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**The Insurance Commissioner's
Prohibition Against Policies that
Limit the Time to File a Claim for
Uninsured or Underinsured
Motorist Coverage Does Not
Apply Retroactively.**

***CARDELLI, LANFEAR
& BUIKEMA, P.C.***

322 W. Lincoln
Royal Oak, Michigan 48067
(248) 544-1100
(248) 544-1191 (FAX)

5537 Glenwood Hills Parkway, SE
Suite 201
Grand Rapids, Michigan 49512
(616) 285-3800
(616) 285-1150 (FAX)

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Anthony F. Caffrey III

Attorney Caffrey manages the firm's appellate group, and specializes in appellate law, insurance coverage, dispositive motion practice, and research/writing.

Ahmed M. Hassouna

Attorney Hassouna is a member of the firm's appellate group, but also specializes in trial litigation.

Summary:

A claimant's application for no-fault benefits does not constitute a claim for uninsured or underinsured motorist coverage.

Last month, in a published Opinion, the Michigan Court of Appeals held that notice of a claim for no-fault benefits is insufficient to constitute appropriate notice for a claim of uninsured or underinsured motorist coverage. *McGraw v Farm Bureau Gen Ins Co*, ___ Mich App __; ___ NW2d ___ (2007). The Court further held that certain Insurance Commissioner's

Orders do not apply retroactively.

The plaintiffs' insurance policy at the time of their accident provided "Family Protection Coverage" that included both uninsured and underinsured motorist coverage. But, the terms of the policy required submission of the claim within one year after the accident occurred for "Family Protection Coverage." Here, the plaintiffs did not give explicit written notice of a claim for underinsured motorist coverage within one year of the accident.

Plaintiffs sued the defendant for first-party underinsured motorist benefits. Farm Bureau moved for summary disposition claiming the plaintiffs waived their contractual right to underinsured motorist benefits. Plaintiffs opposed the motion, arguing

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that they gave adequate notice for coverage.

While defendant's motion was under advisement, the Insurance Commissioner issued an Order prohibiting insurance companies from issuing policies that limit the time to file a claim or sue for uninsured motorist benefits to less than three years; subsequently, the Commissioner issued a similar Order regarding underinsured motorist benefits.¹

Our Court of Appeals reversed the trial court's denial of defendant's motion for summary disposition. Unless a contractual provision shortening a period of limitations violates public policy, it is enforceable. The Court rejected plaintiffs' argument that their

request for no-fault benefits constituted notice of a claim for underinsured motorist coverage. The plaintiffs' failure to notify the defendant of the specific need for such coverage denied the insurance carrier of the opportunity to gather information to evaluate the claim.

Moreover, the Court held that the Insurance Commissioner's Orders had no retroactive effect. The Court noted that the Orders were "effective immediately" and did not state that they were retroactive.

In sum, insurance policies that shorten periods of limitation to file a claim for uninsured or underinsured motorist coverage remain effective in the event they were issued prior to the Insurance Commissioner's Orders mandating no less than a three year period for a claimant to file same.

¹ See Notice and Order of Prohibition 05-060-M; Notice and Order of Prohibition 06-008-M