
HUIE

Significant Alabama Insurance Law Decisions

2018 YEAR IN REVIEW

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UIM Subrogation Claim Does Not Survive the Death of the Insured Where No Claim Was Filed Against the Tortfeasor Before the Insured's Death

GEICO General Insurance Company v. Curtis, 2018 Ala. Civ. App. LEXIS 188*

On February 2, 2016, GEICO's insured was injured in an automobile accident. The striking driver was Curtis. In 2017, GEICO's insured notified it that Curtis' insurer, Allstate Insurance Company, offered to settle her claim for Curtis' policy limits of $25,000. Pursuant to the procedure set out in *Lambert v. State Farm Mutual Automobile Insurance Co.*, 576 So.2d 160 (Ala. 1991), GEICO retained its subrogation rights and advanced its insured $25,000. Subsequently, GEICO's insured died in September 2017.

On February 5, 2018, GEICO sued Curtis seeking reimbursement of the $25,000 which had been advanced. Curtis filed a Motion to Dismiss which was granted though the trial court expressly stated that the reason for dismissal was that GEICO's complaint was filed outside the applicable two-year statue of limitations. GEICO filed a post-judgment motion in which it maintained that because February 4, 2018, which was two years after the date of the collision, fell on a Sunday its complaint was timely filed on February 5, 2018.

The Alabama Court of Civil Appeals affirmed the dismissal. However, in doing so, it agreed with GEICO that the complaint had been timely filed and, therefore, rejected the trial court's opinion that electronic court filing repealed prior statutory law providing that when a deadline falls on a Sunday or legal holiday the next working day shall be counted as the last day within which the act may be accomplished. In affirming the judgment, the Court determined that GEICO's subrogation claim was not a contract claim and GEICO's rights were only those that its insured would have had. Therefore, GEICO's insured's unfiled tort claim did not survive the death of the insured so GEICO had no existing claim.

Underinsured Motorist Unlicensed Driver Exclusion Held Enforceable

Safeway Insurance Company of Alabama, Inc. v. Thomas, 2018 Ala. Civ. App. LEXIS 53*

Thomas was a passenger in a vehicle owned by Lena Spano and operated by Desean Evans, an unlicensed driver. Thomas was injured in an automobile accident and the damages exceeded the limits of the tortfeasor's automobile liability policy. As such, Thomas sued Spano's insurer, Safeway, seeking underinsured motorist benefits.

Safeway filed a Motion for Summary Judgment based upon its policy exclusion avoiding coverage when the insured vehicle was being operated by an unlicensed driver. The trial court denied the motion finding that the exclusion violated Alabama's UIM statute because Thomas was unaware that the driver did not possess a driver's license. The Alabama Court of Civil Appeals reversed finding that because the insured owner of the vehicle agreed that her policy would not cover her automobile if it was driven by an unlicensed driver she had "partially rejected" UIM coverage in such situations.

Accrual of the Statute of Limitations for Negligent Procurement Claim

Beddingfield v. Mullins Insurance Co., 2018 Ala. LEXIS 60*

The insureds filed suit against their insurance agent claiming that due to the agent's conduct they had insufficient liability coverage to respond to a claim made by a guest injured at the Beddingfields' home. The Beddingfields owned three properties and had obtained liability coverage for each. They claimed that the agent improperly, and without their knowledge, cancelled the policy on one of the properties and failed to forward premiums paid on another property resulting in cancellation of that policy. The key question was when the statute of limitations began to run.

The Beddingfields maintained that the claim had never accrued because their insurance benefits were not technically denied and, therefore, their injury only occurred either when the plaintiffs in the underlying litigation initially refused a policy-limit settlement offer or when the underlying jury returned a verdict in favor of the injured guest. Alternatively, they argued that the tort-based cause of action only accrued when actual damage was sustained which, again, was at the time the underlying plaintiffs refused to settle for the limits of the policy or when the jury returned its verdict. In the case of either of these positions, the filing against the agent was within the two-year statute of limitations.

However, the Supreme Court of Alabama held that the Beddingfields were actually denied access to the additional policy coverages which, but for the agent's tortious conduct, would have been otherwise available to them. The notice of the unavailability of these additional proceeds constituted "for all intents and purposes" a denial of the benefits. As the Beddingfields knew that this additional coverage was not available more than three years after the underlying litigation was initiated, the negligence claims were untimely per the two-year statute of limitations.

Summary Judgment on Negligent Procurement Claim Affirmed

Somnus Mattress Corp. v. Hilson, 2018 Ala. LEXIS 139*

On December 21, 2018, the Supreme Court of Alabama affirmed summary judgment in favor of an insurance agent on a negligent procurement claim. The claim arose out of a fire at the insured's facility. The insured alleged that the agent failed to suggest or procure business income loss coverage. Two issues were in play.

First, the agent testified that each year at the time of renewal he had a conversation with the insured in which he recommended business income coverage. The agent asserted that the insured always declined the coverage stating that it was too expensive. On the other hand, absent a conversation which took place years before, the insured testified that he could not remember the particulars of these annual conversations. In finding that there was no issue of fact so as to preclude summary judgment, the Court stated that "[n]ot remembering a conversation does not constitute evidence indicating that what the opposing party contends was relayed in that conversation did not occur".

The insured also argued that the agent had a duty to advise him about the adequacy of his coverage. First, the Court noted that the general law is that absent a specific agreement to do so, an agent does not have a continuing duty to advise, guide, or direct the insured's coverage after it has initially been obtained. Regarding the insured's assertion that the agent had voluntarily assumed such a duty, the Court noted that Alabama has not specifically adopted such a duty though even if the Court did in this case the elements relied upon by courts in other jurisdictions were not present. For example, there was no express agreement for the agent to provide such advice, nor was the agent paid additional compensation to do so. Also, the insured did not claim the existence of a long-established relationship of entrustment. Finally, there was no evidence that the agent held himself out as an expert and that the insured justifiably relied upon that expertise.