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CASE SUMMARY: IN A CLAIM FOR UNIDENTIFIED MOTORIST PROTECTION COVERAGE, THE LIMITATION PERIOD DOES NOT BEGIN TO RUN UNTIL THE PLAINTIFF MAKES AN INDEMNIFICATION DEMAND AND THE RESPONDING INSURER FAILS TO SATISFY THAT DEMAND

Insurance law – Automobile insurance – Unidentified motorist – Limitation of actions

Rooplal v. Fodor, [2018] O.J. No. 4460, 2018 ONSC 4985, Ontario Superior Court of Justice, August 20, 2018, V.R. Chiappetta J.

The insurer provided unidentified motorist coverage under the *Insurance Act*, R.S.O. 1990, C. I.8, s.265. The plaintiff applied for leave to add the insurer as a defendant and the insurer argued the claim was statute barred by the *Limitations Act*, S.O. 2002, c. 24, Sch. B.

On May 4, 2012, the plaintiff was injured as a passenger on a bus when the bus driver stopped short after being cut-off by an unidentified vehicle (the insured). The plaintiff's action was commenced on March 26, 2014, and the plaintiff applied to add the insurer on May 3, 2017.

The insurer argued that time begins to run for the limitation period when the material facts on which the claim is based have been discovered or ought to have been discovered by the plaintiff's exercise of reasonable diligence. In this case, the insurer argued that was the date of the accident. The plaintiff argued that the limitation period does not begin until the plaintiff makes an indemnification demand and the responding insurer fails to satisfy that demand.

The court agreed with the plaintiff and held that the limitation period begins on the first day of default after the indemnification demand is made and the plaintiff's motion was granted.

This case was digested by [Erika L. Decker](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Erika L. Decker at edecker@harpergrey.com.