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# Recent Developments: Lane v. Nationwide Mut. Ins. Co.: Statute of Limitations Does Not Begin to Run on an Insured Motorist's Contract Claim until Insurer Denies Coverage

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Jud. Proc. Code Ann. §§ 10-302 through 10-309 (1989) outline the proper procedures for administering the Breathalyzer test and attempt to resolve questions as to its admissibility. *Id.* at 1103-05. In 1986, the legislature amended section 10-309(a) to permit the introduction of a refusal to take the Breathalyzer test into evidence at trial, but left unchanged that portion of the statute which stated that a jury could make no inferences or presumptions from that evidence concerning guilt or innocence. *Id.* at 1106-07. The court of appeals interpreted the language of section 10-309 to mean that evidence of a refusal to submit to a Breathalyzer test could only be applied to collateral matters that were not material or relevant to the defendant's guilt or innocence, such as whether the test was properly administered. *Id.* at 1107.

The court of appeals noted that Krauss clearly stated at trial that he would not question whether he was properly given the opportunity to take the Breathalyzer test. *Id.* at 1107. Thus, the court found, "there was no collateral matter in question, and there appeared no sound reason for the State to introduce evidence of the refusal except to influence the jury toward a verdict of guilty." *Id.* at 1107-08.

The court of appeals rejected the state's argument that the admission of the Breathalyzer test was harmless error. *Id.* at 1108. Although the facts showed some evidence that put Krauss's sobriety into doubt, there was also conflicting evidence showing that Krauss had sustained a head injury. *Id.* The court stated that it was the jury's function to weigh the evidence. *Id.* at 1108. The court could not conclude beyond a reasonable doubt that the error in admitting the Breathalyzer

test in no way influenced the jury's verdict. *Id.* (applying *Dorsey v. State*, 350 A.2d 665, 679 (Md. 1976)). Finally, the court ruled that the trial judge's brief jury instructions did not overcome the prejudicial effect of admitting into evidence Krauss's refusal to take the Breathalyzer test. *Id.*

Judge McAuliffe led the dissent by arguing that section 10-309 was properly drafted to avoid misapprehension and speculation on the part of jurors. *Id.* at 1109. The dissent suggested that the legislature wrote section 10-309 to give the state an opportunity to dispel any mistaken belief among the jurors that the defendant had no right to refuse or was not given the opportunity to take the Breathalyzer test. The dissent therefore believed that admitting the defendant's refusal to take the test would merely place the state on "a level playing field." *Id.*

According to the decision in *Krauss*, the state will no longer be able to admit evidence that a drunk driver refused to take a Breathalyzer test, unless the driver first calls into question the method by which the test was administered. Only in cases where the defendant claims the police officer did not offer him the test or it was improperly performed could the evidence of his refusal then be admitted. The holding in *Krauss* severely curtails the state's ability to offer evidence that the defendant refused a Breathalyzer test. Unless the legislature decides to amend the statute, the state has lost an important piece of trial evidence, tipping the balance in favor of the defendant, and, thereby resulting in fewer drunk driving convictions.

- Karl Phillips

***Lane v. Nationwide Mut. Ins. Co.: STATUTE OF LIMITATIONS DOES NOT BEGIN TO RUN ON AN INSURED MOTORIST'S CONTRACT CLAIM UNTIL INSURER DENIES COVERAGE.***

In *Lane v. Nationwide Mut. Ins. Co.*, 582 A.2d 501 (Md. 1990), the Court of Appeals of Maryland found that in a breach of contract action by an insured motorist against his insurance carrier, the three-year statute of limitations began to run when the contract was actually breached by the insurance company when it denied coverage under the policy. The holding rejected the view espoused by the court of special appeals in *Yingling v. Phillips*, 501 A.2d 87 (Md. Ct. Spec. App. 1985), that an insured's breach of contract action accrued when the insured motorist first discovered that the tortfeasor was uninsured.

Mr. and Mrs. William Lane were involved in an auto accident when a vehicle driven by Guy Callaway tried to pass them on the left-hand side of the road. As Callaway attempted to pass the Lanes, an oncoming vehicle, driven by Joseph Warren and owned by Michael McKenna, forced Callaway off the road and hit the Lanes' vehicle. The Lanes sustained permanent injuries from the collision. At the time of the accident, the Lanes had an automobile liability insurance policy with Nationwide Mutual Insurance Co. (Nationwide). Nationwide was informed of the collision shortly after it occurred.

In December of 1982, the Lanes filed a tort action against Callaway, Warren and McKenna, and notified Nationwide of the pending suit. Prior to the filing of the tort action, the Lanes discovered that neither Warren nor McKenna had automobile insurance. The Lanes' attorney sent

copies of the tort complaint to Nationwide, along with a letter duly notifying Nationwide that McKenna and Warren were uninsured motorists. Nationwide chose not to intervene in the suit.

The tort action was still pending as of April 1986, when the Lanes filed suit against Nationwide for breach of contract. The suit alleged that Nationwide breached its contract by failing to pay for the Lanes' injuries pursuant to the uninsured motorist provisions of the automobile liability insurance policy. Nationwide responded by filing a motion for summary judgment, alleging that the suit was barred by the three-year statute of limitations. Nationwide asserted that limitations began to run upon the Lanes' discovery that Warren and McKenna were uninsured.

The circuit court agreed with Nationwide. The court of special appeals affirmed the decision, and further held that the statute of limitations began to run when Warren and McKenna's status as uninsured motorists was ascertained, regardless of the fact that the tort suit was still pending when the contract suit was filed. Thereafter, the Court of Appeals of Maryland granted certiorari to resolve the issue of when the statute of limitations began to run against the insurance carrier regarding its obligation to pay benefits in uninsured motorist actions.

The court of appeals first looked to Maryland's Insurance Code. The Code stated, in part, that all insurance policies for motor vehicles "issued, sold, or delivered in this State . . . shall contain coverage . . . for damages which the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained arising out of the ownership, maintenance, or use of such

uninsured motor vehicle." *Lane*, 582 A.2d at 502-03 n.2 (quoting Md. Ann. Code art. 48A, § 541 (1986 & Supp. 1990)). The court stated that public policy required insurance carriers to include uninsured motorist provisions in their policies so that "innocent victims . . . who are unable to recover from financially irresponsible uninsured motorists" would be compensated. *Lane*, 582 A.2d at 503 (citations omitted).

The court of appeals noted that the lower appellate court had relied primarily upon its prior decision in *Yingling v. Phillips*, 501 A.2d 87 (Md. Ct. Spec. App. 1985), where it held that the insured's cause of action for recovery of uninsured motorist benefits accrued once the insured discovered the tortfeasor was uninsured. *Lane*, 582 A.2d at 503-04 (citing *Yingling*, 501 A.2d at 90). Consequently, the court of special appeals found that the statute of limitations began to run at the same time. *Id.*

When the court of special appeals erroneously asserted that the statute of limitations began to run upon the discovery that the tortfeasors were uninsured, it essentially found that limitations began to run in the contract action before the contract was actually breached by Nationwide. *Id.* 582 A.2d at 503. The court of appeals rejected this conclusion because it was at odds with general contract principles and prior decisions. *Id.* (citing *Reese v. State Farm Mut. Auto. Ins.*, 403 A.2d 1229, 1232 (Md. 1979)).

The *Reese* court construed Maryland's uninsured motorist statute as providing that the insured party had the option of deciding whether to bring a tort or a contract action with regard to uninsured motorist compensation. *Lane*, 582 A.2d at 505. Therefore, if the in-

sured decided to first pursue an independent tort action against the uninsured tortfeasor, he was not seeking compensation under the insurance policy. In choosing not to initially file an action in contract against his own insurer, there was no contract suit, and thus no breach of contract. *Id.*

The court of appeals noted that previous actions by insured motorists against their insurers for uninsured motorist benefits have been held to be contract actions. Thus, general contract principles and procedures governed. *Id.* at 503. The court found that an insured motorist had two options when bringing a suit: the insured could bring a contract action against his own insurance company initially, or he could bring a tort action directly against the uninsured tortfeasor and then pursue a contract action against the uninsured motorist carrier. *Id.* at 503.

Thus, the insured motorist was not required to request compensation for his loss under his insurance policy; rather, he had the option of first bringing a tort action. *Id.* at 505. Therefore, the court of appeals emphasized that the statute of limitations could not begin to run in a contract action until compensation was requested and subsequently denied by the insurance carrier. *Id.* In such a situation, the insurer is protected via notification of the tort action, thus giving it a chance to intervene to protect its own interests. *Id.* at 505. If it were indeed found that the statute of limitations started to run upon the discovery that the tortfeasor was uninsured, then "the insured's statutory option of first bringing a tort suit against the uninsured motorist, and thereafter making a claim under his uninsured motorist endorsement, [would] be frustrated." *Id.* at 506.

Accordingly, in *Lane v. Nationwide Mut. Ins. Co.*, the Court of Appeals of Maryland expressly overruled *Yingling v. Phillips*, and held that when the insured party seeks to recover benefits from his automobile liability insurance carrier (even if he has already timely exercised his option to try to recover damages in tort, having notified the insurer of such an intent), the suit against the insurer was governed by traditional contract principles. As such, the three-year statute of limitations did not begin to run against the insured until the insurer breached the contract by denying coverage of the claim. Such a holding enables an insured motorist to wait until the carrier actually denies coverage before filing a contract suit. By placing the burden on the insurance carrier to make an affirmative denial, the insured no longer takes the risk that limitations might run merely because he or she was aware the other motorist was uninsured.

- Jennifer K. Etheridge

***Minnick v. Mississippi*: RIGHT TO COUNSEL DURING CUSTODIAL INTERROGATION BARS POLICE INITIATED DISCUSSIONS UNLESS COUNSEL IS PRESENT.**

In *Minnick v. Mississippi*, 111 S. Ct. 486 (1990), the United States Supreme Court reversed the Mississippi Supreme Court when it ruled that when a defendant in custody has requested counsel, officials may not reinstate interrogation without counsel present. This holds true even if the accused has consulted with his attorney since making the request.

Robert Minnick was arrested in 1986 in California on a Mississippi warrant for capital murder. The next day, two FBI agents re-read him his *Miranda* rights. Although

he acknowledged that he understood them, Minnick refused to sign a waiver of rights form. He agreed to continue the interview but said he would not answer "very many" questions. *Id.* at 488. He then proceeded to answer a number of questions concerning his escape from a Mississippi jail and his subsequent flight. He concluded the interview by saying, "[c]ome back Monday when I have a lawyer," and that he would make a more complete statement at that time. *Id.* at 488. By Monday, the accused had spoken with his lawyer two or three times and been told in no uncertain terms "to talk to nobody." *Id.* at 493.

On Monday morning, a deputy sheriff from Mississippi came to the California jail in order to question Minnick. Having been told by his jailers that he would "have to talk" to the deputy and that he "could not refuse," Minnick proceeded to confess his part in several murders committed following his escape. *Id.* at 488-89. Minnick confessed that he and fellow prisoner, James Dyess, broke into the victim's mobile home after escaping from a county jail in Mississippi. When the victim returned home, he was killed by Dyess. Minnick was then handed a pistol and ordered at gunpoint to shoot the victim's friend. He did.

The motion to suppress these statements, as given to the Mississippi deputy, was denied. Minnick was convicted on two counts of capital murder and sentenced to death. On appeal, the Supreme Court of Mississippi upheld the trial court ruling that the defendant's Fifth Amendment right to counsel had been satisfied. The United States Supreme Court granted certiorari to examine whether the defendant's Fifth Amendment right to counsel had been terminated or merely suspended by his previous consulta-

tions with counsel.

Justice Kennedy began the analysis by examining the language of *Miranda v. Arizona*, 384 U.S. 436 (1966), where the Court held that police must terminate their interrogation of an accused in custody when the accused requests counsel. At that point, "the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning." *Minnick*, 111 S. Ct. at 489 (quoting *Miranda*, 384 U.S. at 474). Turning to *Edwards v. Arizona*, 451 U.S. 477 (1981), the Court determined that having requested an attorney, an accused "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Id.* at 490 (citing *Edwards*, 451 U.S. at 484-85). This legal precedent left open the possibility of a defendant impliedly asking for counsel at each and every new custodial interrogation. The issue posed in *Minnick*, therefore, was whether the *Edwards'* requirement of counsel at custodial interrogations was satisfied after the suspect had consulted with an attorney.

In support of allowing uncounseled confessions, the Supreme Court of Mississippi had rested its holding on the theory that the Fifth Amendment requirement dissipated once the accused met with counsel and could only be reinstated by another request for counsel. *Minnick*, 111 S. Ct. at 490. The Supreme Court, however, refused to follow this proposition for three reasons. First, a holding that allowed the Fifth Amendment right to