7, 1979, appeal dismissed by 444 U.S. 1062 (1980), holding that an automobile insured by an insurance company in receivership on the date of the accident giving rise to the claim was an uninsured motor vehicle because no plan of reparation security was then in effect.

But Appellant did not make the claim when he learned that Legion was in receivership. Instead, he waited for more than seven and one-half years after the accident, despite having had legal representations since at least the fall of 2001. He has offered no explanation for that delay and no reason why his delay should be rewarded by the modification of established law.

Preservation of a UM carrier's subrogation rights is one of the fundamental reasons for using the same accrual date and identical six-year limitation periods for the UM claim and the cause of action against the uninsured tortfeasor. Adopting a later date for accrual of the UM cause of action deprives the UM carrier of its right of subrogation whenever the UM claim is commenced, as in this case, after the time to sue the tortfeasor has expired.

Appellant has suggested, in oral argument before the Court of Appeals, that a UM carrier has no right of subrogation against a tortfeasor under these circumstances, citing Minn. Stat. 60C.09, Subd. 2. That is incorrect. The cited section does not bar subrogation claims against the tortfeasor. Such claims are expressly permitted "to the extent that the claim is outside of the coverage of the policy issued by the insolvent insurer[.]" Minn. Stat. § 60C.09, Subd. 2 (2). See, Goodyear Tire & Rubber Co. v. Dynamic Air, Inc., 702 N.W.2d 237 (Minn. 2005), holding that a party insured by an insolvent insurer may be liable for any portion of the claim in excess of the Minnesota Insurance Guaranty Association's maximum liability but not more than the liability limit of the insolvent insurer's policy. Moreover, the statute specifically permits a subrogation claim to be presented "to the insolvent insurer or its liquidator". Minn. Stat. §

60C.09, Subd. 2 (2). Finally, there is no evidence that Legion Insurance Company was an “insolvent insurer” as that term is defined by Minn. Stat. 60C.03, Subd. 8. The varying limitations imposed on subrogation rights by the Minnesota Insurance Guaranty Act are no basis for discounting or dismissing the importance of those rights which remain or the significance of their loss if Appellant’s proposed special rule were to be adopted.

Indefinitely extending the time for accrual of a UM cause of action exposes the insurer to a second threat: the loss of evidence. Unlike a UIM claim, a UM claim may be presented with little or no investigation having been undertaken by the insured or the alleged tortfeasor. Where an insurer faced with a UIM claim is likely to have access to evidence developed by the parties before settlement, or before judgment is entered, the UM carrier is not. Witnesses’ memories may have failed over the years. Medical records, and a variety of other documentary evidence may have been lost or destroyed before the claim ever is presented. Our legislature has determined, as a general principle, that 6 years is a reasonable period of time in which to bring an action for personal injuries. There is no reason that an insurer should be treated any differently, where it is called upon to stand in place of the tortfeasor and defend claims of liability and damages.

The problem posed by Appellant’s proposed special rule was anticipated by the court in Oanes, when it stated that **an accrual date that “postpone[s] operation of the statute of limitations indefinitely” must be avoided.** 617 N.W. 2d at 406. (Emphasis added.) Adopting the date on which the tortfeasor’s insurer becomes insolvent as the date for the accrual of a cause of action for UM benefits takes us precisely where this

court has said we must not go. Both the trial court and the Court of Appeals recognized and complied with this directive in their respective decisions. See, e.g., Trial Court Memorandum, A-87; Oganov v. American Family Insurance Group, 2008 WL 2020487, *2 (2008).

Appellant's contention that a cause of action should accrue only when an insurer becomes insolvent is facially appealing but riddled with unacknowledged problems. Not the least of these is "How many years after an accident may an insurer become insolvent and still give rise to a cause of action for uninsured motorist benefits?" Under Appellant's construction, there would be no limit. If an insurer became insolvent on the last day of the six year period in which to sue its insured, Appellant proposition would provide the injured party with an additional six-years to bring suit against his uninsured motorist carrier, depriving the carrier of the right to exercise its subrogation rights against the at-fault driver. Why even stop there? What if the liability insurer becomes insolvent in the 7th, 8th, or even 10th year after the accident – should the injured party then have the right to turn to its uninsured motorist carrier for coverage, even though his rights against the tortfeasor are long since expired?

Appellant had no viable answer to this question when it was posed by the trial court (see, T. 5, L. 20 – 8, L. 6.) and offered none before the Court of Appeals. He offers none now. See, Appellant's Brief, generally.

Appellant effectively conceded to the trial court that the accident date should be the accrual date for both a bodily injury cause of action and a UM cause of action when he admitted that an insolvency which occurred after the running of the six-year statute of

limitations would be meaningless because “the initial claim has been completely extinguished in the first place.” T. 8, L. 3-6. Apparently, then, he asks the Court to adopt a special rule under which a cause of action for UM benefits would accrue upon an insurer’s insolvency, if a liability carrier became insolvent at any time after an accident occurred but not more than six years after the accident. Under such a scheme, a UM carrier’s exposure on any given claim could extend for a period of at least twelve years after the accident giving rise to the claim, six years beyond the running of the statute of limitations on any claims against the tortfeasor.

We have statutes of limitations for valid reasons, reasons which are not to be tossed aside in order to find coverage for a man who had at least one and one-half years after the liability carrier became insolvent in which to act. The trial court expressly recognized this, writing that “To impose a six year statute of limitations following an indefinite repose period would frustrate the very purpose of the statute of limitations.” A-87.

Appellant had six years from the date of the accident to sue the allegedly at-fault vehicle owner. He chose to wait five and one-half years to do that, more than two years after a stay had been issued on claims affecting the liability insurer and more than one year after that insurer had been ordered liquidated. Appellant had ample opportunity to sue American Family during this period. The policy terms, the controlling law, and the facts necessary to bring the claim were all available to and known by him or his counsel years before the statute ran. He simply needed to act.

Instead, Appellant waited until well after the statute had run to do what he could have done in July, 2003: sue American Family for uninsured motorist benefits. He now asks the court to disregard controlling precedent, without resort to anything in the No Fault Act itself, solely to save him from the consequences of his own delay.

The principal authority offered by Appellant is Miklas v. Parrot, 684 N.W.2d 458 (Minn. 2004), which extended the six-year statute of limitations to UM claims.³ Below, he relied on a foreign decision, North Carolina Insurance Guaranty Assoc. v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364, 369 (1994).⁴ The North Carolina *statute* at issue in the latter case provided for a minimum period during which insolvency protection must be provided and permitted an insurer to offer broader protection. 446 S.E.2d at 366-67. The North Carolina appellate court determined that the State Farm policy provided broader protection than was required by the North Carolina statute, by virtue of the use of the phrase “is or becomes insolvent” in that policy. Because the policy did not limit the time in which an insurer might become insolvent, the court concluded that State Farm had agreed to furnish insolvency protection beyond the three year term required by North Carolina law. 446 S.E.2d at 367. Appellant correctly noted that the North Carolina court held that a cause of action for uninsured motorist benefits accrued when a liability insurer became insolvent, *under North Carolina law*. Appellant’s Brief Before the Court of Appeals at 8. But, as the Weeks court made clear, “Minnesota takes the minority position in concluding that a cause of action for UM * * *

³ The primary issue in Miklas was whether a claim for UM benefits brought on behalf of the heirs and next of kin of a decedent was subject to the three year statute of limitations governing wrongful death claims or the six year statute governing UM claims

⁴ See A-72.

benefits accrues on the accident date.” Weeks v. American Family Mut. Ins. Co., 580 N.W.2d 24, 27 (Minn. 1998).

Appellant has in the past relied heavily on decisions applying different accrual dates for different types of insurance coverages mandated by the Minnesota No-Fault Act. See, Appellant’s Brief Before the Court of Appeals at 4 – 12. Rather than acknowledge the different contexts in which those decisions issued, he focused on arguments such as the remedial nature of the Act. See, e.g., Appellant’s Brief at 13. But there are good, substantive reasons for the different accrual dates for these causes of action, reasons which Appellant ignores.

The Minnesota Supreme Court has developed an effective system for the preservation of an insurer’s subrogation rights in an underinsured (“UIM”) setting. See, e.g., Schmidt v. Clothier, 338 N.W.2d 256 (Minn. 1983), requiring that an insured entering into a settlement agreement with a tortfeasor, for whose negligence the insured will later seek UIM benefits, give written notice of the insured’s intent to settle and afford the UIM carrier 30 days in which to substitute its own funds for the proposed settlement. If the carrier substitutes its funds, its subrogation rights are preserved. If it chooses not to do so, its subrogation rights are waived. See, *id.* If the insured does not settle and obtains a judgment against the tortfeasor in excess of the available liability insurance limits, the UIM carrier is bound by and subrogated to the judgment against the tortfeasor. *Id.* Again, its subrogation right has been preserved.

No-fault personal injury protection benefits operate in a completely different realm than either UM or UIM benefits. Fault is not at issue and subrogation rights do not arise

in any but a few rare circumstances. See, e.g., Minn. Stat. § 65B.53, subd.1 through 3. The need to preserve an insurer's subrogation right simply does not exist except in these limited circumstances. Even then, claims for personal injury protection benefits typically arise at or shortly after the date of the accident. Insurers, therefore, typically have ample opportunity to assert their subrogation rights within the period of limitations.

A fourth type of insurance mandated by the No-Fault Act is bodily injury and property damage liability coverage. Although an injured party has no direct claim against a liability insurer under Minnesota law, unless and until a judgment has been obtained against its insured, the cause of action against its insured accrues on the date of the accident and is barred after the running of the six-year period of limitations, absent circumstances which would toll the running of the statute. The insurer, and its insured, have ample opportunity to protect their respective subrogation and contribution rights in any action brought against the insured within the period of limitations, by means of cross-claims or third-party claims.

The decisions cited by Appellant make one point exceedingly clear: **different circumstances and policy considerations warrant different dates of accrual of the various causes of action.** This court has determined that the date of settlement or judgment is the appropriate accrual date in the UIM context, that the date of denial of benefits is appropriate in disputes over payment of personal injury benefits, and that the date of the accident is the appropriate date for bodily injury and UM claims.

Under the existing system, an insured has six years from the date of an accident to bring suit against the tortfeasor or sue for UM benefits. All that is required of the insured

is that he determine during that time frame whether the alleged tortfeasor was insured or not and then bring timely suit against the appropriate party(ies). Where, as here, the liability insurer becomes insolvent, the insured has the remainder of the six year period of limitations in which to prosecute his claim for UM benefits. In this case, Appellant simply failed to meet this minimal requirement. His failure to do so is no basis for reversal of long-standing precedent, grounded in sound policy considerations.

CONCLUSION

The trial court's ruling on the accrual date of a cause of action for uninsured motorist benefits conforms to settled precedent. Appellant has offered no compelling basis for this court to substantially modify the law in this area. The rule he asks this court to adopt would effectively double an insurer's potential period of exposure on a UM claim, while simultaneously divesting it of its subrogation right, a right the Minnesota Supreme Court has protected in every other context.

In light of the above, Respondent respectfully requests that the trial court be affirmed in all respects.

OSKIE, HAMILTON & SOFIO, P.A.

Dated: October 21, 2008.



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STATE OF MINNESOTA
IN SUPREME COURT
CASE NO. A07-929

SERGAY OGANOV,

APPELLANT,

VS.

**CERTIFICATE OF BRIEF
LENGTH**

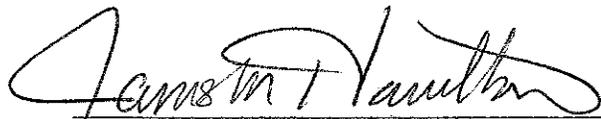
AMERICAN FAMILY INSURANCE GROUP,

RESPONDENT.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a Times New Roman font. The length of the brief is 5,286 words. I certify that the word processing program has been applied to specifically include all text, including headings, footnotes, and quotations. This brief was prepared using Microsoft Office Word.

OSKIE, HAMILTON & SOFIO, P.A.

Dated: October 21, 2008.



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