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RECENT DEVELOPMENT

NATIONWIDE MUT. INS. CO. V. SHILLING: A BREACH OF CONTRACT OCCURS IN AN UNDERINSURED OR UNINSURED MOTORIST CLAIM WHEN AN INSURER DENIES AN INSURED'S REQUEST OF BENEFITS UNDER THE COVERAGE, TRIGGERING THE STATUTE OF LIMITATIONS PERIOD.

By: Markisha Dobson

The Court of Appeals of Maryland held that an injured party's underinsured motorist claim against their insurance company will not be time-barred if the insurer fails to deny the insured's claim for recovery benefits. *Nationwide Mut. Ins. Co. v. Shilling*, 468 Md. 239, 260-61, 227 A.3d 171, 183 (2020). The court elaborated that underinsured and uninsured motorist claims must be viewed as contract law actions. *Id.* at 259-60, 227 A.3d at 183. Thus, when the insurer denies an insured's claim for benefits in an underinsured and uninsured motorist claim, the contract is breached and the statute of limitations begins to run. *Id.* at 248, 227 A.3d at 176. Therefore, courts must turn to contract law to determine when the statute of limitations begins to run for underinsured and uninsured motorist claims. *Id.* at 259-60, 227 A.2d at 183.

On April 19, 2011, Margaret Shilling ("Shilling") was involved in a car accident in Odenton, Maryland with Barbara Gates ("Gates"), who was underinsured and at fault. Shilling was injured following the accident and required extensive medical treatment over three years. Gates' liability coverage with Agency Insurance Company ("Agency") was for \$20,000 which did not cover the total amount of Shilling's damages. Shilling was insured by Nationwide Mutual Insurance Company ("Nationwide"), which provided up to \$300,000 per person in bodily injury compensation. Shilling's insurance coverage included protection from paying for damages when a tortfeasor was uninsured or underinsured. Shilling and Agency reached a settlement agreement in which Shilling received \$20,000. After Nationwide and Shilling agreed to release all claims against Gates, Shilling continued to seek relief for unpaid medical bills from Nationwide. On January 26, 2015, Shilling sent a demand letter to Nationwide for the underinsured motorist benefits from her insurance policy. Nationwide confirmed receipt of the demand letter and reached out to Shilling's attorney four different times, but never denied Shilling's claim for underinsured benefits.

On September 23, 2016, Shilling filed an action against Nationwide in the Circuit Court for Anne Arundel County for unpaid damages not covered under Gates' insurance policy. Nationwide filed a motion to dismiss Shilling's claim alleging that the three-year statute of limitations period had

expired. Ultimately, the Circuit Court for Anne Arundel County granted Nationwide's motion to dismiss because it determined that the statute of limitations began to run on April 23, 2013 which was the settlement date with Agency. Next, Shilling filed an appeal to the Court of Special Appeals of Maryland. Before trial, the Court of Special Appeals granted the parties' motion to stay an appeal, thereby remanding the case back to the circuit court. The Circuit Court for Anne Arundel County, upon remand, held again that Shilling's claim was time-barred as the statute of limitations began to run on April 23, 2013, when the Agency policy was exhausted. Shilling then filed several motions which the Court of Special Appeals of Maryland granted to determine the accuracy of the circuit court's decision in this matter.

The Court of Special Appeals of Maryland reversed the circuit court's decision. The court held that her claim was not time-barred because the earliest possible date that the statute of limitations period could have started was February 3, 2014, which was the date that Shilling executed the release. Nationwide petitioned the Court of Appeals of Maryland for a writ of certiorari, which was granted.

Nationwide asked the court to determine when the statute of limitations started in cases that concern underinsured motorist benefits. *Nationwide*, 468 Md. at 247-48, 227 A.3d at 176. The Court of Appeals of Maryland examined the statute of limitations provision the Maryland Code and reviewed two Maryland cases that analyzed the statute of limitations in uninsured and underinsured motorist claims. *Id.* at 255, 227 A.3d at 180.

First, the Court of Appeals of Maryland applied the statute of limitations provision in civil cases to uninsured and underinsured motorist cases. *Nationwide*, 468 Md. at 259, 227 A.3d at 182. The provision states, "[a] civil action at law shall be filed within three years from the date it accrues." *Nationwide*, 468 Md. at 259, 227 A.3d 182 (quoting Md. Code Ann., Cts. & Jud. Proc. § 5-101 (West 2014)). Then the court reviewed two cases: *Lane* and *Pfeifer*. In *Lane v. Nationwide Mut. Ins. Co.*, the court held that an insured's actions against an insurer will be ruled by contract law principles. *Nationwide*, 468 Md. at 260, 227 A.3d at 183 (citing *Lane v. Nationwide Mut. Ins. Co.*, 321 Md. 165, 170, 582 A.2d 501, 503 (1990)). In contract law, the statute of limitations starts whenever the terms of the contract are breached. *Nationwide*, 468 Md. at 260, 227 A.3d at 183. Therefore, if the insurer does not deny insured's benefits claim, then the statute of limitations does not begin to run. *Nationwide*, 468 Md. at 257, 227 A.3d at 181 (citing *Lane*, 321 Md. at 176-77, 582 A.2d at 506-07).

On the other hand, in *Pfeifer*, the court held that the statute of limitations period did not begin until the exhaustion date of the tortfeasor's coverage occurred. *Nationwide*, 468 Md. at 259, 227 A.3d at 182 (citing *Pfeifer v. Phoenix Ins. Co.*, 189 Md. App. 675 at 694-95, 985 A.2d 581 at 593 (2010)). The Court of Appeals of Maryland overruled *Pfeifer* because it inaccurately

held that the statute of limitations period began to run prior to an insurer's denial of paying out the requested benefits to an insured. *Nationwide*, 468 Md. at 264, 227 A.3d at 185.

Therefore, the statute of limitations in underinsured motorist claims starts when an insurer denies an insured's request because this action breaches the insurance agreement. *Nationwide*, 468 Md. at 248, 227 A.3d at 176. As a result, when Shilling demanded recovery of the underinsured motorist benefits from Nationwide, the statute of limitations period never started since Nationwide failed to formally deny Shilling's claim of benefits. *Id.* at 261, 227 A.3d at 184.

The Court of Appeals of Maryland affirmed the decision of the Court of Special Appeals of Maryland ruling that Shilling's claim was not time-barred. *Nationwide*, 468 Md. at 247, 227 A.3d at 175. Although the Court of Special Appeals of Maryland stated that "the earliest date for commencing contract limitations [was] February 3, 2014," the Court of Appeals of Maryland disagreed. *Nationwide*, 468 Md. at 247, 227 A.3d at 175 (quoting *Shilling v. Nationwide Ins. Co.*, 241 Md. App. 261, 274-75, 209 A.3d 802, 811 (2019)). The Court of Appeals of Maryland held that there could not have been a definitive date set for the statute of limitations period to begin since Nationwide never actually denied Shilling's demand to recover underinsured motorist benefits. *Nationwide*, 468 Md. at 247, 227 A.3d at 176. Therefore, Shilling was able to pursue a claim against Nationwide in unpaid damages outside of Agency's coverage in the car accident. *Id.* at 261, 227 A.3d at 184.

In *Nationwide v. Shilling*, the Court of Appeals of Maryland concluded that if an insured files a claim against their insurance company pursuing recovery of underinsured or uninsured motorist claims, then that action is not time-barred if the insurance company fails to deny the claim. This holding ensures that the insured will not be taken advantage of by insurance companies, if the companies breach their contractual obligations within the insurance agreements. Although the insured has the opportunity to seek unpaid benefits from their insurers in such motorist claims, the insured is on notice that the statute of limitations period can potentially impact their chance to receive coverage if those benefits are not timely sought after their insurers deny their benefits. Alternatively, this also puts the insurance companies on alert when dealing with uninsured and underinsured claims. Insurance companies are also on notice that the statute of limitations begins when they deny a claim for benefits.