

--- N.E.2d ---

(Publication page references are not available for this document.)

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THIS DECISION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE NEW YORK REPORTS.

Court of Appeals of New York.

ALLSTATE **INSURANCE** COMPANY, Government Employees **Insurance** Company, GEICO
Casualty Company, GEICO General **Insurance** Company and GEICO Indemnity Co.,
Respondents,

v.

Gregory V. SERIO, in his capacity as Acting Superintendent of **Insurance** of the
State of New York, Appellant.

April 30, 2002.

[Deon J. Nossel](#), for appellant.

[Penny Shane](#), for respondent Allstate **Insurance**.

[William P. Maloney](#), for respondents Government Empl., et al. United Policyholders,
amicus curiae.

[SMITH](#), J.

The issue before us, brought by certified questions from the Second Circuit, is whether various actions taken by the State Department of **Insurance**, including the promulgation and distribution of the advisory communication Circular Letter 4, complies with [Insurance Law § 2610\(b\)](#). We conclude that they do not.

In the fall of 1992, the Department of **Insurance** initiated an investigation in the Rochester area to determine whether **insurance** companies were complying with [Insurance Law § 2610\(b\)](#), a State statute that regulates "steering" of policyholders by **automobile** casualty **insurers** to particular auto-repair shops with which the **insurance** company has an established business relationship. The statute reads:

"In processing any such claim (other than a claim solely involving window glass), the **insurer** shall not, unless expressly requested by the **insured**, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern." [\[FN1\]](#)

[FN1](#). In 1983, [section 2610\(b\)](#) was amended so as to exempt all claims involving glass repair alone.

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THIS DECISION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE NEW YORK REPORTS.

Court of Appeals of New York.
In the Matter of William C. BRANDON, Respondent,
NATIONWIDE MUTUAL **INSURANCE** COMPANY, Appellant.
April 30, 2002.

John F. Moore, for appellant.

[George A. Kohl](#), 2nd, for respondent.

[KAYE](#), Chief Judge.

Insurance policies providing Supplementary Uninsured Motorists ("SUM") coverage typically require the **insured** not only to submit a notice of claim but also to transmit promptly to the **insurer** the summons and complaint in any action the **insured** brings against a tortfeasor. In many contexts, including SUM coverage, an **insured's** failure to furnish timely notice of claim vitiates the contract, and the **insurer** may rely on this defense regardless of whether it can demonstrate that the **insured's** failure operated to its prejudice. Today an **insurer** asks us, by analogy, to hold that it need not demonstrate prejudice to rely on the defense that the **insured** forfeited SUM coverage by failing to timely submit the tort action summons and complaint. We decline to take this step, as did the Appellate Division, whose order we now affirm.

On March 1, 1997, a motor vehicle driven by Griselda Cancel [\[FN1\]](#) collided with a parked 1985 Buick in which petitioner was a passenger and which was owned and **insured** by petitioner's son. Nine days later, petitioner forwarded a sworn "Notice of Intention to Make Claim" to his **insurer**, respondent Nationwide Mutual **Insurance** Company. The notice of claim indicated that Cancel negligently struck the Buick, injuring petitioner, and that treating these injuries would cost a sum yet to be determined. The notice also indicated that Cancel drove an "uninsured car," and that petitioner was making his claim under his policy's "Uninsured **Automobile** Endorsement." [\[FN2\]](#)

[FN1](#). In the briefs and record before us, the name is variously spelled "Cancel," "Concel" and "Conceal." We have selected the version used by a research bureau that investigated Cancel to determine the extent of her assets and in the files of Cancel's **insurer**.

Supreme Court of Wisconsin.
Karen C. MARTIN, and Allen H. Martin, Plaintiffs-Appellants-Petitioners,
City of FRANKLIN, Involuntary-Plaintiff,
v.
AMERICAN FAMILY MUTUAL **INSURANCE** COMPANY, a Wisconsin **insurance** corporation,
Defendant-Respondent,
Eric H. JOHNSEN, Henry Johnsen d/b/a Johnsen Construction, and ABC **Insurance**
Company, the fictitious name for an unknown **insurance** company, Defendants.
No. 00-2344.

Argued March 7, 2002.
Decided April 30, 2002.

Appeal from Circuit Court, Milwaukee County, Victor Manian, Judge.

For the plaintiffs-appellants-petitioners there were briefs by [William M. Cannon](#), [Edward E. Robinson](#) and Cannon & Dunphy, S.C., Brookfield, and oral argument by [Edward E. Robinson](#).

For the defendant-respondent there was a brief by [Timothy J. Pike](#), Michael J. Wirth and Peterson, Johnson & Murray, S.C., Milwaukee, and oral argument by Michael J. Wirth.

¶ 1 [SHIRLEY S. ABRAHAMSON](#), Chief Justice.

This is a review of a published decision of the court of appeals, [Martin v. American Family Mutual Insurance Co., 2001 WI App 178, 247 Wis.2d 386, 634 N.W.2d 127](#). The court of appeals affirmed the order of the circuit court for Milwaukee County, Victor Manian, Judge, dismissing the claims of Karen C. Martin and Allen H. Martin against Eric Johnsen's **insurance** company, American Family Mutual **Insurance** Company for injuries sustained in an **automobile** accident.

¶ 2 At the time of the accident Eric Johnsen was driving his father's pickup truck, which was available for Eric Johnsen's regular use. Under his father's liability policy with American Family Mutual **Insurance** Company, Eric Johnsen was **insured** as a permitted user of the pickup truck. The present case does not involve coverage under the father's policy but raises the question whether Eric Johnsen is **insured** under his own **insurance** policy with American Family while driving his father's vehicle. More specifically, the question of law presented for review is whether the "regular use" exclusion in Eric Johnsen's **insurance** policy with American Family [\[FN1\]](#) is invalid under [Wis. Stat. § 631.43\(1\) \(1999 2000\)](#). [\[FN2\]](#)

Supreme Court of Wisconsin.
Karen R. YOCHERER and Lance H. Yocherer, Plaintiffs-Respondents,
v.
FARMERS **INSURANCE** EXCHANGE, Defendant-Appellant-Petitioner.
No. 00-0944.
April 30, 2002.

For the defendant-appellant-petitioner there were briefs by [Douglas J. Carroll](#), [Timothy D. Pagel](#) and O'Neill, Schimmel, Quirk & Carroll, S.C., Milwaukee, and oral argument by [Douglas J. Carroll](#).

For the plaintiffs-respondents there was a brief by [William G. Ladewig](#), [Sharon K. Iggens](#) and Ladewig and Rechlicz, Menomonee Falls, and oral argument by [William G. Ladewig](#).

¶ 1 [WILLIAM A. BABLITCH](#), J.

Farmers **Insurance** Exchange (Farmers) petitions this court to review a decision of the court of appeals which held that, in this underinsured motorist claim, the date of the accident is not necessarily the date of loss for purposes of seeking coverage under the **insurance** contract within the statute of limitations. Here, Karen and Lance Yocherer did not make a claim against their underinsured carrier, Farmers, until all claims against the tortfeasors were settled and their carrier terminated arbitration proceedings against them. The court of appeals concluded that the action was timely filed, measuring from the date of termination of the arbitration. We agree that the action was commenced within the statute of limitations, but we conclude the appropriate date of loss was the date of settlement with the tortfeasors. For actions seeking coverage under an underinsured motorist policy, the statute of limitations begins to run from the date of loss, which is the date on which a final resolution is reached in the underlying claim against the tortfeasor, be it through denial of that claim, settlement, judgment, execution of releases, or other form of resolution, whichever is the latest. Accordingly, we affirm.

I

¶ 2 On October 22, 1987, Karen Yocherer was injured in an **automobile** accident caused by the alleged negligence of two other drivers, Katherine Noyes and Jeffrey Barnes. At that time, Yocherer was **insured** under an **automobile insurance** policy issued by Farmers, which contained an underinsured motorist coverage provision. [\[FN1\]](#) Barnes was also **insured** by Farmers. Noyes was **insured** by American Family.

[FN1.](#) The terms of the uninsured/underinsured motorist **insurance**

Only the Westlaw citation is currently available.

(Publication page references are not available for this document.)

Supreme Court of Nebraska.
Renaë SPRADLIN, Appellant,

v.

DAIRYLAND **INSURANCE** COMPANY and Sentry **Insurance** a Mutual Company, Appellees.

No. S-00-1108.

April 12, 2002.

Driver, pursuant to assignment of deceased passenger's claims, brought wrongful death action against underinsured motorist (UIM) **insurers**. The District Court, Phelps County, Terri Harder, J., sustained **insurers'** demurrer. Driver appealed. The Supreme Court, McCormack, J., held that passenger's wrongful death cause of action could not be assigned.

Affirmed.

(Publication page references are not available for this document.)

Supreme Court of Nebraska.
Michele McCORMICK, Conservator of the Estate of Alyssa M. Wickert
McCormick, a minor, and Patrick and Michele McCormick, parents of Alyssa M.
Wickert McCormick, a minor, Appellants,

v.

CITY OF NORFOLK, Appellee.

No. S-00-1332.

April 12, 2002.

Parents filed this action against city under Political Subdivisions Tort Claims Act for personal injuries sustained by their 9-year-old daughter when she was hit by **automobile** while walking her bicycle in marked crosswalk. The District Court, Madison County, Richard P. Garden, J., sustained city's demurrer and dismissed. Parents appealed. The Supreme Court, Connolly, J., held that: (1) placement of traffic control devices is discretionary function of political subdivision under Act subsection creating exception to liability for claim based on exercise of discretionary function, and (2) petition asserting that city's failure to install traffic control devices created dangerous condition or hazard and that this dangerous condition gave rise to duty to warn or take other measures to protect pedestrians who were crossing street did not form basis of valid duty to warn claim under Act.

Affirmed.

(Publication page references are not available for this document.)

Supreme Court of Nebraska.
Jeffrey W. HENERY, Special Administrator of the Estate of Carol Lee
Henery, deceased, Appellee,

v.

CITY OF OMAHA, a municipal corporation, Defendant and Third-party Plaintiff,
Appellant and Cross-Appellee, and Douglas L. Henderson, Third-party Defendant,
Appellee and Cross-Appellant.

No. S-01-498.

April 12, 2002.

After vehicle's passenger was killed when vehicle's driver collided with building while being pursued by police vehicle, special administrator of passenger's estate filed petition alleging that city was liable for **damages** due to passenger's death. City filed third-party petition against driver alleging that driver was responsible for passenger's death. The District Court, Douglas County, W. Mark Ashford, J., concluded that passenger was innocent third party whose death was proximately caused by vehicular pursuit by police officer and awarded **damages**. City appealed and driver cross-appealed. The Supreme Court, Miller-Lerman, J., held that passenger was innocent third party, within meaning of Political Subdivisions Tort Claims Act section providing for payment of **damages** to innocent third party whose death is proximately caused by vehicular pursuit by law enforcement officer.

Affirmed; cross-appeal dismissed.

Supreme Court of Wisconsin.
STATE FARM MUTUAL **AUTOMOBILE INSURANCE** COMPANY, Plaintiff-Respondent-
Petitioner,

v.

Franklin GILLETTE and V. Thomas Ostlund, Defendants-Appellants.

No. 00-0637.

Argued Jan. 10, 2002.

Decided March 29, 2002.

Insureds brought action against **automobile insurer** to recover underinsured motorist (UIM) benefits for injuries arising out of accident in Manitoba. The Circuit Court, LaCrosse County, Dennis G. Montabon, J., entered summary judgment in favor of the **insurer**. **Insureds** appealed. The Court of Appeals, Hue, J., [246 Wis.2d 561, 630 N.W.2d 527](#), affirmed in part and reversed in part. Review was granted. The Supreme Court, Shirley S. Abrahamson, C.J., held that: (1) the requirement that the **insured** be legally entitled to collect **damages** from the underinsured motorist embraces the limitations imposed by law on the amount or type of **damages** recoverable from the motorist; (2) Wisconsin, rather than Manitoba, law applied to permit the recovery of non- economic **damages**; and (3) the exhaustion requirement for UIM benefits for non- economic **damages** was satisfied by the fact that the amount of recovery from the Manitoba driver was zero.

Affirmed.

Jon P. Wilcox, J., concurred in part, dissented in part, and filed opinion.

N. Patrick Crooks, J., dissented and filed opinion joined by Diane S. Sykes, J.

Supreme Court of Georgia.
BROWN, P.E., INC.

v.

KENT.

No. S01G0973.

March 11, 2002.

Expert sued attorney to recover expert witness fees for services provided in suit arising out of **automobile** accident. The State Court, Muscogee County, Andrew Prather, II, J., entered judgment awarding expert witness fees, attorney fees, and expenses of litigation, and attorney appealed. After the Court of Appeals, Barnes, J., [238 Ga.App. 607, 518 S.E.2d 737](#), affirmed, expert filed motion in trial court for post-trial attorney fees. After jury trial, the State Court, Muscogee County, Edward Prather, II, J., awarded litigation expenses to expert incurred as the result of appeal. Attorney appealed, and the Court of Appeals, Johnson, P.J., [248 Ga.App. 447, 545 S.E.2d 598](#), reversed. On grant of certiorari, the Supreme Court, Hines, J., held that attorney fees and expenses of litigation could not be awarded for proceedings before the appellate courts.

Judgment of Court of Appeals affirmed.

(Publication page references are not available for this document.)

Supreme Court of Iowa.
Loretta MEIER, Appellee,
v.
Voltaire Senecaut, Defendant,
and
Voltaire SENECAUT III, Appellant.
No. 00-0114.
Feb. 27, 2002.

Motorist brought action arising out of **automobile** accident, naming other driver's grandfather as defendant. After driver was served, motorist voluntarily dismissed action and then obtained order reinstating action as to driver. The District Court, Polk County, Jack D. Levin, J., overruled driver's motion to dismiss. Driver appealed. The Supreme Court, Cady, J., held that: (1) driver failed to preserve for appeal issue of district court's jurisdiction to reinstate motorist's petition against him, but (2) motorist failed to present substantial evidence of good cause for untimely service of petition on driver.

Reversed and remanded.

(Publication page references are not available for this document.)

Supreme Court of Louisiana.
Rachel HOLLIER and Chad Matt
v.
STATE FARM MUTUAL **AUTOMOBILE INSURANCE** COMPANY and Mona Bernard.
No. 2001-C-3163.
Feb. 22, 2002.

Prior report: La.App., [799 So.2d 793](#).

In re State Farm Mutual **Automobile** Ins. Co. et al.; Bernard, Mona;--
Defendants; Applying for Writ of Certiorari and/or Review, Parish of Lafayette,
15th Judicial District Court Div. L, No. 98-3498-L; to the Court of Appeal,
Third Circuit, No. 01-0592.

Denied.

[VICTORY](#), J., would grant the writ.

[TRAYLOR](#), J., would grant the writ.

La. 2002.

Hollier v. State Farm Mut. Auto. Ins. Co.