IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2011-CA-00225 RT

FALESCA MONTGOMERY

APPELLANT

VS.

JEREMY HELVESTON AND
SAFECO INSURANCE COMPANY OF ILLINOIS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and/or entities have an interest in the outcome of this cause. These representations are made in order that the Justices of the Supreme Court and/or the Judges of Court of Appeals may evaluate possible disqualification or recusal:

1. The Honorable Roger Clark - Circuit Court Judge of Stone County.
2. Safeco Insurance Company of Illinois - Defendant/Appellee.
3. Wright Hill Jr. - Attorney for SafeCo Insurance Company of Illinois
4. Falesca Montgomery- Plaintiff/Appellant
5. Andrew C. Burrell - Attorney for Falesca Montgomery.

ANDREW C. BURRELL
ATTORNEY FOR APPELLANT
FALESCA MONTGOMERY

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

ARGUMENT

A cause of action against an insurer for uninsured-motorist benefits is subject to a three-year statute of limitations. Miss. Code Ann. Sec. 15-1-49. See, *Mitchell v. Progressive Ins. Co.*, 965 So.2d 679, 683 (Miss. 2007). The issue in the case at bar is when the statute of limitations begins to run and move over what is a reasonable investigation. Further, by statute and by insurance policy terms, notice of the claim must first be given to the insurance company. Miss. Code Ann. Sec. 83-9-5(e) (Rev. 1999). No suit may be brought sooner than sixty days after written proof of loss has been given, nor later than three years after the proof of loss. Miss. Code Ann. Sec. 83-9-5(k) (Rev. 2002). Thus, based on the statute, the statute of limitation on the case at bar could not begin to run until 60 days after the accident.

The Defendant, Safeco, argues that the Plaintiff should have known that the Driver/Owner, Helveston, was uninsured on the day of the accident or upon receipt of the accident report some week to ten days later based on the two prong test of *Stamps v. State Farm*. That test states that the date of the accident begins the running of the statute of limitations when one can show that the Plaintiff was hurt on the day of the accident and to that, evidence exists showing the defendant or at-fault party was uninsured at that time. *Stamps v. State Farm Mutual Automobile Insurance Company*, 2011 WL 1743107 (S.D. Miss.). This seems to be directly contrary to current Mississippi law, set forth in *Jackson v. State Farm Mutual Automobile Insurance* and against the facts in the case at bar.

First, evidence was clear in Stamps that the at fault party was uninsured on the day of the accident due to an admission from the at fault party that he was uninsured. This coupled with the fact that the Plaintiff was injured, was sufficient for the court to find that

the statute of limitations began to run on the day of the accident. Those facts do not exist in the case at bar, since on the day in question, Plaintiff had no conversation with the Defendant, Helveston. Thus, Safeco, wants to relate that since the Plaintiff was injured on the date of the accident, the statute of limitations begins to also run on that date. However, there is no evidence as of the date of the accident that the Plaintiff knew or should have known that Helveston was uninsured at that time.

Further, Defendant, Safeco, argues that the date the accident report was received by Plaintiff is the date that should begin the running of the statute again, relying on Stamps. This argument is unreasonable and against current Mississippi law as to knowing or should have known. The facts are clear that the accident report solely answers the questions that on the day of accident, simply put, that Mr. Helveston had no proof of insurance at the time of the accident. There are many reasons while this could have happened. Defendant, Safeco, wants the Court to assume that it was solely due to being uninsured. To find in favor of the Defendant's position, the Court is taking away a parties obligation to conduct a known duty to reasonably and diligently investigate the claims they face. This further shows how the Stamps decision flies directly against the Jackson decision which states the Plaintiff has the duty to exercise due diligence as a reasonable and prudent man to acquire information so that he may be informed about his claims. *Jackson*, 880 So. 2d at 342. Thus, the receipt of the accident report in the case at bar should only trigger the need for a reasonable investigation to begin to determine whether the Defendant was or was not insured at the time of accident.

Similarly, the letters to the Defendant, Safeco, informing them of a potential uninsured claim, only shows a continuation of the reasonable investigation; an investigation in line

with the ruling of Jackson. These letters do not allege that Helveston was uninsured; rather, that he may or may not be insured. At the time of these letters, there existed no proof to say that Helveston was or was not insured. Thus, how can the statute of limitations begin to run at that date. Further the simple presentation of medical records as information of injury and cooperation between parties should not be read to trigger the statute of limitations as there are other elements to a policy that require medical records

Lastly, Safeco relies to a point of a brief conversation between Montgomery and Helveston in which he alleged that he had "no insurance." In *State Farm Mutual Automobile Insurance Company v. Stewart*, 288 So. 2d 723, (Miss. 1974), the Court ruled that a statement by a party was not sufficient enough to meet the burden of presenting a uninsured motorist claim as the only witnesses testifying about the uninsured status were Easterling, plaintiff's attorney and Joe E. Smith, the claims supervisor. The court held that there was no competent evidence establishing that the vehicle was not covered by liability insurance and the case was reversed and remanded. *Id.* at 724. See also *Stonewall Insurance Company v. McQueen*, 337 So.2d 711, 712.

Much as in Stewart, there is no current competent evidence that proves Helveston was or remains uninsured at the time of the accident or any reasonable time afterwards. Thus, it could be argued that the claim is not ripe to pursue the uninsured benefits.

Throughout the life of the claim at bar, Helveston has not been forthcoming with information, no comments at the scene other than having the no proof of insurance. He has been difficult to serve process nor has he made any appearance through the proceedings. All these facts further underlie the essential findings in Jackson; the need for a reasonable investigation. In the matter at bar, the Plaintiff is really asking if ninety days is a reasonable

time frame to investigate the fact of the claim to determine if it was known or reasonably known that the Defendant was uninsured. This reasonable time frame is within the courts ruling in Jackson, and does not allow for the Plaintiff to set a subjective standard as to when determining the statute of limitations, but rather, follow the courts ruling as setting forth a reasonable investigation to determine what facts exist.

V. CONCLUSION

Under Jackson, the court has ruled that the statute of limitations begins to run when the Plaintiff knew or should have known after reasonable investigation so that he may be informed about his claims. For the court to rule for the Defendant, the lower court went against the findings and decision in Jackson, as there is no evidence that on the date any statement or proof existed that Defendant, Helveston, was insured and/or uninsured on the date of the accident. Further, error should be found that the date of receipt of the accident report follows the same line because a notation of "no proof" of insurance should note to a party the need for an investigation to be performed.

The lower courts ruling in favor of the Defendant is against the findings in Jackson by setting a date of receipt of the accident report is enough to set the statute of limitations, then is one to assume that "no proof of insurance" is the same as no insurance.

The lowers court's ruling should be reversed as it goes against the Court's ruling in Jackson, as there was no evidence in the record enough at any of the time to confirm that the Defendant was or was not insured at the time of the accident. Thus, triggering a period of necessary investigation of due diligence a reasonable time occurred of ninety days and as such the Plaintiff filed her Amended Cmplaint during that time frame and thus the

Complaint was filed timely. Therefore, the decision of the lower court should be reversed and the case should be reinstated and be allowed to move forward as properly filed.

Respectfully submitted this the 23, day of August, 2011.

FALESCA MONTGOMERY

By: _____

ANDREW C. BURRELL, Esquire

ANDREW C. BURRELL, Esquire
ANDREW C. BURRELL, P.A.
750 EAST PASS ROAD
GULFPORT, MS 39507
phone (228) 896-4016
fax (228) 896-8372
MS Bar [redacted]

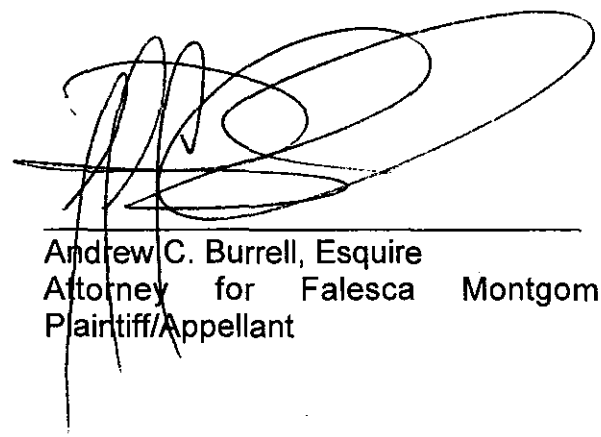
CERTIFICATE OF SERVICE

I, Andrew C. Burrell, do hereby certify that I have this day filed this Appellant's Brief with the Clerk of this Court on behalf of the Supreme Court of Mississippi, and have served a copy of this Notice of Appeal by United States mail, with postage prepaid, to counsel for Defendant\Appellee, as follows:

W. Wright Hill, Jr.
Page Kruber and Holland
10 Canebrake Blvd. Suite 200
Jackson, Mississippi 39232.

Honorable Roger Clark
Circuit Court Judge of Stone County
323 Cavers Ave
Wiggins, MS 39577

This the 23rd day of Aug, 2011



Andrew C. Burrell, Esquire
Attorney for Falesca Montgomery,
Plaintiff/Appellant