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Tennessee Litigation Update: Reaffirming the Statute of Limitations for Uninsured Motorist Coverage Claims

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Larrystine Bates v. Michael J. Greene

Uninsured Motorist ("UM") litigation is not for the faint of heart. It can present both unusual and difficult questions in a number of situations. A debate taking place over a number of years in various situations is the statute of limitations applicable to UM claims. For example, a person (soon to be a plaintiff) purchases UM coverage as part of her auto policy. She is later in an automobile accident where she is rear-ended by the defendant. She files a lawsuit and finds out the defendant either has no liability insurance or purchased a minimum limits policy. The UM statutes contained in the Tennessee Code Annotated allow her to serve the UM carrier (her own insurance company) with process as a party defendant and, if applicable, bring her own UM policy limits into play in the litigation.[i] In situations where the uninsured motorist cannot be served, T.C.A. sec. 1206(d) states the UM carrier can be required to proceed as the only defendant when it is apparent the uninsured motorist cannot be served. In other words Tenn. R. Civ. P. 3 does not operate to hold a plaintiff hostage to service of process rules in those situations.

In the recent case of *Larrystine Bates v. Michael J. Greene*[ii], the Western Section Court of Appeals addressed a UM statute of limitations issue. Plaintiff was in an accident on May 5, 2011. Prior to the one-year limitations period for personal injury, [iii] Plaintiff filed a General Sessions warrant against Defendant which was returned unserved. On January 25, 2013, alias process issued again was returned unserved along with a server affidavit stating Defendant was not to be found. On July 22, 2013, Plaintiff tried again, but this time added the UM carrier as a defendant. The UM carrier was served on July 31, 2013, two years after the accident.[iv] The UM carrier 's summary judgment motion was denied at the sessions level and granted by the circuit court on the basis the underlying action was a personal injury case governed by the one year statute of limitations as opposed to a contract action governed by the six-year statute of limitations.[v] Thus, the circuit court based its ruling on the gravamen of the action, as opposed to the underlying contract of insurance.

On appeal, the Western Section reversed, holding the six-year contract statute of limitations applied. It pointed out the UM contract was not designed to protect the UM driver, but was designed to compensate the insured.[vi] While acknowledging UM was placed in the role of a liability carrier, the Court went back to the reason for the contract itself, i.e., protection of the insured. The Court cited a number of sister jurisdictions holding actions based on UM coverage are at their essence *ex contractu* and not *ex delicto*. [vii]

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The Court then went on to cite a number of pre-1984 Tennessee cases holding the issue was one of contract (prior to the 1984 amendments to provisions of T.C.A. 56-7-1206(d)). In the 1966 case of *Schlief v. Hardware Dealer's Mutual Fire Insurance Co.,**[viii]*** the Tennessee Supreme Court addressed a case involving hit and run driver and a UM carrier that denied the insured coverage. The Supreme Court reversed a lower court ruling that[ix] the statute of limitations was one year and held the action was based on the contract, mandating a six year statute of limitations. Other Tennessee cases have determined in UM situations, the gravamen of the action does not control the statute of limitations.[x]

In *Bates,* the UM carrier argued the UM statutes, including T.C.A. sec. 56-7-1206(d), were passed after the older cases. As such, it argued the UM statutes superseded the older precedent and was controlling. The carrier argued the UM statute was subject to the one-year statute that controlled service on the UM driver. Any argument to the contrary would "add" to the statutory language. The carrier argued sec. 1206(d) does not require the plaintiff to wait until "not to found" is returned by the process server, and waiting does not toll the one year statute.

In rejecting the argument, the Court held the UM statute does not mandate service on the UM carrier within one year either.[xi] The Court cited contrary precedent, where it held suit against the UM carrier was not barred by the one-year statute of limitations.[xii] In other words, if the original UM motorist was sued prior to the one-year statute of limitations, the UM carrier cannot rely on the one-year statute to bar the claim if it is served with process outside the one year statute of limitations unless it can show prejudice. [xiii]

Interestingly, the issue of whether the service in the Bates case was subject to the "prejudice" exception was never reached because it was raised on appeal for the first time.[xiv] Many insurance policies have language requiring the insured to notify the insurance company of claims or potential claims within a certain time. This type of notice clause is utilized to give companies notice and prevent the insurance company being brought into a litigation that is already well underway. In 1998, the Tennessee Supreme Court addressed the competing interests this situation presented in *Alcazar v. Hayes.**[xv]***

In *Alcazar*, a UM policy required prompt notice of a claim. The notice was not provided until well after a year from the accident. The Supreme Court essentially held the notice provisions in UM policies were not "technical escape hatches" but put in a policy to prevent prejudice to the insurer. The Court held that if the notice provision is not followed there is a rebuttable presumption prejudice has occurred, but the insured can rebut the presumption by offering proof the insurer was not prejudiced by the delay.[xvi] Since *Alcazar*, this reasoning has been applied to other types of policies as well, such as liability policies.[xvii]

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The interesting "takeaway" from *Bates* is the fact that in insurance matters, the gravamen of the case deciding the statute of limitations issue is often not apparent. Depending on the circumstances, such as a UM claim against the contract, one cannot simply "follow the pleadings" to determine the issue.

[i] T.C.A. sec. 56-7-1206(a)

[ii] 2017 Tenn. App. LEXIS 503 (Tenn. Ct. App. At Jackson, July 27, 2017)

[iii] T.C.A. sec. 28-3-104(a)(1)

[iv] Bates, at *2 and*3.

[v] Bates, at *3 and *4; T.C.A. sec. 28-3-109(a)(3) (6 years for actions on contract not otherwise expressly provided for)

[vi] Bates, at *5 (citations omitted).

[vii] Bates, at *6-*8.

[viii] 404 S.W.2d 490 (Tenn. 1966).

[ix] Bates, at *8-*10 (citations omitted).

[x] E.g., Price v. State Farm, 486 S.W.2d 721,724-25 (Tenn. 1972) (six year statute of limitations applies to declaratory judgment action against UM insurer).

[xi] Bates, at *13-*14.

[xii] Buck v. Scalf, 2003 Tenn. App. LEXIS 361, (Tenn. Ct. App. May 20, 2003) (plaintiff sued defendant and did not serve UM carrier within one year; the UM statue did not bar claim against UM carrier as long as statute of limitations has not run against UM motorist).

[xiii] Bates, at *18-*120, citing, Bolin v. Tennessee Farmer's Mutual Insurance Co., 614 S.W.2d 566, 568 (Tenn. 1981); Robbins v. City of Chattanooga, 1985 Tenn. App. LEXIS 2644, at *1-2 (ten. Ct. App., Jan. 29, 1985) (if service is within one year on uninsured motorist, process served on UM carrier later is valid unless the UM insurer can show prejudice).

[xiv] Bates, at *21.

[xv] 982 S.W.2d 845 (Tenn. 1998).

[xvi] Alcazar, at 856.

[xvii] E.g., Everest National Ins. Co. v. Rest. Mgmt. Group, 2011 Tenn. App. LEXIS (Tenn. Ct. App. March 7, 2011) (liability policy).

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