



Kentucky Supreme Court Addresses Limitations on UIM Claims

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Until March of this year, Kentucky courts had yet to uphold any contractual limitation provision on an insured's ability to bring a UIM suit against their carrier. In March, the Supreme Court of Kentucky rendered its opinion in *State Farm v. Riggs*, 484 S.W.3d 724 (Ky. 2016), noting that a policy provision limiting the time to file a UIM claim was reasonable.

Lonnie Riggs, a police officer, was involved in a motor vehicle accident while in the line of duty. He received workers' compensation benefits for his injuries and thus did not collect any basic reparation benefits. He brought his suit against the tortfeasor within two years as required by the Motor Vehicle Reparations Act (MVRA). Eventually, he settled with the tortfeasor for their policy limits. After this settlement, Mr. Riggs decided to file a lawsuit against his own insurer for UIM coverage, almost three years after the date of loss.

Mr. Riggs' policy contained a limiting provision for bringing suit for UIM coverage; it mirrored the MVRA's own tort claim time limitation found in KRS 304.39-230(6). The provision in the policy stated that a suit cannot be brought against State Farm "unless such action is commenced no later than two (2) years after the injury, or death, or the last basic or added reparation payment made by any reparation obligor, whichever later occurs." The Court found this limitation provision to be reasonable and to be in line with public policy.

Mr. Riggs' chief argument was that the policy provision would force a plaintiff to bring suit against a UIM carrier before there is a final judgment against the tortfeasor. The Court disagreed. Kentucky courts have repeatedly found that a final judgment against a tortfeasor is not necessary to bring a UIM suit. The Court laid out multiple options for how the Plaintiff can proceed with a UIM cause of action:

- A claimant can simply proceed with a suit against the UIM carrier before the tortfeasor is brought in;

- A claimant can bring suits against both the tortfeasor and the UIM carrier at the same time (popular approach);
 - The Plaintiff can ask the court to hold in abeyance the UIM suit until the underlying suit is completed;
 - In the alternative, if a Plaintiff does not wish to bring suit so soon against a UIM carrier, then they can seek an agreement from the carrier to toll the statute of limitations until the underlying suit has concluded.

Overall, the Supreme Court has been fair and reasonable with its ruling in this case. The options to toll or place the UIM suit in abeyance could result in reduced litigation expenses for insurers. A two-year statute of limitations provision, mirroring the MVRA's limitation on tort actions, will likely become standard in policies going forward based upon the precedent established by the Kentucky Supreme Court.