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STATUTE OF LIMITATIONS FOR AN UNDERINSURED MOTORIST CLAIM BEGINS WHEN UNDER-INSURED CARRIER NOTIFIES INSURED IT WILL NOT SUBSTITUTE ITS DRAFT

In Stroop v. Farmers Insurance Exchange, a/k/a Illinois Farmers Insurance Company, -- N.W.2d --, 2009 WL 1049908 (Minn. Ct. App. April 21, 2009), the Minnesota Court of Appeals reversed the District Court; holding the statute of limitations for a UIM claim begins to run the moment an insured receives notice his UIM carrier will not substitute its draft for that of the tortfeasor.

James Stroop was injured in February 2001 in a motor vehicle accident. In March 2001, Mr. Stroop accepted a settlement offer from the tortfeasor's insurer for the tortfeasor's policy limits of \$50,000. Mr. Stroop sent a Schmidt notice of the settlement offer to his UIM insurer, Farmers, on March 19, 2001. Farmers declined to substitute its draft by letter dated March 30, 2001, which Mr. Stroop's attorney received on April 2, 2001. Mr. Stroop executed a release with the tortfeasor on April 17, 2001. Mr. Stroop then waited until April 12, 2007, to assert a UIM claim against Farmers.

Farmers moved for summary judgment arguing the statute of limitations expired on April 2, 2007. Stroop argued that the statute of limitations did not run until six years from the date the release was executed or April 17, 2007. Stroop prevailed at District Court and Farmers' motion was denied. Farmers appealed the decision.

In reversing the District Court, the Minnesota Court of Appeals noted the statute of limitations begins to run for the purpose of a UIM cause of action on the date of settlement or judgment. The Court further noted a settlement agreement is enforceable before the release is signed. Therefore, because Mr. Stroop's settlement agreement was enforceable the moment Stroop received notice Farmers refused to substitute its draft for that of the tortfeasor, the statute of limitations began to run April 2, 2001. Consequently, Mr. Stroop's UIM claim was barred by the six-year statute of limitations.

This letter, and other State of Minnesota, Court of Appeals, and Supreme Court opinion updates, are available in .pdf form on the News and Resources page of our Firm's website: www.johnson-condon.com. If you have any questions, please contact us.

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