

NO. A08-1320

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State of Minnesota  
**In Court of Appeals**

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James Stroop,

*Respondent,*

v.

Farmers Insurance Exchange a/k/a  
Illinois Farmers Insurance Company,

*Appellant.*

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**BRIEF OF APPELLANT  
ILLINOIS FARMERS INSURANCE COMPANY**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE CASE

Plaintiff-Respondent, James Stroop (hereinafter - "Respondent") was involved in a motor vehicle accident on February 13, 1996. On April 12, 2007, Defendant-Appellant, Illinois Farmers Insurance Company (hereinafter - "Appellant") was served with a Summons and Complaint from Respondent (A, 1)<sup>1</sup> who sought underinsured motorist (UIM) benefits stemming from the motor vehicle accident.

In its Answer, Appellant alleged that Respondent's UIM claim was barred by the applicable Statute of Limitations (A, 5).

Appellant commenced a Motion for Summary Judgment with the trial court on December 12, 2007 requesting dismissal of the matter (A, 10).

Appellant contended that the Summons and Complaint was served over six (6) years after the underlying case had been settled, thus precluding Respondent's UIM claim (A, 11).

Respondent argued that the applicable date for the underlying settlement was the date that Respondent signed

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<sup>1</sup> "A" refers to Appellant's Appendix

the release and therefore the Summons and Complaint was served within the applicable Statute of Limitations (A, 21).

On January 31, 2008, the trial court denied Appellant's Motion for Summary Judgment (A, 34). The court stated in its Memorandum of Law:

...having found no case law on point, and having considered the issue and memorandum of law submitted by counsel carefully, agrees with the Plaintiff and determines that the triggering date (in this matter) for statute of limitations purposes was when Plaintiff signed the release on April 17, 2001. (A, 35)

Appellant and Respondent entered into a Stipulation of Entry of Judgment which preserved Appellant's right to appeal the issue of the Statute of Limitations in this matter. On June 17, 2007, the trial court entered Judgment based upon the parties' Stipulation (A, 36).

Appellant seeks reversal on Appeal of the trial court's denial of Summary Judgment based upon the applicable Statute of Limitations.

#### **STATEMENT OF THE FACTS**

On February 13, 1996, Respondent, James Stroop was involved in a motor vehicle accident with Joel Letourneau.

Some time prior to March 2001, Mr. Stroop brought a personal injury action against Mr. Letourneau.

On or just prior to March 19, 2001, Mr. Stroop accepted an offer from State Farm Insurance Company (Mr. Letourneau's automobile insurer) to settle his personal injury case against Mr. Letourneau. The settlement was for the full liability policy limits of \$50,000 (A, 38).

On March 19, 2001, pursuant to Schmidt v. Clothier, 338 N.W.2d 256 (Minn. 1983), counsel for Mr. Stroop provided notice of the pending settlement to Illinois Farmers Insurance Company and informed them of their right, as the underinsured motorist insurer, to substitute its draft and preserve its subrogation right against Mr. Letourneau (A, 38).

On March 30, 2001, Appellant, Illinois Farmers Insurance Company, sent a reply to counsel for Mr. Stroop declining to substitute its draft. This correspondence was received by counsel's office on April 2, 2001 (A, 40).

A Release was signed by Mr. Stroop on April 17, 2001 concerning his claims against Mr. Letourneau (A, 41).

Mr. Stroop, through his counsel, drafted a Summons and Complaint against Illinois Farmers Insurance Company, dated April 12, 2007, seeking underinsured motorist benefits concerning the February 13, 1996 motor vehicle accident (A, 3). The Complaint was received by Illinois Farmers Insurance Company on April 16, 2007 via certified mail along with a cover letter indicating that the Commissioner of Commerce had been served in accordance with the date on the Complaint (A, 42).

#### ISSUE

- I. Did the trial court err in denying Appellant's Motion for Summary Judgment when it determined that the triggering date for statute of limitations purposes in a UIM action is the date the Release is signed by the Plaintiff in the underlying action against the tortfeasor?

#### ARGUMENT

##### I. Standard of Review

When it reviews a summary judgment, the appellate court asks "two questions: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law." State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). When questions of

law are raised, the appellate court may properly conduct an independent review. See generally, Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476, 483 (Minn. 1985).

**II. The Settlement of Respondent's Liability Action against Mr. Letourneau occurred when Appellant notified Respondent that it would not Substitute the Check Pursuant to Schmidt v. Clothier.**

**A. Statute of Limitations in UIM Cases**

A claim for underinsured motorist ("UIM") benefits through a policy of insurance is contractual in nature.

Minn.Stat. § 541.05, subd. 1 states:

Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within 6 years:

- (1) Upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed...
- (10) For assault...or other tort, resulting in personal injury...

The Supreme Court in Oanes v. Allstate Insurance Company, 617 N.W.2d 401 (Minn. 2000), ruled specifically on the Statute of Limitations with respect to claims for UIM benefits. The Court stated:

[W]e conclude that the better rule is that UIM claims accrue and the statute of limitations begins to run when the UIM claim becomes ripe by settlement or adjudication of the claim against the tortfeasor.

*Id.* at 402 (emphasis added).

**B. Settlements are Contractual in Nature**

The settlement of a lawsuit is contractual in nature, requiring offer and acceptance for its formation, and is subject to all of the other rules of interpretation and enforcement. Theis v. Theis, 135 N.W.2d 740, 744 (Minn. 1965). Thus basic rules of contract apply to a settlement.

In terms of a contract, a "condition precedent" is "any fact or event, subsequent to the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract." National City Bank v. St. Paul Fire & Marine Ins. Co., 447 N.W.2d 171, 176 (Minn. 1989). "'[I]f the [fact or] event required by the condition [precedent] does not occur, there can be no breach of contract.'" *Id.* If on the other hand the condition precedent is met or satisfied, a binding, specifically enforceable contract is made. See Rognrud v. Zubert, 165 N.W.2d 244 (Minn. 1969).

In Minnesota, settlements concerning automobile personal injury lawsuits are further governed by Schmidt v. Clothier, 338 N.W.2d 256 (Minn. 1983). The Supreme Court in Schmidt

sought to protect the UIM insurer's right of subrogation against the tortfeasor by mandating that they be placed on notice of the settlement and given the opportunity to substitute its check within 30 days of the notice. The insurer can "cut short that 30-day notice requirement" by informing the party that it does not wish to substitute its check. See Auto-Owners v. George, et. al., A06-2133, (Minn. July 31, 2008).

In the present case, Respondent states in his March 19, 2001 Schmidt letter to Appellant that he has accepted State Farm's offer to settle the claims against Mr. Letourneau for \$50,000 (A, 38). That settlement, by law, was contingent upon the non-substitution of the check by Illinois Farmers Insurance Company. See Schmidt. Non-substitution by Farmers was a "condition precedent" to the settlement contract between Respondent and Mr. Letourneau's insurer.

On March 30, 2001, Appellant notified Respondent that it would not substitute its check. The date stamp on the letter shows that Respondent's counsel received the letter on April 2, 2001 (A, 40). At that point, the "condition

precedent'' was satisfied, thereby creating a binding settlement contract between Respondent and Mr. Letourneau's insurer.

The ''settlement'' date, and thus the triggering date for the Statute of Limitations in the UIM action, was on April 2, 2001 when Respondent received notice that Appellant would not be substituting its draft. The condition precedent was satisfied and a binding and enforceable contract was created between the parties.

**III. Respondent Recovered from the Liability Insurer when he Settled his Action Against the Tortfeasor**

Respondent relies upon the language in Employers Mutual Companies v. Nordstrom, 495 N.W.2d 855 (Minn. 1993) which indicates that the claimant must ''recover first from the tortfeasor's liability insurance before proceeding to arbitrate an underinsured benefits claim.'' *Id.* at 858. Respondent erroneously leaps to the conclusion that ''recovery'' means that money has been paid to the Plaintiff or that a ''condition of recovery'' is the signing of a Release.

The Oanes Court stated that "[a]dopting the date of settlement or judgment as the accrual date protects the interest of both the insured and the insurer". See Oanes at 407. While the Supreme Court in Oanes discussed the language it used in Nordstrom, it clearly chose not to use the term "recovery" in formulating its Rule. The Court did not declare that a Release must be signed or that payment by a tortfeasor's insurer is a prerequisite to the UIM case accruing. The Court simply indicated that a "settlement" must occur.

Even if the Court requires "recovery" as opposed to a "settlement", Respondent's recovery was when he entered into the contract with Mr. Letourneau's insurer by way of settlement. Once the settlement contract was created, it was enforceable with the court and either party to the contract could demand specific performance. The enforceable settlement contract provided Respondent with a right of recovery. To hold otherwise would contradict the basic principles contract law. In the case at hand, if we adopt Respondent's position, a settlement contract would

not occur until a Release is signed and money had changed hands.

The counter-part to the "settlement" accrual date under Oanes is the "judgment" accrual date. The entry of judgment following a trial provides plaintiff with a right of recovery. The date of a judgment is not when money changes hands. The Oanes Court did not indicate that UIM claims accrue when a judgment is satisfied.

Prior to Oanes, the Supreme Court clarified the Nordstrom Court's use of the term "recover" by stating:

*Nordstrom* merely clarified that the insured must first recover from the tortfeasor's insurance by either pursuing the tort claim to conclusion in a district court action or by reaching a settlement in accordance with the procedures set forth in *Schmidt v. Clothier...*" (emphasis added)

Washington v. Milbank Insurance Company, 562 N.W.2d 801, 806 (Minn. 1997).

Most recently in July 2008, the Minnesota Supreme Court clarified even further the issue of settlement in a UIM matter. In Auto-Owners v. George, et. al., A06-2133, (Minn. July 31, 2008), the Court ruled that an unorthodox arbitration award in an underlying tort case was the

equivalent to a settlement and was subject to the Schmidt v. Clothier notice requirements. The award was the equivalent of a "best settlement". The Court did not indicate that the payment or satisfaction of the arbitration award was the operable date. The Court indicated that it was the award itself that was the "settlement".

In this case, Respondent obtained a right of recovery as soon as he was notified that Appellant was not going to substitute its draft on April 2, 2001. This created an enforceable contract between Respondent and Mr. Letourneau's insurer. The Statute of Limitations began to run as of that date.

**IV. The Trial Court's Decision is Inconsistent with the Legislative Purpose of the Statute of Limitations.**

The general purpose of a Statute of Limitations is to "prescribe a period within which a right may be enforced, afterwards withholding a remedy for reasons of private justice and public policy...". Bachertz v. Hayes-Lucas Lumber Co., 275 N.W. 694, 697 (Minn. 1937) (quoting 4 Dunnell, Minn.Dig. § 5586 (2d Ed. & Supp. 1932)).

Furthermore, its purpose is the repose of the defendant and the fair and effective administration of justice. Dalton v. Dow Chemical Co., et. al., 158 N.W.2d 580, 584 (Minn. 1968).

In essence, the legislature, by adopting a Statute of Limitations, sought to protect defendants against unreasonable delays by the Plaintiff where facts and evidence can be lost or forgotten due to the delay. See Bachertz at 697. "'[I]t would be inequitable for him to assert such claim after an unreasonable lapse of time, during which such other has been permitted to rest in the belief that no such claim existed.'" *Id.*

The Court in Oanes stated that their decision is "consonant with our concern...that the claimant not be enabled to forestall commencement of the limitations period indefinitely by failing to assert the UIM claim." See Oanes at 407.

In this case, the trial court, having found no case law to support its position, concluded that the triggering date of the Statute of Limitations in a UIM case was when the plaintiff signs the Release in the underlying claim (A, 35).

This conclusion, however, does not afford the Appellant the protection the Statute of Limitations purports to provide. The signing of a Release is completely within the control of the plaintiff. He/she can choose to sign it immediately, with significant delay or never. There may even be situations where no Release is even provided to the plaintiff to sign. To allow a plaintiff the sole ability to control when the Statute of Limitation begins to run provides no more protection to the defendant than if there was no Statute of Limitations at all.

Indeed there is no requirement under Minnesota Law that Plaintiff sign a Release after settlement or that a signed Release be provided to the UIM carrier. The only legal requirement under the law is that a Schmidt v. Clothier notice must be sent. As this is the only notice the UIM defendant has of the potential for a UIM claim, they will have no way of knowing if and/or when a Release is ever signed and will thus have no idea when the Statute of Limitations begins to run.

By adopting Respondent's position and the conclusion of the trial court, no protection is afforded the defendant UIM

insurer of the potential for unreasonable delays. In fact, there is the potential that if a Release is never signed, the Statute of Limitations would never start to run.

The arbitrary conclusion that the trial court made in this case, ruling that the triggering date for the Statute of Limitations in a UIM case is the date the plaintiff signs the Release in the underlying case, is erroneous and is not consistent with the legislative purpose of the Statute of Limitations.

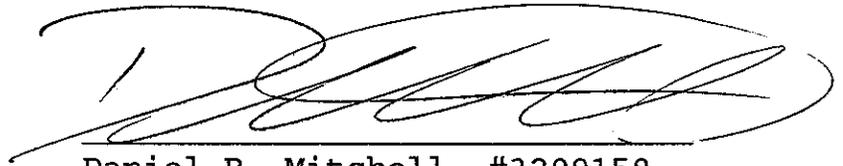
#### CONCLUSION

The trial court erred as a matter of law by ruling that the triggering date for the Statute of Limitations in a UIM action is when the Release is signed by the plaintiff. The accrual date for a UIM action and thus the commencement of the Statute of Limitations is the date of "settlement" of the underlying liability action. As Respondent initiated the present UIM action against Appellant over 6 years after his underlying claim against the tortfeasor was settled, Respondent's claims against Appellant are barred by the Statute of Limitations.

Appellant respectfully requests that the trial court's denial of Summary Judgment in this matter, based on the Statute of Limitations, be reversed and remanded to the trial court with instructions to grant Summary Judgment and dismissal in favor of Appellant.

Respectfully Submitted,

VOTEL, MCEACHRON & GODFREY

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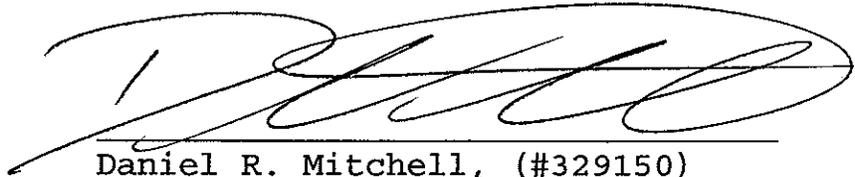
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**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01 subds. 1 and 3. This brief was prepared using Microsoft Word 2000 in a Courier 13 point font. The length of this brief is 2,512 words.

Dated: September 15, 2008

**VOTEL, MCEACHRON & GODFREY**

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