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It Is What It Is! Supreme Court Strictly Applies UM Policy's Plain Language, Holds Insurers Do Not Need To Show Prejudice In Order To Enforce 30-Day Notice Requirements

By Drew Broaddus

For years, the Michigan Supreme Court has consistently held that, because uninsured motorist (UM) coverage is optional and not mandated by the No-Fault Act, the policy language alone controls when a claimant is entitled to such benefits. For example, *Rohlman v Hawkeye-Security Ins,* 442 Mich 520 (1993) noted that although the No-Fault Act is the "rule book" for coverages mandated by statute, the insurance policy itself is the "rule book" for non-mandatory coverages like UM. The Court issued even stronger pronouncements in 2005. In *Rory v Cont'l Ins,* 473 Mich 457 (2005) the Court held that a contract's one-year limitations period barred a plaintiff's suit for UM benefits, even though two lower courts had found this limitation to be unreasonable. In reversing, *Rory* announced that ordinary contract principles (in other words, the policy's plain language, absent fraud or illegality) govern UM coverage. The same year, in *Jackson v State Farm*, 472 Mich 942 (2005) the Court issued a preemptory order vacating a Court of Appeals decision "for the reasons stated in the Court of Appeals dissent"; the Court of Appeals dissent had found that the notice-of-claim provision was unambiguous and enforceable without a showing of prejudice to the insurer.

This so-called "notice-prejudice" rule, and precedential weight of the *Jackson* preemptory order, were the Supreme Court's focus in *DeFrain v State Farm*, __ Mich __ (No. 142956) (released May 30, 2012). On May 31, 2008, a hit-and-run driver ran his vehicle into a pedestrian, William DeFrain, who sustained severe head injuries and later died. At the time, DeFrain had UM coverage with State Farm. The UM portion of the policy contained a provision specifically dealing with hit-and-run accidents; this provision required a claimant seeking UM benefits to report the accident "to [State Farm] within 30 days[.]" It was undisputed that State Farm did not receive notice that DeFrain had been the victim of a hit-and-run accident until August 25, 2008, about two months after the 30-day notice period had lapsed. DeFrain filed a complaint seeking UM benefits. State Farm moved for summary disposition, asserting the failure to comply with the 30-day notice provision for hit-and-run cases, and relying upon *Jackson*.

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DeFrain finally puts to rest the "notice-prejudice" rule which, for all intents and purposes, probably did not survive the Supreme Court's 2005 *Rory* and *Jackson* decisions, but continued to find favor among some Court of Appeals panels.

DeFrain contains an important statement about the precedential value of preemptory orders such as the one issued in *Jackson*. Such orders are binding precedent if they constitute a final disposition of an application and contain a concise statement of the facts and reasons for the decision. The *DeFrain* Court found that when the *Jackson* order referred to the Court of Appeals dissent, the Supreme Court adopted the facts and reasons cited by the dissenting Court of Appeals judge as its own.

Although *DeFrain* does not explicitly overrule *Koski*, the majority's conclusion casts serious doubt upon *Koski's* precedential value going forward: "Not only is *Koski* distinguishable …, but imposing a prejudice requirement here would be inconsistent with … *Rory*."

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Despite *Jackson*, DeFrain's estate maintained that the notice-of-claim provision was ambiguous regarding when and from whom notice was required, and was enforceable only upon a showing of prejudice to State Farm. The trial court agreed with plaintiff, denying State Farm's motion because (1) the 30-day notice provision was ambiguous, and (2) there was no evidence that the failure to comply with the provision prejudiced State Farm. The Court of Appeals affirmed, following *Koski v Allstate*, 456 Mich 439 (1998) – which applied a "notice-prejudice" rule – and declining to follow the preemptory order in *Jackson*. The Court of Appeals noted that *Koski* and *Jackson* were in direct conflict, but concluded that since the Court in *Jackson* did not explicitly mention, much less overrule, *Koski* – and *Koski* was a fully articulated opinion, while *Jackson* was simply an order – the *Koski* decision and its "notice-prejudice" rule should prevail.

The Supreme Court reversed as follows: "[A]n unambiguous notice-of-claim provision setting forth a specified period within which notice must be provided is enforceable without a showing that the failure to comply with the provision prejudiced the insurer. Therefore, State Farm properly denied the claim for UM benefits sought in the instant case because it did not receive timely notice, a condition precedent to the policy's enforcement. This conclusion is consistent with … *Jackson* … and *Rory* … both of which the Court of Appeals was bound to follow. The Court of Appeals erred by disregarding this controlling authority in favor of an earlier decision, *Koski*…. The Court of Appeals failed to recognize the critical ways in which *Koski* is distinguishable from the instant case."

Elsewhere in the *DeFrain* opinion, the Court elaborated: "Because providing UM coverage is optional and not statutorily mandated under the no-fault act, the policy language alone controls the circumstances entitling a claimant to an award of benefits. Having reviewed the language of the instant policy, as well as the relevant authority, we hold that an unambiguous notice-of claim provision setting forth a specified time within which notice must be provided is enforceable without a showing that the failure to comply with the provision prejudiced the insurer. In reading a prejudice requirement into the notice provision where none existed, the Court of Appeals disregarded controlling authority … and frustrated the parties' right to contract freely."

The *DeFrain* Court stopped short of explicitly overruling *Koski*, but explained in detail why *Koski* was distinguishable based on the contract language at issue. The notice requirement in *Koski* was far less specific in terms of how long the insured had to notify the insurer of a claim, whereas the policy at issue in *DeFrain* specifically required notice within 30 days of the accident. Justice Zahra authored the majority opinion which garnered the votes of Justices Young, Markman, and Mary Beth Kelly. Justice Cavanagh authored a dissent which Justices Marilyn Kelly, and Hathaway also signed.

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