



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: Dave Blinn

July 15, 2010

Uninsured Motorist Claim - Statute of Limitations

Blankenship v. Allstate Insurance Company
Court of Appeal, Third District (June 29, 2010)

An insured may file a claim for uninsured motorist damages with his carrier, but under Insurance Code Section 1158.2 he or she may not subsequently file a legal action against the carrier unless within 2 years he or she has (1) filed a lawsuit against the uninsured motorist, (2) has demanded UM arbitration with the carrier or (3) has settled the claim with the carrier. This case raised the question of whether a minor is excused with complying with acting within that two year period.

On September 10, 2004, 13 year old Dakota Blankenship was riding his bicycle on the wrong side of the road and was struck by a car when he turned into traffic. The car was owned by Edward McEnespy, and was driven by Jennifer Outcalt. Outcalt had no insurance, and McEnespy's carrier denied coverage. Four months later, Blankenship's stepfather, Michael Moore, made a claim on behalf of Dakota with his automobile insurer, Allstate Insurance Company. After reviewing Dakota's medical records and files, Allstate sent a letter on May 25, 2006 offering \$10,000 to settle Dakota's claim. Allstate also advised that the statute would run on Dakota's claim on the second anniversary of the accident, September 10, 2006. Allstate also sent a second letter to Mr. Moore informing him that Dakota had two years from the date of the accident, September 10, 2004, to settle the claim, file suit or institute formal arbitration proceedings.

Blankenship's family did not respond until August of 2007, when the Blankenship's attorney informed Allstate he was representing Blankenship. On October 10, 2007, the attorney sent a letter demanding arbitration. Allstate requested proof that Blankenship had complied with Section 11580.2 by filing suit in a timely manner. The attorney provided Allstate with a civil suit against McEnespy and Outcalt filed on February 26, 2007, 29 months after the accident.

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood

Allstate then denied the demand for arbitration, claiming that by failing to settle the claim, file suit or institute arbitration within the two year period, Blankenship had forfeited any right of recovery under the UM claim. Blankenship filed a petition to compel uninsured motorist arbitration. The trial court denied the petition with prejudice, determining that Blankenship had failed to perfect his claim against Allstate within the two year period. Blankenship appealed.

The Court of Appeal upheld the trial court's decision, holding that Blankenship's minority did not excuse his noncompliance with Section 11580.2. Blankenship argued that amendments to the Section had implied that minority excused compliance. The 1995 amendment added language which stated that the doctrines of estoppel, waiver, impossibility, impracticality, and futility apply to excuse a party's noncompliance with the statutory timeframe. Blankenship argued that minority was a legal disability as a matter of law, and rendered compliance with Section 11580.2's limitations requirements impossible or impractical. The Court noted that prior decisions had already established that minority did not excuse compliance with Section 11580.2. Hence, minority could not be a disability rendering performance under Section 11580.2 impossible or impractical. Minority is a disability only when the legislature says it is. In this case, neither in the statute nor at the time it was amended did the legislature say that minority was a disability or excuse from compliance with the time limitations of Section 11580.2.

As to the 2003 amendment, this simply changed the language from a 1 year statute to a two year statute, to be consistent with the change the year before in the statute of limitations for filing a personal injury action.

Blankenship next argued that applying the two year limit in Section 11580.2 to minors violated his constitutional right to equal protection under the law. He claimed that it was unfair to discriminate between those for whom compliance was impossible or impractical by other factors from those for whom it was impossible or impractical by reason of minority. The Court pointed out that there was nothing about being a minor which prevented Blankenship from complying with the statutory limitations of Section 11580.2, so this was no basis for an equal protection claim.

Blankenship also argued that it was unfair to allow minority to toll application of the statute for Underinsured Motorist claims but not for Uninsured Motorist claims. The Court pointed out that by their nature, Underinsured Motorist claims required resolution of the underlying action with the underinsured motorist, and that they would often take longer time to resolve. On the other hand, the simple procedure mandated by Section 11580.2 for Uninsured Motorist claims was akin to the claims filing requirement under the Government Claims Act. Minors were not

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood

exempt from the Tort Claims Act's claim filing requirements.

Finally, the Court denied that language in Allstate's policy that it would pay damages an insured was Alegally entitled to recover in an uninsured motorist claim meant that because Blankenship was Alegally entitled to file suit against the third party until he turned 20, this meant he had the same tolling rights under the policy. The Court noted that the policy had to be read to include the mandates of Section 11580.2, and that it was thus not reasonable to conclude that the policy language exempted plaintiff from compliance while he was still a minor.

COMMENT

This case makes clear that although a minor's claims against third parties in an accident are tolled during his minority, there is nothing in the Uninsured Motorist statute which excuses that minor's compliance with the two year statute of limitations as a pre-requisite for bringing an action against the carrier.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/C059423.PDF](http://www.courtinfo.ca.gov/opinions/documents/C059423.pdf)

This content is provided for informational purposes only. The content is not intended and should not be construed as legal advice.

Visit our [website](#) for a fully searchable archive of past editions of the Weekly Law Resume and other Low, Ball & Lynch publications.

The Weekly Law Resume TM is published fifty-two times a year, and is a complimentary publication of Low, Ball & Lynch, Attorneys at Law, a Professional Corporation, with offices in San Francisco and Monterey, California. Information regarding this and other Weekly Law Resume TM articles is available at www.lowball.com.

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com