2017 WL 5617628
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Supreme Court of Pennsylvania.

ERIE INSURANCE EXCHANGE
v.
Michael **BRISTOL** and RCC, Inc.
Appeal of: Michael **Bristol**

No. 124 MAP 2016
|
Argued: May 10, 2017
|
Decided: November 22, 2017

Synopsis

Background: Commercial automobile insurer brought declaratory judgment action seeking determination that uninsured motorist (UM) claim filed by injured employee of insured was barred by statute of limitations. The Court of Common Pleas, Montgomery County, Civil Division, No. 2013–12947, Thomas C. Branca, J., granted summary judgment in favor of insurer. Employee appealed. The Superior Court, No. 1119 Eda 2015, 2016 WL 3062309, affirmed. Employee sought allowance to appeal, which was granted.

[Holding:] On an issue of first impression, the Supreme Court, No. 124 MAP 2016, Mundy, J., held that statute of limitations for UM claim by employee of insured against commercial automobile insurer began to run upon alleged breach of contractual duty; overruling Boyle v. State Farm Mut. Auto. **Ins**. Co., 310 Pa.Super. 10, 456 A.2d 156, and Hopkins v. **Erie** **Ins**. Co., 65 A.3d 452.

Reversed and remanded.

Wecht, J., filed dissenting opinion.

West Headnotes (2)

[1] Appeal and Error
Cases Triable in Appellate Court

Issues involving the interpretation of a statute of limitations are questions of law for which the Supreme Court's standard of review is de novo and scope of review is plenary.

Cases that cite this headnote

[2] Limitation of Actions
Demand for performance of contract

Limitation of Actions
Contracts;warranties

Statute of limitations for employee's uninsured motorist (UM) claim against employer's commercial automobile insurer would begin to run when insurer denied coverage or refused to arbitrate, rather than when employee first learned that other driver involved in hit-and-run accident was uninsured or underinsured; under general contract principles, statute of limitations would begin to run when cause of action accrued, and there was no compelling public policy ground or legislative intent to support creation of special rule for determining when the statute of limitations started to run in UM cases; overruling Boyle v. State Farm Mut. Auto. **Ins**. Co., 310 Pa.Super. 10, 456 A.2d 156, and Hopkins v. **Erie** **Ins**. Co., 65 A.3d 452. 42 Pa. Cons. Stat. Ann. § 5502(a).

Cases that cite this headnote

Appeal from the Order of the Superior Court dated May 27, 2016 at No. 1119 EDA 2015 which Affirmed the Order of the Court of Common Pleas of Montgomery County, Civil Division, dated March 20, 2015 at No. 2013–12947. Thomas C. Branca, Judge.

Attorneys and Law Firms

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SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE MUNDY

***1** We granted allowance of appeal in this case to determine when the statute of limitations [1] begins to run on an uninsured motorist (UM) claim under an insurance policy. [2] Specifically, we must determine when the statute of limitations begins to run on an insured's ability to initiate a court action to enforce a UM claim in a policy containing an arbitration agreement. The Superior Court held that, for the purpose of UM and underinsured motorist (UIM) claims, the statute of limitations begins to run when a claimant injured in an automobile accident first learns that the other driver is uninsured or underinsured. [3] However, this conclusion is not adequately grounded in the pertinent statutory text, prevailing statute of limitations doctrine, or significant public policy concerns. Accordingly, we hold that statute of limitations principles attending contract claims apply, and that the running of the statute is commenced upon an alleged breach of a contractual duty, which in this case would be occasioned by the insurer's denial of coverage or refusal to arbitrate. We therefore reverse the Superior Court's order to the contrary.

***2** This matter was initiated when **Bristol** reported he was injured on July 22, 2005, in a hit-and-run incident while engaged within the scope of his employment as a lineman for RCC, Inc. in Upper Dublin Township, Montgomery County, Pennsylvania. At the time, RCC, Inc. was insured under a Pioneer Commercial Auto Fleet Policy, policy no. Q88–0200396 (the Policy), through **Erie** Insurance Exchange (**Erie**). The Policy contained an Uninsured/Underinsured Motorist Coverage Endorsement, which afforded coverage of $500,000.00 per accident. An arbitration clause was included in the Endorsement. The arbitration clause provided for binding resolution of disputes over liability and the amount of damages under the Endorsement, reserving other disputes, including the applicability of any statute of limitations, to the courts. [4] **Bristol**, through his attorney, put **Erie** on notice by letter of his UM claim on June 19, 2007. By letter dated July 9, 2007, **Erie** reserved its rights. [5] Subsequently, both parties selected arbitrators and **Erie** obtained a statement under oath from **Bristol**. In September 2012, the parties exchanged correspondence concerning **Bristol's** intervening, but unrelated, incarceration and the need to await his release to schedule further proceedings. No further action on the record was taken until **Erie** filed an action for declaratory judgment on May 29, 2013. Therein, **Erie** sought a determination of whether **Bristol's** UM claim was barred by the four-year statute of limitations under Section 5525(a)(8). [6] On September 11, 2014, **Erie** filed a motion for summary judgment. **Erie** asserted the statute of limitations began to run on the date of the accident, July 22, 2005, when **Bristol** was unable to identify the vehicle involved in the hit-and-run, i.e., when he became aware he had a UM claim. **Erie** averred that, by failing to file a "savings action with a court of competent jurisdiction" by the date the four-year limitation expired on July 22, 2009, **Bristol's** UM claim was time barred. In his cross-motion for summary judgment, **Bristol** asserted that **Erie's** reservation of rights and agreement to arbitrate precluded application of the statute of limitations because, in such circumstances, there is no contractual requirement to file a court action. **Bristol's** Motion for Summary Judgment, 10/10/14, at 6–7. Alternatively, **Bristol** argued that if the statute commenced, it was tolled by the agreement to arbitrate and selection of the first two arbitrators. *Id.* at 9.

The trial court granted **Erie's** motion for summary judgment on March 18, 2014. It denied **Bristol's** motion for reconsideration on April 9, 2014. The trial court rejected **Bristol's** arguments, determining that the statute in this case commenced to run on the day of the accident, which occurred over a year prior to the selection of any arbitrators, and that, pursuant to the Superior Court case of *Hopkins v. Erie Ins. Co.*, 65 A.3d 452 (Pa. Super. 2013), commencement of court action is required to toll the running of the four-year time limitation. **Bristol** timely appealed to the Superior Court.

In an unpublished memorandum opinion authored by Judge Olson, the Superior Court affirmed. [7] The court noted the standard and scope of its review for a grant of summary judgment as requiring affirmance only if facts supporting relief are clear and no issue for a factfinder

is present. *Erie Ins. Exch. v. Bristol*, 151 A.3d 1161, 2016 WL 3062309, at *2 (Pa. Super. 2016) (unpublished memorandum) (citing *Englert v. Fazio Mech. Servs., Inc.*, 932 A.2d 122, 124 (Pa. Super. 2007)). The Superior Court held that the statute begins to run on a UM claim when an insured sustains an injury as a result of a motor vehicle accident and knows the owner or operator of the other vehicle is uninsured. *Id.* at *4 (citing *Boyle v. State Farm Auto. Ins. Co.*, 310 Pa.Super. 10, 456 A.2d 156, 162 (1983)). Because it was undisputed that **Bristol** was aware at the time he was injured in the accident that he could not identify the hit-and-run driver or vehicle, the court concluded that a reasonable person would have known at the time of the accident that the unidentified alleged tortfeasor was presumptively uninsured. *Id.* at *2 (citing *Seay v. Prudential Prop. & Cas. Ins. Co.*, 375 Pa.Super. 37, 543 A.2d 1166, 1169 (1988), *appeal dismissed*, 520 Pa. 618, 554 A.2d 510 (1989)).

***3** The court further rejected **Bristol's** argument that his demand for arbitration made to **Erie** within four years of the date of the accident should be deemed to toll the statute of limitations. Relying on *Hopkins*, the Superior Court held that extrajudicial correspondence attempting to resolve a UM claim does not toll the statute of limitations. The court also concluded this result was consonant with the language of Section 5503, which, for commencement of an action, requires a filing asserting the claim in an authorized office.[8] Thus, the court reasoned that the exchange of correspondence between the parties in this case relative to commencing contractual arbitration, including the appointment of two arbitrators, did not toll the statute. The Court held, "pursuant to *Hopkins*, [**Bristol**] was at all times required to commence his 'action' within the required time-period, by filing a praecipe for a writ of summons, a complaint, a petition to appoint arbitrator, or a petition to compel arbitration, with the Prothonotary." *Id.* at *6. Accordingly, the Superior Court determined that the trial court did not err in granting **Erie's** motion for summary judgment.

Judge Ott filed a concurring opinion agreeing that the "rules for determining the commencement of the statute of limitations for an uninsured motorist claim are well settled." *Id.* (Ott, J., concurring) (citing *Boyle*, 456 A.2d at 162). However, she expressed the view that the portion of *Hopkins* discussing the tolling requirements is dicta and that precedent was unclear about what actions are sufficient to toll the statute, because in no case was tolling at issue. The concurrence, therefore, advocated announcing a bright-line rule "that a claimant in an uninsured motorist action, seeking arbitration, must file a petition to appoint arbitrator and compel arbitration in order to toll the statute of limitations in such action." *Id.* at *7. We granted allowance of appeal.

Bristol relates the history and current state of Pennsylvania law relative to arbitration of UM claims. **Bristol** noted this Court held that policy provisions requiring arbitration of UM disputes are enforceable. *Johnson v. Pa. Nat'l Ins. Cos.*, 527 Pa. 504,594 A.2d 296, 300 (1991).[9] The instant policy provides for compulsory arbitration for certain defined issues and requires court action for others. For issues not otherwise defined in the policy, the provision defaults to the requirements of Arbitration Act of 1927.[10] **Bristol** notes he made a written demand for arbitration in accordance with the policy terms and **Erie** agreed to arbitrate. Each party selected an arbitrator, but further action, as evidenced by correspondence between the parties, was postponed without objection from **Erie**, due to **Bristol's** unrelated incarceration. Section 7304 of the Act provides that a party petitioning a court to compel arbitration must show, in addition to the existence of a controlling agreement, "that an opposing party refused to arbitrate." 42 Pa.C.S. § 7304(a). Accordingly, **Bristol** argues there was no basis under the specific language of the contractual agreement to arbitrate, or under the Arbitration Act itself, for him to initiate the court action required by the Superior Court to toll the running of the statute of limitations.

***4** **Bristol** contends the Superior Court's reliance on *Hopkins* is relevant only to the question of an insured's presentation of the contractual UM **claim** to the insurer. **Bristol** advocates a determination that for a **cause of action** based on a contract to trigger the statute of limitations, it must be based on the occurrence of a breach. **Bristol** cites the Superior Court's decision in *Myers v. USAA Casualty Insurance Co.*, 298 Pa.Super. 366, 444 A.2d 1217 (1981), which interpreted the former No–Fault Act's definition of "loss" as employing the common law principle establishing a breach of contract to trigger the commencement of the applicable statute of limitations. Therein the court stated:

> 'loss' as that term is defined in the No–Fault Act must be equated with the common law concept of

> breach of contract because until such breach occurs, the claimant does not know that he has incurred any economic detriment. Moreover, until a breach has occurred, no cause of action based on contract exists and ... to hold that the limitations period begins to run prior to the existence of a cause of action would be unjust and unnecessary.

Id. at 1221 (citing *Bond v. Gallen*, 292 Pa.Super. 207,437 A.2d 7 (1981)).[11] **Bristol** urges this Court to overrule *Hopkins* to the extent it deems the existence of a claim of UM coverage, rather than the accrual of a cause of action for breach of contract, to be the circumstance triggering the commencement of the statute of limitations. He argues that *Hopkins*' requirement of filing a court action to compel arbitration or a complaint prior to the existence of a cause of action based on a breach of contract in connection with a UM claim would only serve to clog the courts with cases upon which they have no basis to decide. **Bristol** further distinguishes *Hopkins* factually on the basis that here the parties agreed to proceed with arbitration and had taken the steps including the appointing of arbitrators in furtherance of the agreement to arbitrate.

Bristol notes that the Superior Court acknowledged the potential adverse policy implications, including providing an incentive to insurers to draw out extra-judicial actions, negotiations, and investigations to exhaust the statute of limitations. The court also recognized the *Hopkins* decision is contrary to the overwhelming majority of other states that have considered the issue. Alternatively, **Bristol** argues that, in light of those policy concerns, this Court should hold that, under the facts of this case, the extrajudicial actions by **Erie** in agreeing to arbitrate, selecting arbitrators, and acquiescing in the delay occasioned by **Bristol's** incarceration should toll the statute of limitation, even if it commenced.[12]

Erie argues the Superior Court's decision is consonant with settled case law holding a UM claim is commenced for the purpose of the statute of limitations when the claimant's rights have vested. **Erie** urges our endorsement of the line of cases commencing with *Boyle* that hold, for the purpose of a UM or UIM claim, the four-year statute of limitations begins to run upon the known existence of the claim. That is, when "(1) the insured was in a motor vehicle accident; (2) the insured sustained bodily injury as a result of that accident; and (3) the insured knows of the uninsured status of the other owner or operator." *Clark v. State Farm Auto. Ins. Co.*, 410 Pa.Super. 300, 599 A.2d 1001, 1005 (1991) (citing *Boyle*, 456 A.2d at 162). To the extent this rule deviates from the application of traditional contract principles specifying that a breach of a contractual duty is needed to activate the statute of limitations, **Erie** points to the notion that Pennsylvania courts have long viewed insurance contracts as special cases. *See Brakeman v. Potomac Ins. Co.*, 472 Pa. 66, 371 A.2d 193, 196–97 (Pa. Super. 1977) (noting traditional contract principles may have to yield in consideration of the relationship between the insurer and insured). **Erie** argues the policy considerations articulated by **Bristol** in support of overruling Hopkins' are outweighed by counter-concerns. **Erie** argues that failing to start the running of the statute of limitation upon the knowledge by the insured that a UM claim exists would result in "no limit to the amount of time a claimant could extend the Matter." **Erie's** Brief at 26. **Erie** concludes "[t]his would be detrimental to the application of UM and UIM policies and would lead to confusion, difficult ... to measure damages, ... waste of judicial economy and is against public policy." *Id.* at 27.

***5** **Erie** contends **Bristol's** reliance on the Arbitration Act is inapposite and moot given Superior Court precedent and the need to follow the language of the relevant statute of limitations. Also, **Erie** notes the Arbitration Act is silent with respect to the statute of limitations and tolling. Further, **Erie** maintains **Bristol's** Arbitration Act issue is moot, because the appointment of arbitrators did not occur in this case until after the four-year statute of limitations expired.

Erie proceeds to argue this Court should uphold *Hopkins*' central holding that only a judicial action is sufficient to toll the statute of limitations. **Erie** contends **Bristol's** attempt to distinguish *Hopkins* is flawed. **Erie** notes that the parties in *Hopkins* did engage in numerous extra-judicial communications and exchanges of information, which were not deemed to toll the statute of limitations. The additional step of appointing arbitrators, as was done in this case, provides no qualitative distinction to support deviation from the conclusion, based on the language of Section 5525, that non-judicial acts are insufficient to toll the running of the limitations period. **Erie** endorses a bright-line rule that only the filing of a judicial action will

toll the statute. Such a rule would put claimants on notice to employ due diligence to protect their claim with such action within the limitation period. According to **Erie**, any rule that is dependent on an analysis of the quantity or quality of non-judicial acts could only inject confusion and uncertainty into the claims process.

[1] As **Erie** points out, the Superior Court's holding relative to when the statute of limitations begins to run is grounded on long established precedent of that court. It is, however, a question of first impression for this Court. [13] While the focus of the parties' arguments centers on the *Hopkins* decision, it is important to note that relative to this issue the *Hopkins* court was merely extending precedent stemming from the Superior Court's earlier decision in *Boyle* to UIM cases. In *Boyle*, the question on appeal was which statute of limitations should apply to an action to enforce a UM policy endorsement. The insurer argued the two-year statute of limitations for personal injury cases should apply and the insured argued the then six-year statute prescribed for actions on contracts should apply. The Superior Court determined that "[a]n action by an insured against his automobile insurance carrier essentially sounds in contract rather than in tort, even where the insured is recovering for personal injuries sustained in an accident with an uninsured motorist." *Boyle*, 456 A.2d at 157. After reaching this conclusion, the panel, with little discussion or citation, held, using the since oft-quoted language, as follows.

> Under the terms of the uninsured motorist coverage endorsement, the insured's right to payment did not vest until: (1) the insured was in a motor vehicle accident, and (2) the insured sustained bodily injury as a result of that accident, and (3) the insured knows of the uninsured status of the other owner or operator.

Id. at 162.

[2] We begin our analysis by examining the controlling language of the applicable statute of limitations in this case. Section 5502 of the Judicial Code defines the method of computing periods of limitation. Its clear mandate provides that "[t]he time within which a matter must be commenced under this chapter shall be computed ... from the time the **cause of action accrued** ...." 42 Pa.C.S. § 5502(a) (emphasis added). In construing this language for general contract purposes, we have adopted the view of a majority of jurisdictions that it is the accrual of the right of action that starts a limitations period to run.

***6** Our holding is in accord with the law across the country.

> *Unless a statute provides otherwise, the statute of limitations begins to run at the time when a complete cause or right of action accrues or arises, which occurs as soon as the right to institute and maintain a suit arises.*
>
> The general rule, as embodied in most statutes, is that, unless a statute specifically provides otherwise, as, for example, a statute specifically providing that the statute of limitations shall run from a particular event which may precede the time where the liability actually arises, the statute of limitations begins to run at the time when a complete cause or right of action accrues or arises, and only at such time, that is, as soon as the right to institute and maintain a suit arises, or when there is a demand capable of present enforcement. An action may accrue at the time of a wrongful act, although the limitations period does not always begin on the date the wrong is committed.
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> 54 C.J.S. *Limitations of Actions*, § 81 (footnotes and case citations omitted.)

Ctr. Concrete Co. v. AGI, Inc., 522 Pa. 27, 559 A.2d 516, 518–19 (1989). Therefore, applying these general contract principles to the enforcement of an insured's UM/UIM claim, the statute of limitations would begin to run when the insured's cause of action accrued, i.e., when the insurer is alleged to have breached its duty under the insurance contract. As **Erie** argued, however, our appellate courts have, in various contexts, viewed insurance contracts as special cases. We therefore address whether a basis exists to deviate from the general rule relative to when the statute of limitations begins to run in a UM case.

The issue of when the statute of limitations begins to run in connection with actions stemming from insurance contracts has arisen in our appellate courts, albeit, in contexts different than those we consider today. A review of those cases is instructive. In construing the predecessor No–Fault Act, we were called upon to interpret the

concept of "loss" contained in the No–Fault Act. In doing so, we effectively overruled the Superior Court's decision in *Myers* wherein it interpreted the No–Fault Act as conforming to common law notions, concluding the statute of limitations starts to run, not upon the occurrence of an injury from the underlying accident, but from the alleged breach by the insurer of its duty to pay. *Myers*, 444 A.2d at 1221.[14] Following *Myers*, the Superior Court, in *Murphy v. Prudential Property & Casualty Insurance Co.*, 312 Pa.Super. 236, 458 A.2d 602 (1983), determined that the claimed loss under Section 1009.106(c) of the No–Fault Act, for the purposes of the statute of limitations, occurred upon the insurer's refusal to pay, not the date of the accident. On appeal, this Court reversed. The majority based its reasoning on the specific language of the No Fault Act. It noted the statute defined loss as an "**accrued** economic detriment resulting from injury arising out of the maintenance or use of a motor vehicle consisting of [various defined expenses and losses]." *Murphy,* 469 A.2d at 1379 (emphasis added).

***7** The relevance of these decisions to this case is that the reason for deviating from normal contract principles, that a breach of a duty under a contract creates a cause of action for the purposes of a statute of limitations, was grounded in the specific language of the controlling No–Fault Act. In *Boyle*, no such analysis or justification was given for concluding the knowledge of the existence of a UM claim rather than a breach of a contractual duty by the insurer was the event that triggers the running of the limitation period. Contrastingly, in the instant case, the construction of a provision of the Motor Vehicle Financial Responsibility Law (MVFRL) is not at issue and does not supply a rationale for deviating from the general rule that in contract cases it is an alleged breach of a duty under the contract that starts the running of the statute of limitations.

Our courts have also confronted statute of limitation issues in the context of declaratory judgment actions for insurance contracts. In *Zourelias v. **Erie** Insurance Group*, 456 Pa.Super. 775, 691 A.2d 963 (1997), a decision involving a distinctive procedural footing, the Superior Court was tasked with determining whether the trial court erred in holding the insured's claim for UM or UIM coverage was barred by the terms of the policy. As a preliminary issue, the court addressed **Erie's** claim that the insured's declaratory judgment action was barred by the statute of limitations. Somewhat incongruously with the holding in *Boyle*, the court held the following.

> We note that **Erie** argues that appellant's request for declaratory relief was barred by the statute of limitations. We disagree. The general rule is that the statute of limitations begins to run when the plaintiff's cause of action arises or accrues. This Court has held that a cause of action for a declaratory judgment does not arise or accrue until an "actual controversy" exists. We have also held that the statute of limitations for a declaratory judgment action is four years. In this case, the "actual controversy" surrounding the interpretation of the insurance policy at issue did not arise until **Erie** denied appellant's request for coverage. It appears from the correspondence contained in the record that **Erie** denied appellant's request for coverage some time after October 21, 1994. The complaint for declaratory judgment was filed by appellant on May 31, 1996, well within the applicable four year statute of limitations. Accordingly, appellant's request for declaratory relief was not barred by the statute of limitations.

Zourelias, 691 A.2d at 964 n.2 (citations omitted); *but see Selective Way **Ins**. Co. v. Hospitality Grp. Servs., Inc.*, 119 A.3d 1035, 1048–49 (Pa. Super. 2015) (distinguishing *Zourelias* in holding the statute of limitations for an **insurer** to bring a declaratory judgment action to determine its duty to defend and indemnify under a policy commences when an actual controversy exists, which required a finding of when insurer had sufficient information to question its duties under the policy, and not necessarily when it denied coverage).

Although an issue of first impression for this Court, the question of when an action accrues in the context of UM and UIM claims has been an active one among various other states. *See* Jeffrey A. Kelso and Matthew

R. Drevlow, *When Does the Clock Start Ticking? A Primer on Statutory and Contractual Time Limitation Issues Involved in Uninsured and Underinsured Motorist Claims*, 47 DRAKE L. REV. 689 (1999). Three positions concerning when the statute of limitations begins in UM/UIM cases have emerged among those states employing a statute of limitations statute applicable to contract cases. These are: 1) the date of any breach by the insurer (the position advanced by **Bristol**); 2) the date the insured knows or has reason to know the tortfeasor is uninsured or underinsured (the position of the Superior Court advocated by **Erie**); and 3) the date of the accident. The majority of jurisdictions have adopted the first position. Having determined cases involving UM claims are grounded in the contractual relationship of the insured and the insurer, these courts reason it should be a breach of a contractual duty that serves as the triggering occurrence. *See Blutreich v. Liberty Mut. Ins. Co.*, 170 Ariz. 541, 826 P.2d 1167, 1169–70 (Ariz. Ct. App. 1991) (citing A. Widiss, *Uninsured and Underinsured Motorist Insurance* § 7.12 (2d ed. 1990) (collecting cases)).

***8** Other courts also express a view that the balance of public policy considerations underlying UM and UIM enactments support the result.[15] In *American States Insurance Co. v. LaFlam*, 69 A.3d 831 (R.I. 2013), the Supreme Court of Rhode Island addressed, in part on policy grounds, whether a contract provision contained in a policy that imposed a time limitation based on the date of the accident for commencing an action on a UM or UIM claim was unenforceable as against public policy. The court noted that in evaluating other insurance policy provisions, the court weighed the public policy underlying UM and UIM provisions "to afford protection to the insured against economic loss resulting from injuries sustained by reason of the negligent operation of uninsured motor vehicles or hit-and-run motor vehicles." *LaFlam*, 69 A.3d at 835 (internal quotation marks and citations omitted). The court balanced these concerns with the recognition that the legislature did not intend to protect from all economic loss, and that the statute must be construed in a manner to "afford insurers some financial protection." *Id.* (internal quotation marks and citations omitted). After reviewing its weighing of these considerations in prior UM/UIM cases the court concluded "the issue of when a UM/UIM cause of action accrues is one of first impression in this jurisdiction. The overwhelming majority of ... jurisdictions [that have considered this issue] have concluded that the limitations period begins to run on a UIM claim upon the insurer's breach of the insurance contract rather than the date of the accident. After careful consideration, we are persuaded to join this majority." *Id.* at 839 (internal quotation marks and citations omitted; footnote collecting cases omitted).

On occasion, this Court has weighed these same public policy considerations when evaluating policy provisions affecting UM/UIM coverage and has articulated the limitations of such an inquiry.

> This Court has repeatedly confronted the formless face of public policy. Wary of its vague nature, we have adopted a circumspect posture:
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> > Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest. As the term "public policy" is vague, there must be found definite indications in the law of the sovereignty to justify the invalidation of a contract as contrary to that policy. ... Only dominant public policy would justify such action. In the absence of a plain indication of that policy through long governmental practice or statutory enactments, or of violations of obvious ethical or moral standards, the Court should not assume to declare contracts ... contrary to public policy. The courts must be content to await legislative action.
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> *Eichelman* [*v. Nationwide Ins. Co.*], [551 Pa. 558] 711 A.2d [1006] at 1008 [(1998)]; *see also Hall,* 648 A.2d at 760 (quoting *Muschany v. United States,* 324 U.S. 49, 66–67, 65 S.Ct. 442, 89 L.Ed. 744 (1945)).
>
> *Burstein v. Prudential Prop. & Cas. Ins. Co.*, 570 Pa. 177, 809 A.2d 204, 207 (2002).
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> > It would be easy to state a public policy in the forbidden sense of "general considerations of supposed public interest," to elevate it to the status of unstated statutory language, thence to hold that an agency interpretation or insurance contract provision which is perfectly consistent with the plain words of the statute nonetheless violates the judicially perceived public policy and is therefore unenforceable. Although uninsured motorist coverage serves the purpose of protecting innocent victims from irresponsible uninsured motorists, that purpose does not rise to the level of a public policy overriding every other consideration of statutory construction.

> Not to lose sight of the forest for the trees, we quote the obvious: "[T]he policy of liberal interpretation of the [uninsured motorist law] is not limitless, a proverbial House that Jack Built. ... [T]here is a correlation between the premiums paid by the insured and the coverage a claimant could reasonably expect to receive." *Jeffrey v. Erie Insurance Exchange,* 423 Pa.Super. 483, 501–02, 621 A.2d 635, 645 (1993).

Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 648 A.2d 755, 760–61 (1994) (footnote omitted).

Instantly, we are not confronted with an interpretation of a contract provision affecting UM or UIM coverage. Neither does the question of what triggers the running of the statute of limitations involve an interpretation of a specific provision of the MVFRL. Accordingly, we need not engage in a targeted public policy analysis in the context of such interpretations. *Cf. Pa. Nat'l Mut. Cas. Co. v. Black*, 591 Pa. 221, 916 A.2d 569, 580 (2007) (employing a public policy analysis to evaluate the propriety of an insurance contract provision). *Boyle* and subsequent cases adopting its knowledge-of-UM-claim standard, to the extent they have engaged in any public policy analysis, have noted concerns of administrative efficiency. *See Hopkins*, 65 A.3d at 458 (noting its decision that the statute of limitations commences to run upon a claimant learning of a motorist's underinsured status, i.e., the settlement of a claim or a damage award, harmonizes UM and UIM cases and affords an insured time to assess his position in a UIM case). However the initial determination in *Boyle* was not based on any analysis of statutory language or any articulated public policy grounds.

***9** The policy arguments of the parties center on the potential for either insureds or insurers to manipulate a delay for tactical advantage or to unduly prolong the insurer's exposure to liability. **Bristol** argues the Superior Court's position encourages an insurer to artificially pace negotiations, discovery and evaluations to "lull a claimant into a false sense of security." **Bristol's** Brief at 22. **Erie** argues "[i]f the statute on a UM action did not begin to run until the alleged breach occurred there would be no limit to the amount of time a claimant could extend the matter. ... This would be detrimental to the application of UM and UIM policies, and would lead to confusion, difficult if not impossible to measure damages, unnecessary waste of judicial economy and is against public policy." **Erie's** Brief at 27.

These apprehensions about an insured delaying submission of a claim or an insurer delaying action on a claim may be of concern but do not justify departing from the normal breach of contract principles attendant to triggering the statute of limitations. We note that an insured would rarely be advantaged by delay in the submission of a claim and insurers are charged with acting in good faith. Deviations from these norms may be addressed on equitable grounds or in other ways based on particular facts.

Absent a compelling public policy ground or legislative intent, we conclude there is no reason to create a special rule for determining when the statute of limitations starts to run in UM cases. We conclude the proper circumstance to start the running of the limitation period is an alleged breach of the insurance contract, which will be occasioned in this context by a denial of a claim or the refusal to arbitrate. [16] This is the point when "the cause of action accrued." 42 Pa.C.S. § 5502(a). Accordingly, we overrule *Boyle* and its progeny to the extent those cases are at variance with our holding today.

Because it is undisputed that **Erie** has not refused arbitration or denied coverage in this case, it follows that **Bristol** had no accrued cause of action to initiate through the court either by complaint or motion to compel arbitration. We determine, therefore, that the trial court erred in granting summary judgment to **Erie** in its declaratory judgment action on the basis that the statute of limitations had expired for **Bristol** to assert his UM claim. Accordingly, the order of the Superior Court is reversed, and the case is remanded for further proceedings, consistent with this opinion.

Chief Justice Saylor and Justices Baer, Todd, Donohue and Dougherty join the opinion.

Justice Wecht files a dissenting opinion.

DISSENTING OPINION

JUSTICE WECHT

As I explained in my May 24, 2017 Dissenting Statement, [1] the issue of when the statute of limitations begins to run on an uninsured motorist claim is not

properly before this Court. Nevertheless, the learned Majority—apparently eager to overturn more than thirty years of Superior Court precedent [2]—allows Michael **Bristol** to challenge the exact legal principle that he conceded in the lower courts. Unlike the Majority, I refuse to endorse **Bristol's** choose-your-own-adventure litigation strategy. Accordingly, I respectfully dissent.

Before the trial court, **Bristol** never argued that the four-year statute of limitations governing uninsured motorist claims begins to run only when an insurer explicitly rejects the insured's claim. In opposition to **Erie's** motion for summary judgment, **Bristol** argued that **Erie** "should be estopped from asserting the statute of limitations as a defense" because: (1) **Bristol** notified **Erie** that he intended to pursue an uninsured motorist claim *"within four years of the date of the accident*;" and (2) **Erie** agreed to proceed to arbitration and then appointed an arbitrator. *See* **Bristol's** Answer to **Erie's** Motion for Summary Judgment at 4, 9 (emphasis added). [3] In other words, **Bristol** waived the issue that the Majority resurrects and resolves on the merits. *See* Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

In fact, **Bristol** conceded that the applicable limitations period commenced on the date of the alleged vehicle accident. *See* Answer to **Erie's** Motion for Summary Judgment, 10/10/2014, at 2 ¶22 (admitting that the limitations period in this case commenced on July 22, 2005). **Bristol** argued that **Erie** waived the statute of limitations defense because it agreed to arbitrate **Bristol's** claim. *Id.* at 8 ("Because **Erie** agreed to arbitrate [**Bristol's**] claim and selected an arbitrator, **Erie** has waived any claim that this matter is barred by the statute of limitations.").

Similarly, **Bristol's** Superior Court brief contained no argument regarding when the four-year statute of limitations commenced. Instead, **Bristol** maintained that the parties' actions effectively *tolled* the statute of limitations such that "filing a Complaint against **Erie** would have been meaningless surplusage." **Bristol's** Superior Court Brief at 18.

Because **Bristol** never argued that the statute of limitations in his case did not commence on the date that he was injured, it makes sense that this Court's December 29, 2016 Order granting **Bristol's** Petition for Allowance of Appeal focused upon whether "extra-judicial actions," such as an informal demand for arbitration or the appointment of arbitrators, can "toll the statute of limitations." Order, 439 MAL 2016 (Dec. 29, 2016). According to the Majority, however, that phrasing inadvertently "*constrained consideration* of" the commencement issue. Maj. Op. at 2 n.2 (emphasis added). Indeed. In an extraordinary attempt to fix this "mistake" after oral argument, the Court (over my dissent) issued an order amending our original *allocatur* grant, this time adopting the issue statement exactly as **Bristol** framed it in his Petition for Allowance of Appeal. *See* ***Erie Ins. Exch. v. Bristol***, 160 A.3d 123 (Pa. 2017).

Ironically, the issue that **Bristol** presented in his Petition for Allowance of Appeal—much like the arguments **Bristol** made in the courts below—has absolutely nothing to do with the commencement of the applicable statute of limitations. [4] Rather, the issue that **Bristol** raised (and that the Majority retroactively granted review) concerns the Superior Court's conclusion that, pursuant to *Hopkins v. **Erie** Insurance Co.*, 65 A.3d 452 (Pa. Super. 2013), **Bristol** was required to file a petition to compel arbitration in order to *toll* the statute of limitations. *See* Superior Court Opinion at 6 ("[A]s this Court held in *Hopkins*, to toll the running of the statute of limitations, an insured is required to file, in a court, a 'petition to appoint arbitrators [or] to compel arbitration.' "); *id.* at 10 ("First, under the precedent established in *Hopkins*, [**Bristol's**] extrajudicial demand for arbitration did not commence his action and it did not toll the four-year statute of limitations.").

Perhaps that is why this Court, after adopting **Bristol's** own issue statement *verbatim*, ventured that it "*understands* this issue to encompass a determination of the time at which a cause of action accrues—thereby triggering the commencement of the statutory period for bringing a claim—in the specific context of an insurance contract containing a mandatory arbitration provision." ***Erie Ins. Exch. v. Bristol***, 160 A.3d 123 (*per curiam*) (emphasis added). Needless to say, I do not share this creative "understanding," *see id.* at 125–27 (Wecht, J., dissenting). Even if I did, the Court's revised issue statement cannot change the fact that **Bristol** failed to preserve the commencement issue in the lower courts. *In re J.M.*, 556 Pa. 63, 726 A.2d 1041, 1051 n.15 (1999) (holding that issues not raised before the trial or Superior Court are not preserved for appellate review); *see United States v. Burke*, 504 U.S. 229, 246, 112 S.Ct. 1867, 119 L.Ed.2d 34 (1992) (Scalia, J., concurring) ("The rule that

points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one.").

For whatever reason, and to my puzzlement, today's Majority is willing to overlook the many procedural defects in this case, even though this Court has considered those same defects to be inexcusable in numerous other appeals.[5] Although the Majority does not tell us why **Bristol's** case warrants such special indulgences,[6] what is clear is that the time has come for this Court—either by rule or by decision—to commit to clear standards for determining whether a particular case warrants departure from our ordinary issue preservation doctrines. Absent such standards, the unpreserved issues that the Court regularly declines to consider will continue to be indistinguishable from those that we idiosyncratically agree to resolve. In my view, such arbitrary and selective enforcement of our Rules of Appellate Procedure is ill-advised.

All Citations

--- A.3d ----, 2017 WL 5617628

Footnotes

1 The parties agree that the applicable statute of limitations is the four-year limitation set forth in Section 5525 of the Judicial Code, which provides as follows.

> **§ 5525. Four year limitation**
> (a) General rule.—Except as provided for in subsection (b), the following actions and proceedings must be commenced within four years:
> ...
> (8) An action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7) [concerning bonds or notes], under seal or otherwise, except an action subject to another limitation specified in this subchapter.
> ...

42 Pa.C.S. § 5525(a)(8).

2 Dependent on the resolution of that issue, we also accepted an ancillary issue of whether a claimant under an insurance policy containing a mandatory arbitration provision for UM claims must file a writ of summons, complaint, petition to appoint arbitrator, or a petition to compel arbitration, in order to toll the statute of limitations. Our initial grant of allocatur for this case included a rephrasing of the issue in a manner that, in an attempt at clarity, constrained consideration of the first issue. Consequently, the Court entered an order on May 24, 2017, reinstating the following questions as originally posed by **Bristol** and briefed and argued by all parties.

> By affirming its Opinion in *Hopkins v. **Erie** Insurance Co.*, 65 A.3d 452 (Pa. Super. 2013), and ruling that:
> (1) a claimant seeking uninsured or underinsured motorist benefits must file a Complaint or a Petition to Compel Arbitration if the claim does not resolve within four years of the date of the underlying accident, and,
> (2) a claimant must file a Complaint or Petition to Compel Arbitration, contrary to the plain language of the Arbitration Act of 1927, 42 Pa.C.S. § 7304(a), which requires a claimant to file a Complaint or Petition only when "an opposing party refuse[s] to arbitrate,"
> did the Superior Court create a new rule that is contrary to prior decisions of the Court and inconsistent with the plain language of the Arbitration Act?

Erie Ins. Exch. v. Bristol, 160 A.3d 123 (Pa. 2017) (per curiam); *see also id.* at 124 (Saylor, C.J., concurring); *id.* at 125 (Wecht, J., dissenting).

In his dissenting opinion, Justice Wecht reiterates the concerns expressed in his dissenting statement to the Court's May 24, 2017 per curiam order. These concerns were ably addressed by Chief Justice Saylor in his concurring statement accompanying the per curiam order, which was joined by the balance of this Court. As the question of which issues are before the Court in this case have been clearly decided, there is little utility in re-expounding on them at this stage.

3 Optional UM and UIM endorsements to an automobile insurance policy provide an insured with benefits from his or her own policy for losses caused by another motorist who is uninsured or inadequately insured, respectively.

4 The arbitration clause provides in pertinent part as follows.

> ARBITRATION
> Disagreement over:

1. whether or not anyone we protect is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle; or
2. the amount of damages;

shall be settled by arbitration. The decision of the arbitrators shall be limited to, and binding on, these two issues. However, the amount of damages can never exceed the Uninsured or Underinsured Motorists Coverage limits shown on the Declarations.

All other disagreements shall be decided by a court of competent jurisdiction and not by arbitration. Disagreements to be determined by such court include, but are not limited to:

...

3. statutes of limitations;

...

After written demand for arbitration by either party, each party will select an arbitrator. These two will select a third. If no selection is made within 30 days, the Judge of the Court of Record, in the county where the arbitration is pending, will appoint the third arbitrator.

...

In all other respects, any arbitration will follow the arbitration provisions of the Arbitration Act of 1927.

Pioneer Commercial Auto Fleet Policy, policy no. Q88–0200396 (Endorsement, June 2003 Edition), at 4 (formatting adjusted).

5 We have defined an insurer's reservation of rights in the following manner:

> A reservation of rights letter asserts defenses and exclusions that are already set forth in the policy. *See* BLACK'S LAW DICTIONARY (8th ed. 2004) (defining a reservation-of-rights letter as "notice of an insurer's intention not to waive its contractual rights to contest coverage or to apply an exclusion that negates an insured's claim.").

Am. & Foreign Ins. Co. v. Jerry's Sport Ctr., Inc., 606 Pa. 584, 2 A.3d 526, 544 (2010). Accordingly, a reservation of rights by an insurer does not constitute a breach of the insurance contract. *Babcock & Wilcox Co. v. Am. Nuclear Insurers*, 635 Pa. 1, 131 A.3d 445, 456–57 (2015).

6 An initial default judgment was entered in favor of **Erie**, but, upon petition filed by **Bristol**, the trial court struck the default judgment on January 27, 2014.

7 Justice Stevens concurred in the result, and Judge Ott filed a concurring opinion.

8 The section provides in pertinent part:

> **§ 5503. Commencement of matters**
>
> **(a) General rule.—**A matter is commenced for the purposes of this chapter when a document embodying the matter is filed in an office authorized by section 5103 (relating to transfer of erroneously filed matters) or by any other provision of law to receive such document.
>
> ...

42 Pa.C.S. § 5503(a)

9 Appellant also noted that this Court determined in *Insurance Federation of Pennsylvania, Inc. v. Department of Insurance*, 585 Pa. 630, 889 A.2d 550 (2005), that the Pennsylvania Department of Insurance did not have the authority to mandate arbitration for UM and UIM coverage disputes.

10 The Uniform Arbitration Act of 1980, repealed and replaced the 1927 Act. 42 Pa.C.S. §§ 7301–7320. A source note to Section 7320 states the applicability of the Act to "[an] agreement heretofore or hereafter made which expressly provides for arbitration pursuant to the former provisions of the Act of April 25, 1927 ..., relating to statutory arbitration." 42 Pa.C.S. § 7302.

11 The ruling in *Myers* was effectively overruled by this Court's decision in *Murphy v. Prudential Property & Casualty Co.*, 503 Pa. 528, 469 A.2d 1378 (1983), as discussed more fully *infra*.

12 The Pennsylvania Association for Justice filed an amicus curiae brief, in which it also argued this Court should join the majority of jurisdictions in holding that for a UM claim the statute of limitations begins to run when a cause of action for a breach of a contractual duty accrues.

13 Issues involving the interpretation of a statute of limitations are questions of law for which our standard of review is de novo and our scope of review is plenary. *Commonwealth v. Corban Corp.*, 598 Pa. 459, 957 A.2d 274, 276 (2008).

14 The No Fault Act contained its own limitations provisions. *See generally* 40 P.S. §§ 1009.101–1009.701 (repealed 1984).

15 Some of the policy arguments favoring the respective positions are particularly relevant to UIM policy endorsements, where ascertaining the possibility of a contractual UIM claim is intertwined with the tort action against the other driver.

16 Because of our disposition of the first issue, **Bristol's** secondary issue respecting whether non-judicial acts may be sufficient to toll a statute of limitation once it has commenced is moot, and we need not address it further.

1 *See* ***Erie Ins. Exch. v. Bristol***, 160 A.3d 123, 125 (Pa. 2017) (Wecht, J., dissenting).

2 In an appropriate case, I have no objection whatsoever to this Court reversing this body of precedent, which traces back to the Superior Court's decision in *Boyle v. State Farm Mut. Auto. **Ins**. Co.*, 310 Pa.Super. 10, 456 A.2d 156 (1983). This is not an appropriate case.

3 *See also* Notes of Testimony, 3/11/2015, at 14 (counsel for **Bristol** conceding that **Bristol** would have been required to file a petition to compel arbitration if **Erie** had not appointed an arbitrator).

4 In its revised order, the Court accepted review of the following issue, taken directly from **Bristol's** Petition for Allowance of Appeal:

> By affirming its Opinion in *Hopkins v. **Erie** Insurance Co.*, 65 A.3d 452 (Pa. Super. 2013), and ruling that:
>
> (1) a claimant seeking uninsured or underinsured motorist benefits must file a Complaint or a Petition to Compel Arbitration if the claim does not resolve within four years of the date of the underlying accident, and,
>
> (2) a claimant must file a Complaint or Petition to Compel Arbitration, contrary to the plain language of the Arbitration Act of 1927, 42 Pa.C.S. § 7304(a), which requires a claimant to file a Complaint or Petition only when "an opposing party refuse[s] to arbitrate,"
>
> did the Superior Court create a new rule that is contrary to prior decisions of this Court and inconsistent with the plain language of the Arbitration Act?

Erie Ins. Exch. v. Bristol, 160 A.3d 123 (Pa. 2017) (*per curiam*).

5 *See, e.g., Commonwealth v. Sanchez*, 623 Pa. 253, 82 A.3d 943, 969 (2013) (finding that a capital defendant waived his claim that trial court failed to "life qualify" prospective capital jurors); *Butler v. Charles Powers Estate ex rel. Warren*, 620 Pa. 1, 65 A.3d 885, 896 (2013) (explaining that issues not raised in a motion for declaratory judgment are waived); *Brayman Const. Corp. v. Com., Dept. of Transp.*, 608 Pa. 584, 13 A.3d 925, 932 (2011) (holding that appellant waived challenge to plaintiff's standing where it conceded same in the Commonwealth Court); *In re Farnese*, 609 Pa. 543, 17 A.3d 357, 368 (2011) (explaining that issues raised for the first time on appeal are waived); *Oliver v. City of Pittsburgh*, 608 Pa. 386, 11 A.3d 960, 964–65 (2011) (holding that any issues not raised before the intermediate appellate court were); *Cash Am. Net of Nev., LLC v. Com., Dept. of Banking*, 607 Pa. 432, 8 A.3d 282, 298 (2010) (same); *Commonwealth v. Wholaver*, 605 Pa. 325, 989 A.2d 883, 893 (2010) (holding that capital defendant waived issue regarding prosecutor's penalty-phase rhetoric where trial counsel objected to those remarks on different grounds).

6 Judging by our case law, the reason is not that it would have been futile for **Bristol** to raise the argument earlier, since both the trial and Superior Courts were bound by *Boyle*. *See Schmidt v. Boardman Co.*, 608 Pa. 327, 11 A.3d 924, 942 (2011) (holding that in such circumstances the litigant should "acknowledg[e] the binding nature of the prevailing precedent but merely indicat[e] that it wishes to preserve a challenge for review on later appeal"). Nor is it because the issue that **Bristol** preserved is broad enough to encompass the issue that the Majority resolves. *See Commonwealth v. Bradley*, 575 Pa. 141, 834 A.2d 1127, 1135 (2003) (appellant who argued generally at sentencing that he was not subject to the Sentencing Code's "three strikes" provision waived the more specific "recidivist philosophy-based argument" that he raised on appeal). Nor is it material that **Erie** does not object to **Bristol's** attempt to argue a waived issue. *See Commonwealth v. Triplett*, 476 Pa. 83, 381 A.2d 877, 881 n.10 (1977); *accord Newman Dev. Grp. of Pottstown, LLC v. Genuardi's Family Markets, Inc.*, 617 Pa. 265, 52 A.3d 1233, 1246 (2012) ("[W]e have a strong interest in the preservation of consistency and predictability in the operation of our appellate process, and issue preservation rules play an important role in that process." (internal citation omitted)).

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