

IN THE SUPREME COURT OF OHIO

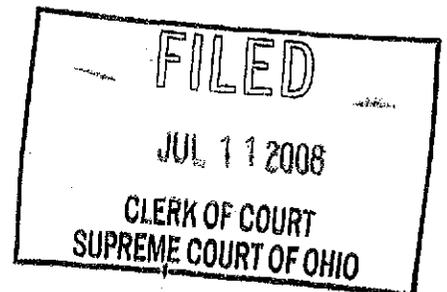
CASE NO. 2007-0758

Theresa L. Angel, et al.,)	On Appeal from the Geauga County
)	Court of Appeals, Eleventh Appellate
Plaintiffs-Appellees,)	District
)	
v.)	
)	Court of Appeals Case No:
Eric Reed, et al.)	2005G2669
)	
Defendant-Appellants.)	

APPELLEE'S MOTION
FOR RECONSIDERATION

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**APPELLEE'S MOTION
FOR RECONSIDERATION**

Now comes the Appellee, Teresa L. Angel, by and through undersigned Counsel, and hereby moves for reconsideration of this Court's Opinion in this case, issued July 3, 2008, and cited as Angel v. Reed, ___ Ohio St. 3d ___, 2008-Ohio-3193.

Appellee asks this Court to reconsider the issue of when the two year period begins to run. This Court held that this matter is governed entirely by the language of the UM/UIM contract, which provides that the suit must be filed "within two years of the date of the accident." According to the headnote of the case, the "due care" Ms. Angel should have exercised was to contact the carrier that the tortfeasor claimed to have coverage with.

The problem with this approach is that it makes Ms. Angel's rights under her own Allstate policy contingent on the performance of a stranger to the contract. When the tortfeasor claimed to be insured by "Nationwide," he left Ms. Angel with no information, and no belief, to the contrary. To make another insurance carrier responsible for an incorrect or dishonest statement by the tortfeasor is not a satisfactory resolution to a situation like this.

For one thing, Ms. Angel has no direct legal remedy against the tortfeasor's claimed carrier until there is a judgment against the tortfeasor. R.C. 3929.06(B); Chitlik v. Allstate Ins. Co. (Cuyahoga Ct. App. 1973), 34 Ohio App. 2d 193, 197-198. The assumption that a carrier who is implicated by a tortfeasor will cooperate with a UM policy holder's request for information is not a safe one. This Court's ruling makes a policy holder's rights to recover under her own policy contingent on performance by another carrier, a third party with no interest in the UM contract, and no actual connection to the accident.

For the sake of that third-party carrier, in this case Nationwide, this Court should re-examine what the holding in this case might mean. While the law does not allow a direct action against the liability carrier, in cases where the plaintiff cannot obtain cooperation, she will be forced to seek other remedies. Without a prompt response by the carrier alleged to cover the tortfeasor, a plaintiff may have to file a discovery action shortly after the accident in order to obtain the information within the two year period upheld in this case.

This case may have the unfortunate result of encouraging claims of tortious interference with contractual relations against carriers situated like Nationwide. The elements of this tort are:

They are (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages.

Fred Siegel Co., L.P.A. v. Arter & Hadden (1999), 85 Ohio St. 3d 171, 176, quoting Kenty v. Transamerica Premium Ins. Co. (1995), 72 Ohio St. 3d 415, at syllabus 2. It is easy to foresee that the third element, intentional procurement of the UM policy holder's breach of the UM contract, will be difficult to prove. What happens if the third party carrier, who is wrongly alleged to insure a tortfeasor, does not act? At what point does nonfeasance equate to sabotage of a UM holder's claim? If this remedy is unavailable, what remedy is? The result in this case makes Nationwide an unintended party to the controversy between Ms. Angel and her own carrier, all because of the dishonest or mistaken actions of a tortfeasor who was never found after the accident.

There is no question that the two-year provision in the Allstate policy owned by Ms. Angel requires some degree of care on her part to satisfy it. The question is what is that degree of care? This Court's answer places obligations on Nationwide, a third party to the contract who never

appeared in this case, and who (it turns out) never had any rightful connection to the accident, nor to Ms. Angel's relationship with Allstate.

But after this Court's holding in this case, a carrier situated like Nationwide is a necessary actor for any UM policy holder who has bad information from the tortfeasor. The upshot may well be that plaintiffs have to pursue aggressive action against carriers situated like Nationwide, all because a tortfeasor needed to give an insurance company's name to the police. In this way, this Court's holding in this case actually promotes needless litigation.

As discussed throughout this case, there is also another way that this result promotes litigation. Teresa Angel's UM policy is a minimum limits policy; if Eric Reed had had any coverage at all, she never would have had UM or UIM claim. But now, even without information or belief that there is a UM claim, plaintiffs are advised by this case to file against the UM carrier if there is any doubt.

This case creates duties for a carrier by the mere fact that a tortfeasor wrongly identified it, and it necessitates premature filing against UM carriers who may not actually be involved. "Promoting litigation should not be endorsed as a method of obtaining the benefit of contract rights." Marsh v. State Auto. Mut. Ins. Co. (Montgomery Ct. App. 1997), 123 Ohio App. 3d 356, 363-364 (Judge Grady, dissenting).

There is a surprising irony in the parties' positions in this case that should not go unnoticed. By their argumentation, Allstate—one of the most visible insurance companies in Ohio, and nationwide—is urging plaintiffs to sue them within two years of the accident, whether or not the plaintiffs have information or belief that there is a UM claim. Ms. Angel—through a very visible firm that represents injured plaintiffs—came before this Court asking for a rule of law that would allow

them to *not* file suit against insurance carriers until it is absolutely necessary.

The role reversal in this case is remarkable. The insurance company insists on being sued. The plaintiff seeks a way to avoid suit if possible. All of this turns on a requirement of the contract. The contract does not contemplate performance by a stranger to it, but this Court's decision does.

In this case, Teresa Angel did everything should could do respecting Mr. Reed. Mr. Reed was mistaken or dishonest with the insurance information he gave to the police. Given the policy limit at issue, there is no UM or UIM claim to be had in this case if Mr. Reed's statement is correct. The Allstate policy does not direct the holder to make an inquiry of any third party. Appellee submits that the better approach in this case would be to apply the general rule previously stated by this Court, to this case:

2. The validity of a contractual period of limitations governing a civil action brought pursuant to the contract is contingent upon the commencement of the limitations period on the date that the right of action arising from the contractual obligation accrues.

Kraly v. Vannewkirk (1994), 69 Ohio St. 3d 627, syllabus.

In the exceptional circumstance of the tortfeasor giving inaccurate information about his insurance, the better rule would be that the UM claim does not accrue the policy holder is informed that there is no liability insurance. Judge O'Grady's dissent in Marsh well illustrates that this rule has the effect of reducing litigation.

CONCLUSION

For the reasons stated, Appellee Teresa Angel urges Reconsideration of the Opinion issued on July 3, 2008, and that the Judgment of the Eleventh District Court of Appeals be Affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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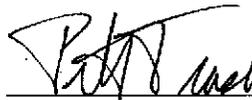
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