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Illinois Court of Appeals Addresses Tolling Provision in Illinois Insurance Code

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In *D'Agostino v. Ill. Farmers Ins. Co.*, 2023 IL App (1st) 210567-U, ¶ 2, the Illinois Fifth District Court of Appeals addressed the application of Illinois Insurance Code section 143.1 to an insurance policy provision limiting an insured's demand for arbitration to two years from the date the limits of liability under the policy have been "exhausted by payment, judgment, or settlement". On March 11, 2015, Ms. D'Agostino was involved in a motor vehicle collision that caused her to suffer significant injury. As she was not at fault, a claim was made against the responsible driver's automobile insurance policy. In January 2017, Ms. D'Agostino entered into a settlement agreement with the at-fault driver for policy limits and proceeded to file an underinsured motorist claim with her own underinsured motorist carrier—Farmers. Farmers denied the claim and Ms. D'Agostino thereafter sought to compel arbitration pursuant to the arbitration provision of the Farmer's Policy. When Farmers refused to participate in arbitration, Ms. D'Agostino filed suit to compel Farmers participation.

In response to the suit, Farmers filed a motion to dismiss contending that pursuant to the limitations language in the policy, Ms. D'Agostino failed to make a demand for arbitration within the time allowed. Specifically, the Farmer's Policy contained a limitations provision that provided:

"An insured person must agree to a settlement or begin a proceeding in arbitration by making written demand to us for such proceeding within two years from the date the limits of liability under any applicable bodily injury, liability bonds or policies have been exhausted by payment or judgment or settlement. Failure to comply with the time limit will relieve us of any obligation to the insured person under Coverage C-1"

Farmers took the position that Ms. D'Agostino settled her claim with the at-fault driver on January 12, 2017. Correspondingly, Farmers asserted that the deadline for any arbitration demand was January 12, 2019 and because Ms. D'Agostino failed to demand arbitration within the limitations period she was barred from pursuing an underinsured motorist claim under the policy.

In response, Ms. D'Agostino contended, among other things, that section 143.1 of the Illinois Insurance Code (215 ILCS 5/143.1) provided for the tolling of the limitations period. Section 143.1 provides: "Whenever any policy or contract for insurance, except life, accident and health, fidelity and surety, and ocean marine policies, contains a provision limiting the period within which the insured may bring suit, the running of such period is tolled from the date proof of loss is filed, in whatever form is required by the policy, until the date the claim is denied in whole or in part."

Ms. D'Agostino argued that the running of the two-year limitations period was tolled under the statute beginning on August 15, 2015—the date she sent her proof of loss to Farmers—and only began running again when the claim was denied on February 21, 2019. Under that argument, Ms. D'Agostino maintained that her arbitration demand, made less than two years later, was timely.

In rejecting Ms. D'Agostino's assertions, the Court took note of a number of letters sent by Farmers requesting medical records and other information so that it could evaluate Ms. D'Agostino's claim. Specifically, between November 2016 and November 2018, Farmers sent five letters each time requesting updated medical information. Ms. D'Agostino did not, however, provide Farmers with updated medical information until November 27, 2018. Shortly thereafter, on February 21, 2019, Farmers informed Ms. D'Agostino that it was denying her claim and determined that she had failed to request arbitration within the limitations period.

According to the Court, the letters demonstrated that whatever materials Ms. D'Agostino may have submitted in August 2015 were insufficient to trigger the tolling statute because they did not satisfy the proof of loss standard required by the policy. Rather, the Court concluded that Ms. D'Agostino did not provide sufficient proof of loss until November 27, 2018, such that any tolling under the statute would have begun on this date. Therefore, because any tolling would end on February 21, 2019, the date when Farmers denied the claim, the result was a total of 86 days of tolling. Accounting for the additional 86 days of tolling, the Court calculated that Ms. D'Agostino had until April 8, 2019 to demand arbitration under the terms of the policy. As she failed to make any such demand until May 6, 2019, the Court found that Ms. D'Agostino's arbitration demand was untimely.