

Ohio Supreme Court Upholds Insurance Policy Limitation of Action Clauses

In two recent cases, the Supreme Court of Ohio upheld limitation of action clauses in two insurance policies. Limitation of action clauses narrow the timeframe, which is 15 years by statute in Ohio, in which an insured may sue to enforce a policy. In *Dominish v. Nationwide Insurance Co.*, the insured sued his insurer for storm damage to his home almost two years after the storm. But the insurance policy contained a limitation of action clause that stated: “Any action must be started within one year after the date of loss or damage.”

The Ohio Supreme Court upheld the limitation of action clause and affirmed the trial court’s grant of summary judgment to the insurance company. The Supreme Court held that the limitation of action clause was unambiguous and the insurer had not waived its right to enforce the limitation. To waive a limitation of action clause, the insurance company must either recognize liability or hold out reasonable hope of adjustment and induce the insured to delay filing a lawsuit. In *Dominish*, the insurer had issued checks to the insured to cover the storm damage, but the insured had returned the checks because he was dissatisfied with the amount of payment. The Court found that the insurance company had not waived the limitation of action clause because it stated at the time it sent the checks that it was not liable for any amount in excess of the amount on the check, and it reminded the insured of the limitation of action clause.

The second case, *Barbee v. Nationwide Mutual Ins. Co.*, involved a claim for uninsured/underinsured motorist (UM/UIM) benefits. The UM/UIM policy had a limitation of action clause of three years. But it also had a provision requiring the

insured to exhaust the tortfeasor's liability limits before bringing a claim against the insurer. The insureds in *Barbee* originally brought suit against the estate of the tortfeasors, but when the tortfeasor's estate left the judgment partially unsatisfied, they sued the insurance company under their UM/UIM policy more than three years after the accident.

The insureds argued that it was unfair to enforce the limitation of action clause against them because they did not know that they had a claim against their UM/UIM carrier until they obtained judgment against the tortfeasors. The Supreme Court was unpersuaded. It held that if the insureds anticipated a claim against the UM/UIM insurance carrier, they should have filed suit within the three-year limitations period.

These two cases show that Ohio courts will enforce limitation of actions clauses in most circumstances, but the insurance company does need to be vigilant against any action that would waive the limitation. Insureds must commence their actions against their insurers within the limitation period even if they only anticipate a claim against the insurers at some later time.