2026 IL App (1st) 250471-U

Fourth Division
Filed August 27, 2026

No. 1-25-0471

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAWRENCE MOSBY, Plaintiff and Counterdefendant-Appellant, v. AMERICAN FREEDOM INSURANCE COMPANY, Defendant and Counterplaintiff-Appellee.	Appeal from the Circuit Court of Cook County No. 2023 L 004160 The Honorable Michael T. Mullen, Judge, presiding.

JUSTICE OCASIO delivered the judgment of the court.
Presiding Justice Navarro and Justice Quish concurred in the judgment.

ORDER

¶ 1 *Held*: The entry of summary judgment in favor of insurer was reversed, and the cause remanded, where the parties' coverage dispute fell outside the scope of arbitrable issues under the policy and the applicable statute and where plaintiff commenced suit within the policy's limitation period.

¶ 2 The appellant, Lawrence Mosby, challenges the trial court's entry of judgment in favor of American Freedom Insurance Company (American), arguing that the trial court improperly granted summary judgment for American and failed to address Mosby's breach of contract claim.

¶ 3 BACKGROUND

¶ 4 Mosby was a named insured and driver on a policy of automobile insurance issued by American under policy number 12-2191783-01 and was in effect in April 2021.

¶ 5 On April 23, 2021, while operating his vehicle, Mosby was rear-ended by an uninsured motorist. As a result, Mosby filed claims for uninsured motorist damages. American investigated the use of Mosby's vehicle.

¶ 6 On August 24, 2021, American denied coverage of the claim after its investigation, citing purported work-related usage of the insured vehicle. Mosby did not demand uninsured motorist arbitration.

¶ 7 On April 24, 2023, Mosby filed a complaint alleging breach of contract by American for wrongfully denying uninsured motorist coverage and negligence claims against the driver and owner of the other car involved.

¶ 8 On October 23, 2023, American filed a countercomplaint seeking declaratory judgment and a stay of arbitration. The counter-complaint alleged that Mosby's failure to demand arbitration (an alleged condition precedent) relieved American of any duty under the policy, and it sought a judicial declaration confirming that position.

¶ 9 The policy required arbitration of disputes regarding "with respect to the coverage and the amount of damages" under the uninsured motorist provision. American asserted the policy required Mosby to report changes in the vehicle's use within 30 days.

¶ 10 On November 21, 2023, Mosby filed a response to American's countercomplaint and admitted that he did not demand uninsured motorist arbitration and that an actual controversy existed under section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2022)). Mosby argued that he complied with the insurance policy because he chose to file a lawsuit within the two-year limitation.

¶ 11 Later, Mosby filed a motion for summary judgment on his breach of contract claim and American's countercomplaint. American filed a response to Mosby's motion and a cross-motion seeking summary judgment on its counterclaim. Mosby subsequently dismissed, without prejudice, the driver and owner of the other vehicle.

¶ 12 On January 29, 2025, the trial court ruled on the motions for summary judgment, denying Mosby's motion and granting American's cross-motion. It found that Mosby's policy "provide[d]

no coverage with respect to the April 23, 2021 accident *** for uninsured motorist coverage" and that American was "not obligated by said policy to defend, indemnify, or arbitration [*sic*] on behalf of [Mosby] for any case or claim pending or other case or claim yet to be filed."

¶ 13 Mosby filed a motion to reconsider, and the trial court denied it on February 25, 2025.

¶ 14 On March 13, 2025, Mosby filed a notice of appeal challenging the January 29, 2025 order denying its motion for summary judgment and the February 25, 2025 order denying its motion to reconsider.

¶ 15 Relevant Policy Provisions

¶ 16 Part III of the policy, entitled "Uninsured Motorist and Underinsured Motorist Coverage," provided, in relevant part, as follows:

> "Coverage J - Uninsured Motorist Coverage (Damages for Bodily Injury). To pay damages not exceeding the limits shown on the Declarations page, which the insured is legally entitled to recover from the owner or operator of an uninsured automobile because of bodily injury, sustained by the Insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purpose of this coverage determination as to whether the Insured is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the Insured and the Company or, if they fail to agree, by arbitration. To pay under this coverage only after the limits of liability under all applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements.
>
> * * *
>
> Arbitration of Claims under Part III - Uninsured Motorist and Underinsured Motorist Coverages J, L and K. Any dispute with respect

> to the coverage and the amount of damages shall be submitted for arbitration to the American Arbitration Association and shall be subject to its rules of the conduct of arbitration hearings as to all matters except medical opinions.
>
> * * *
>
> Limitation on Suits, Actions or Arbitrations. No suit, action, or arbitration proceeding for the recovery of any claim under this section shall be sustainable in any court of law or equity unless the insured, as a condition precedent to such action, has fully complied with all terms and provisions of this policy, nor unless said suit, action, or arbitration proceeding is commenced within two years of the date of accident (except under coverage K, Underinsured Motorist) to any claim against the company submitted more than two years after the date of accident or within 120 days of the entry of judgment against the underinsured whichever is later, provided the insured protects the company's rights of subrogation."

¶ 17 ANALYSIS

¶ 18 Mosby raises numerous challenges to the trial court's authority to enter judgment, the interpretation and application of the policy's arbitration and limitations provisions, the legal effect of American's denial of coverage, and the application of forfeiture to arguments first raised in his motion to reconsider. The sole issue we need to address is whether Mosby's dispute, American's denial of uninsured motorist coverage based on allegedly improper vehicle use, was subject to arbitration under the policy and section 143a of the Illinois Insurance Code.

¶ 19 Summary judgment rulings and questions of policy interpretation and arbitrability are reviewed *de novo*. *Schal Bovis, Inc. v. Casualty Insurance Co.*, 315 Ill. App. 3d 353, 364 (2000);

Hobbs v. Hartford Insurance Co. of the Midwest, 214 Ill. 2d 11, 17 (2005); *Salsitz v. Kreiss*, 198 Ill. 2d 1, 15 (2001).

¶ 20 Arbitration and Section 143a

¶ 21 The record reflects that Mosby never requested arbitration under the uninsured motorist provision of the policy. Unlike disputes involving liability or the amount of damages, the sole issue presented was whether American properly denied uninsured motorist coverage based on its determination that Mosby was using the insured vehicle for work. Because the dispute concerned a threshold question of insurance coverage, it was for the trial court, not an arbitrator, to resolve. See *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 542-44 (1992). Until the trial court determined whether American properly denied coverage under the policy, there was no arbitrable issue for Mosby to submit to arbitration.

¶ 22 Section 143a of the Illinois Insurance Code contains the same operative language found in the policy: arbitration is required for "any dispute with respect to the coverage and the amount of damages." 215 ILCS 5/143a(1) (West 2020). The statutory phrase "any dispute with respect to the coverage" has been interpreted consistently for more than three decades. In *Yapejian*, the Illinois Supreme Court held that this language limits arbitration to disputes concerning damages or liability after coverage has been established. *Yapejian*, 152 Ill. 2d at 542-44. Questions as to the existence of coverage are not subject to arbitration under the statute. See *id.* at 539. The only issues subject to arbitration under section 143a are (1) whether the insured is entitled to recover damages from the uninsured motorist, and (2) the amount of those damages. *Reed v. Farmers Insurance Group*, 188 Ill. 2d 168, 179 (1999).

¶ 23 Nothing in the subsequent amendments to section 143a alters *Yapejian*'s rule. The legislature has amended the statute multiple times without altering the specific language at issue in *Yapejian*, and courts continue to treat *Yapejian* as controlling authority. See, *e.g.*, *Cincinnati Insurance Company v. Pritchett*, 2018 IL App (3d) 170577, ¶ 14.

¶ 24 This case presents a pure coverage question. American denied uninsured motorist coverage based entirely on its assertion that Mosby failed to report a change in the vehicle's use. That denial created a threshold judicial issue: whether coverage existed at all. Because the dispute concerned coverage, not liability or damages, there was no arbitrable issue. Arbitration was not required.

¶ 25 The record further reflects that Mosby timely commenced this action within the contractual two-year limitations period. Although the two-year anniversary of the accident fell on a Sunday, Mosby filed the complaint on the following Monday. When the last day of commencing an action falls on a Saturday, Sunday, or legal holiday, the period extends to the next business day. 5 ILCS 70/1.11 (West 2022); 735 ILCS 5/1-106 (West 2022). Accordingly, Mosby's complaint was timely filed. Having timely invoked the jurisdiction of the trial court to resolve the threshold coverage dispute, Mosby was not required to request arbitration where the only issue presented was American's denial of uninsured motorist coverage. Because the dispute concerned the existence of coverage rather than liability or damages, there was no arbitrable issue until the trial court first determined whether American properly denied coverage under the policy.

¶ 26 CONCLUSION

¶ 27 For the reasons stated, we reverse the judgment of the trial court and remand the cause for further proceedings.

¶ 28 Reversed and remanded.