CONTRACTUAL LIMITATIONS ON THE TIME TO FILE UNDERINSURED MOTORIST AND UNINSURED MOTORIST CLAIMS IN IOWA: FINDING A MORE BALANCED APPROACH

ABSTRACT

Underinsured and uninsured motorists policies are carried by the overwhelming majority of Iowa drivers. However, while these coverages are standard in Iowa automobile insurance policies, receiving the benefits of such coverages can require an insured to navigate a complex process that oftentimes requires the assistance of an attorney and the court system. The 2011 case Robinson v. Allied Property*, decided by the Iowa Supreme Court, may have brought clarity to the issue of how long an insured has to file a claim on an underinsured or uninsured motorist policy, but it has raised questions about the need to balance an insurers right to contract with the need to protect consumers who are entering insurance contracts with very little understanding of the contract and even less leverage to negotiate the terms of it. This Note examines the history of contractual limitations on insureds' time to file an underinsured or uninsured motorist claim in Iowa, discusses the impact of the Iowa Supreme Court's decision in* Robinson*, and recommends legislative action that could balance the freedom to contract and the protection of consumers.*

TABLE OF CONTENTS

I. INTRODUCTION

The relationship between an automobile insurance carrier and its insured can be a complex one. While insurance companies rely on individuals to purchase their product in order to keep their companies in business, those individuals may have very little room to negotiate the contract they enter into when they purchase their insurance policies.[1] A state can require its residents to purchase certain levels and types of automobile insurance as a condition of issuing them a driver's license.[2] Therefore, consumers may enter into a contract with an insurance carrier out of necessity and, while they can shop around for other carriers, in the end, they are forced to enter a contract with some insurance carrier if they cannot afford to insure themselves. The terms of those contracts dictate how insurance companies act when benefits are paid out.

Add the complexities of state laws, and the situation grows even more confusing. States can regulate insurance companies' actions, as well as the rights of insureds to bring claims against their insurers.[3]

1. *See* Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988) ("[I]nsurance policies are contracts of adhesion. This is due to the inherently unequal bargaining power between the insurer and insured . . . ." (citations omitted)).

2. *See, e.g.*, IOWA CODE § 321A.5 (2013) (requiring Iowa residents to have an automobile insurance policy or to be personally insured to cover damages or injuries resulting from an automobile accident).

3. *See infra* Part V; IOWA CODE § 614.1(5)(a) (establishing a ten-year

This Note addresses what happens in Iowa when an insurer attempts to limit the amount of time to bring a claim under certain types of policies—underinsured motorist and uninsured motorist policies—and how that is affected by the state law governing such claims. While Iowa law grants citizens the right to bring claims for a certain number of years,[4] some insurance companies contractually limit the amount of time their customers have to bring such claims.[5] In the past, this has resulted in uncertainty as to the rights of the insureds, and the case law on the issue has, until recently, been unclear.[6] As it currently stands, a two-year limitation on the time to file a claim under an underinsured or uninsured policy is—as a matter of law—reasonable.[7] This Note examines the history of contractual limitations on insureds' time to file,[8] explains the impact of the recent developments in the law,[9] and recommends legislative action that could ensure more balance between: (1) insurers' rights to contractually limit the time to file claims for uninsured and underinsured motorist coverage; and (2) protection of consumers forced to enter into contractual relationships with insurers when they have little or no ability to negotiate the terms of such contracts.[10]

II. UNINSURED MOTORIST AND UNDERINSURED MOTORIST BASICS

A. *Underinsured and Uninsured Motorist Coverage, Generally*

Iowa requires all drivers to prove financial stability in order to ensure compensation to other drivers who sustain injuries or damages as a result of their driving.[11] While there are other forms of proving financial stability,

statute of limitations for contract actions).

4. *Id.*

5. *See* Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 330 (Iowa 2005); Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 786 (Iowa 2000); Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 775, 783 (Iowa 2000); Douglass v. Am. Family Mut. Ins. Co., 508 N.W.2d 665, 666 (Iowa 1993), *overruled by id.*

6. *Compare* Robinson v. Allied Prop. & Cas. Ins. Co., No. 10-1721, 2011 WL 2556951, at *5 (Iowa Ct. App. June 29, 2011) (holding a two-year contractual limitation on the time to file an underinsured motorist claim was unreasonable), *vacated*, 816 N.W.2d 398 (Iowa 2012), *with* Hesseling v. State Farm Mut. Auto. Ins. Co., No. 09-1562, 2010 WL 5023070, at *1 (Iowa Ct. App. Dec. 8, 2010) (holding a two-year contractual limitation on the time to commence an uninsured motorist claim was reasonable).

7. *Robinson*, 816 N.W.2d at 409.

8. *Infra* Part IV.A.

9. *Infra* Part IV.B.

10. *Infra* Part V.

11. IOWA CODE § 321.20B (2013) ("[A] person shall not drive a motor vehicle

the most common way to do so is by purchasing liability insurance.[12] The law requires that all automobile policies sold in Iowa contain underinsured (UI) and uninsured motorist (UIM) coverage unless the purchaser refuses such coverage in writing.[13] These types of policies provide coverage for damages and injuries arising out of accidents with motorists who are either uninsured or with policy limits that do not cover the extent of the damages.[14] The purpose behind Iowa's law requiring these types of coverage is to protect "persons insured under such polic[ies] who are legally entitled to recover damages" from uninsured or underinsured drivers.[15] Since it has been estimated that eleven percent of Iowa drivers are uninsured,[16] and the minimum insurance level required is only $40,000 coverage for a single accident,[17] accidents involving either an uninsured motorist or a motorist who is underinsured are not uncommon.

Underinsured and uninsured motorist coverages safeguard drivers against financial injury when they are involved in a collision with another

on the highways of this state unless financial liability coverage . . . is in effect for the motor vehicle . . . .").

12. *See id.* § 321.1(24B) (stating that financial liability coverage includes insurance policies, bonds, certificates of deposit with the treasurer, or certificates of self-insurance).

13. *Id.* § 516A.1 ("No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident. Both the uninsured motor vehicle or hit-and-run motor vehicle coverage, and the underinsured motor vehicle coverage shall include limits for bodily injury or death at least equal to those stated in section 321A.1, subsection 11. The form and provisions of such coverage shall be examined and approved by the commissioner of insurance.").

14. *See id.*

15. *Id.*

16. Press Release, Ins. Research Council, Recession Marked by Bump in Uninsured Motorists: IRC Analysis Finds One in Seven Drivers Are Uninsured (Apr. 21, 2011), *available at* http://www.insurance-research.org/sites/default/files/downloads/IRCUM2011_042111.pdf.

17. *See* IOWA CODE § 321A.1(11).

driver who has either too little or no insurance.[18] While these coverages are not an actual form of liability insurance, they do act as a substitute to the required liability insurance that would generally be available to the injured party of an automobile accident.[19] These are known as "first-party" coverages, and rather than being paid to the injured party by the negligent party's insurance company—as is the case with liability insurance—they pay directly to the party who purchases the insurance.[20]

The first type, uninsured motorist coverage, is available to ensure a victim will receive minimum compensation when injured by a driver operating a vehicle with no insurance coverage.[21] This essentially provides the injured driver with the same coverage that would be available to them had the driver at fault in the collision carried the minimum amount of insurance required by state law.[22]

Underinsured motorist coverage, while similar to uninsured motorist coverage in that it is a first-party coverage, works in a different manner. Underinsured motorist coverage has the purpose of ensuring that a victim of an accident receives full compensation for the injuries they suffered, even though the driver of the other vehicle may not have adequate insurance to cover the full amount of damages.[23] This type of coverage only comes into effect when an insured's damages exceed the policy limits of the at-fault driver's insurance policy.[24]

18. 9 STEVEN PLITT ET AL., COUCH ON INSURANCE § 122:10 (2008 rev. ed.) (stating that the primary purposes of uninsured and underinsured motorist provisions include: "Providing financial recompense to innocent persons and dependents of those who are injured or killed because of wrongful conduct of uninsured motorists[,] . . . [m]aking the victim whole for losses sustained at the hands of negligent and financially irresponsible motorists[, and] . . . [a]ffording victims injured by the uninsured motorist the same recompense they would have enjoyed if the offending motorist had himself or herself carried liability insurance." (footnotes omitted)).

19. 16 RICHARD A. LORD, WILLISTON ON CONTRACTS § 49:35 (4th ed. 1989).

20. *Id.*

21. *See* IOWA CODE § 516A.1; Veach v. Farmers Ins. Co., 460 N.W.2d 845, 848 (Iowa 1990) ("The purpose of uninsured motorist coverage is to ensure minimum compensation to victims of uninsured motorists.").

22. *Veach*, 460 N.W.2d at 848.

23. *See id.* ("The goal of underinsured motorist coverage . . . is full compensation to the victim to the extent of the injuries suffered."); McClure v. Northland Ins. Cos., 424 N.W.2d 448, 450 (Iowa 1988) (stating the "goal of underinsurance to be full compensation to the injured party to the extent of damages sustained, as opposed to minimum compensation").

24. *See McClure*, 424 N.W.2d at 450.

Because the Iowa statute requires these types of coverages be offered in all automobile insurance policies,[25] most drivers will have both uninsured and underinsured motorist coverage in their policy. Generally, however, the insured cannot "stack" the two coverages when a claim is made.[26] Rather, the insured will "recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage" available on the insured's policy.[27]

B. *Bringing a Claim for Underinsured Motorist or Uninsured Motorist Benefits*

Generally, when a driver is involved in an accident for which another driver is at fault, a claim is entered against the negligent driver's insurance company, and the benefit—up to the amount of damages or the policy limit, whichever is less—is paid directly to the injured party without the involvement of attorneys or the courts.[28] However, the steps taken to receive benefits under underinsured or uninsured motorist policies can be numerous, and courts are often involved when injured parties bring claims against their own insurance companies to recover those benefits.[29]

For underinsured motorist coverage, the insured must show that the extent of their damages exceeds the value of the policy held by the negligent driver.[30] While it may be very simple in certain cases to produce such evidence, the insurance company may deny these claims and challenge the total amount of damages incurred by its insured if it questions the validity or extent of the claimed injuries.[31] Oftentimes, the disputed amount of the damages will be related to personal injuries, with the insurance

25. *See* IOWA CODE § 516A.1.

26. *Id.* § 516A.2(3) ("It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.").

27. *Id.*

28. *See* PAUL W. PRETZEL, UNINSURED MOTORISTS § 1 (1972).

29. *See* 2 ALAN I. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 29.1, at 569 (2d ed. 1999).

30. 3 *id.* § 42.2, at 476.

31. *See id.* § 42.2, at 479.

company arguing that the injuries are either unrelated to the incident in question or not as substantial as claimed, while the insured attempts to prove the injuries are related and are as serious as alleged—a long process that may include physical examination of the injured insured.[32] This process of dispute between the insured and the insurance company can be complex; oftentimes, the insured seeks legal advice in order to navigate the process.[33] As a result, when a resolution cannot be reached between an insured and the insurer, the underinsured motorist claim will be decided by the courts when the insured seeks relief through a suit seeking enforcement of the contract with the insurer.[34]

The process for handling uninsured motorist claims is generally easier to navigate for the insured and the claims are more difficult for the insurer to challenge. Typically, an injured driver will learn the negligent driver has no insurance at the time of the accident, or shortly thereafter when the injured driver attempts to file a claim with the negligent driver's insurance company.[35] In those instances, the injured party can report to his insurance company the negligent driver's lack of insurance and start the process of receiving benefits under the uninsured motorist policy.[36] However, issues can and do arise when—for a variety of reasons—the injured party may not become aware of the negligent driver's lack of insurance within the time period required by the carrier of the uninsured motorist policy.[37]

C. *Underinsured and Uninsured Motorist Claims Governed by Contract Law*

When uninsured motorist or underinsured motorist insurance is purchased, the insured buys a policy from the insurance company, and the agreement entered into between the insured—who agrees to pay for the insurance—and the insurance company—which agrees to provide financial coverage payable at the time of an accident—is a contractual

32. *See id.* § 42.3–.4.

33. *See* 2 *id.* § 19.13, at 193 ("Purchasers of insurance frequently do not understand many of the terms set forth in insurance policies.").

34. *See, e.g.*, Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 786 (Iowa 2000) ("Nicodemus subsequently filed this action seeking UIM benefits *under the . . . policy* . . . ." (emphasis added)).

35. *See* PRETZEL, *supra* note 28, § 52.2.

36. 2 WIDISS, *supra* note 29, § 16.2(B), at 14.

37. Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 330 (Iowa 2005) (illustrating a case in which an insured failed to file their claim within the contractually limited period of time because they were unaware of the tortfeasor's insolvency until after the time period for filing had expired).

arrangement.[38] Iowa courts, as a result, hold that underinsured motorist and uninsured motorist claims are governed by the principles of contract law.[39]

D. *Iowa Law Allows Ten Years to Bring a Suit in an Underinsured Motorist or Uninsured Motorist Claim*

Because underinsured motorist and uninsured motorist claims are treated as contractual claims in Iowa, the applicable statutory limitations period is ten years for bringing either type of claim against an insurer.[40] While this is the amount of time Iowa law allows for such claims to be initiated, many insurers have opted to contractually limit the time period in which an insured may bring a valid claim for either underinsured motorist or uninsured motorist coverage.[41]

III. LIMITING THE STATUTE OF LIMITATIONS OF UNDERINSURED MOTORIST AND UNINSURED MOTORIST POLICIES

A. *The Time to File a Claim for an Underinsured Motorist or Uninsured Motorist Policy Can be Limited by Contract*

Traditional contract law holds that terms of a contract can be formulated and agreed upon by the parties, and the intent of the parties in such contracts will govern the enforcement of the contract.[42] At times, parties may even agree to contract away rights granted to them by authorities outside the contractual arrangement—such as rights granted to an individual by state statutes.[43]

38. *See Nicodemus*, 612 N.W.2d at 787 (discussing a claim under an underinsured motorist policy as a contractual claim); Douglass v. Am. Family Mut. Ins. Co., 508 N.W.2d 665, 666 (Iowa 1993) ("[A] direct suit for uninsured motorist benefits is considered to be an action on a contract, not in tort."), *overruled by* Hamm v. Allied Mut. Ins. Co., 612, N.W.2d 775 (Iowa 2000).

39. *See Nicodemus*, 612 N.W.2d at 787; *Douglass*, 508 N.W.2d at 666; Vasquez v. LeMars Mut. Ins. Co., 477 N.W.2d 404, 409 (Iowa 1991) (holding an uninsured motorist benefits suit is an action on a contract and not a tort suit).

40. IOWA CODE § 614.1(5) (2013).

41. 2 WIDISS, *supra* note 29, § 16.2(B), at 15.

42. 1 LORD, *supra* note 19, § 1.1 ("The heart of 'contract' is thus found both in its promissory nature and in its enforceability. As such, a contract enables parties to project exchange into the future and to tailor their affairs according to their individual needs and interests; once a contract is entered, the parties' rights and obligations are binding under the law . . . ." (footnote omitted)).

43. *Id.* ("Contract law is designed to protect the expectations of the

Under these well-accepted theories of contract law, Iowa courts have held that an insured and an insurer may contract for a shorter amount of time for claims to be filed than the ten-year period granted to an insured under Iowa law.[44] An insurance company may, in the terms of the policy that are agreed to by the insured at the time of purchase, limit the period of time in which the insured can file a claim against the insurer and may also define the event that will trigger the limitations period.[45] Because the Iowa legislature has not acted to disallow such contractual limitations in regard to underinsured motorist or uninsured motorist claims, such limitations are valid if reasonable.[46] These contractual limitations have been recognized as not only consistent with the tenets of contract law, but also as consistent with public policy as long as the limitation allows for reasonable time to bring such claims under the policy in question.[47]

B. *Limitations Must Be Reasonable*

The allowance of limitations on the time in which a claim may be filed is not boundless.[48] Iowa courts have required that any such limitation must

contracting parties. It is intended to enforce the expectancy interests created by the parties' promises so that they can allocate risks and costs during their bargaining. The goal of contract law is to hold parties to their agreements so that they receive the benefits of their bargains. It is not the function of the court to relieve a party to a freely negotiated contract of the burdens of a provision which becomes more onerous than had originally been anticipated." (footnotes omitted)); *see also, e.g.*, *Douglass*, 508 N.W.2d at 666 (illustrating a case in which the court allowed a two-year contractual limitation of the time to file an uninsured motorist claim, which is limiting the right to bring a claim within ten years afforded by Iowa law).

44. IOWA CODE § 614.1(5); *see Douglass*, 508 N.W.2d at 668.

45. Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 775, 784 (Iowa 2000).

46. *See* 20A JOHN ALAN APPLEMAN & JEAN APPELMAN, INSURANCE LAW AND PRACTICE § 11601, at 428–33 (1980) ("A contractual limitation requiring suit to be brought within a prescribed period of time is, in the absence of statutory provisions to the contrary, valid if reasonable. Consequently, an action brought after the expiration of such time would be barred. The fact that the period thus fixed is shorter than the general statute of limitations does not invalidate the policy requirement. And the fact that the policy provides that any conflicting statutory provisions shall prevail does not substitute the statutory limitation in the place and stead of the contractual limitation." (footnotes omitted)).

47. 44A AM. JUR. 2D *Insurance* § 1909 (2012) ("In the absence of statutory regulation to the contrary, an insurance contract may validly provide for a limitation period shorter than that provided in the general statute of limitations, provided that the interval allowed is not unreasonably short." (footnotes omitted)).

48. *See* Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 788 (Iowa 2000) (holding a requirement to exhaust all tort remedies prior to filing a claim on an

be reasonable.[49] If the court finds a limitation on the time for bringing a claim is unreasonable, the court will not enforce the limitation.[50] The time to bring such a claim is unreasonable if the right of the insured to bring a claim is abrogated.[51]

IV. DETERMINING REASONABLENESS: EVOLUTION OF THE REASONABLENESS STANDARD IN IOWA CASES

A. *The History of the Reasonableness Standard*

While the courts have stated a contractual limitation on the time to bring a claim cannot be valid unless such a limitation is reasonable,[52] the standard of what is reasonable and what is not reasonable has not always been clear. The law on the reasonableness of such limitations has been evolving for the past twenty years in Iowa.

In 1993, the Iowa Supreme Court addressed the issue of contractual limitations on the time to file a claim under an uninsured motorist policy in *Douglass v. American Family Mutual Insurance Co*.[53] In *Douglass*, an insured failed to file a claim against her insurance carrier, American Family Insurance, before the contractually required two-year limitations period had passed.[54] The plaintiff argued that she had not learned the tortfeasor was judgment proof until after the two-year period had expired.[55] Additionally, she argued the legislature had not explicitly permitted insurance companies the right to limit the ten-year statute of limitations for contracts, as they had in fire insurance policies, and that the legislature's silence should be interpreted as their intent to disallow such limitations.[56]

uninsured motorist claim, yet starting the two-year filing period at the time of the incident, when the claim had not accrued, was an unreasonable and unenforceable limitation of the ten-year statute of limitations).

49. *Id*. at 787 ("The policy must provide a reasonable period of time for filing actions to recover under the insurance contract."); Hesseling v. State Farm Mut. Auto. Ins. Co., No 09-1562, 2010 WL 5023070, at *3 (Iowa Ct. App. Dec. 8, 2010).

50. *Nicodemus*, 612 N.W.2d at 788.

51. *Id.* at 787 ("A contractual limitations provision that would require a plaintiff 'to bring his action before his loss or damage can be ascertained' is per se unreasonable." (citations omitted) (internal quotation marks omitted)).

52. *Id.*; *Hesseling*, 2010 WL 5023070, at *3.

53. Douglass v. Am. Family Mut. Ins. Co., 508 N.W.2d 665, 665 (Iowa 1993), *overruled by* Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 775 (Iowa 2000).

54. *Id.* at 665.

55. *Id.* at 667.

56. *Id.*

The court rejected both arguments, stating the contract did not require exhaustion of remedies against the other driver as a requirement to filing the claim and, citing cases from the early 1900s, indicated Iowa had long allowed contractual limitations by insurers.[57] Interestingly, the court cited a portion of an annotation in their discussion of the issue that stated:

> It appears to be generally recognized that the time allowed should be sufficient to allow the plaintiff to investigate and file his case within the limitation period, and that periods which are so short as to amount to a practical abrogation of the right of action, or which would require plaintiff to bring his action before his loss or damage can be ascertained, are unreasonable.[58]

Just two years after the *Douglass* decision, the Iowa Supreme Court again dealt with a question of whether an insurer could contractually limit the time to file a claim for uninsured motorist benefits in *Morgan v. American Family Mutual Insurance*[59] The plaintiffs argued the insurer's refusal to pay benefits on their uninsured motorist policy after the two-year contractually limited time frame had passed amounted to bad faith on the part of the insurer.[60] The *Morgan* court, citing *Douglass*, held that the contractual limitation was valid and enforceable, and the plaintiffs' failure to timely file their claim against the insurer barred their recovery under the policy's uninsured motorist coverage.[61]

The case law regarding the issue of contractual limitations on the time to file continued to evolve in *Hamm v. Allied Mutual Insurance Co.*.[62] The court in *Hamm* addressed the question of "when . . . the policy limitation period begin[s] to run on an insured's claim for underinsured motorist (UIM) benefits under provisions of the insured's automobile insurance

57. *Id.*

58. *Id.* at 666 (emphasis added) (quoting B.H. Glenn, Annotation, *Validity of Contractual Time Period, Shorter than Statute of Limitations, for Bringing Action*, 6 A.L.R.3d 1197, 1202–03 (1966)).

59. Morgan v. Am. Family Mut. Ins. Co., 534 N.W.2d 92, 98 (Iowa 1995), *overruled by* Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 775 (Iowa 2000).

60. *Id.* at 92.

61. *Id.* at 98, 100.

62. *Hamm*, 612 N.W.2d at 776. *Hamm* overruled *Morgan* and *Douglass* on the characterization of policy provisions that limit or prohibit coverage on "any claim that is barred by the tort statute of limitations," but did not affect the principles regarding the enforceability of provisions in insurance policies shortening the statutory limitations period. *Morgan*, 534 N.W.2d at 98; *Douglass*, 508 N.W.2d at 666. *See* Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 787 n.1 (Iowa 2000).

policy."[63] The policy in question involved an exhaustion clause that indicated the insurer, Allied, would pay uninsured motorist claims only after the plaintiff had settled with or obtained a judgment against the tortfeasor and stated the insurer could not "be sued under the [u]ninsured [m]otorist coverage on any claim that is barred by the statute of limitations."[64] The court discussed case law from other states and outlined three possible times that could be the date when the limitations period began to run: "(1) the date that the insurance company allegedly breaches the insurance contract by denying the insured's UIM claim; (2) the date of the accident; and (3) the date that the insured settles with or obtains judgment against the tortfeasor, thereby exhausting the limits of the tortfeasor's liability coverage."[65] The court determined the language of the policy was ambiguous, failed to set a time for bringing the uninsured motorist claim, failed to define when the limitations period began, and, therefore, the applicable limitations period was set out by the Iowa Code governing contract actions, which allowed ten years.[66] The court also indicated the policy lacked the allowable definition of when the limitations period began to run and therefore concluded that the general rule—that the limitation begins to run on the date the contract is breached—would control.[67]

The issue of contractual limitations on the time to file a claim under an uninsured motorist policy again returned to the court in *Nicodemus v. Milwaukee Mutual Insurance Co.*[68] The court considered the reasonableness of the insurer's provision shortening the plaintiff's time to file an uninsured motorist claim to within two years of the accident.[69] The policy in question also had a clause requiring all "limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident" to be exhausted by "payment of judgments or settlements" before the insurer was obligated to make any payment under the policy—similar to the policy in *Hamm*.[70] The court contrasted general contract principles—in which the statute of limitations would begin to run at the time an insurer denied coverage or refused to pay—with the insurer's

63. *Hamm*, 612 N.W.2d at 776.
64. *Id.* at 778.
65. *Id.* at 781.
66. *Id.* at 784.
67. *Id.*
68. Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 786 (Iowa 2000).
69. *Id.*
70. *Id.*; *see Hamm*, 612 N.W.2d at 778.

limitations—which began the limitations period at the time of the accident.[71] The court found the limitation on the time to file, combined with the fact that the insured could not file suit against the insurer until she had settled with or obtained a judgment against the tortfeasor, was unreasonable.[72]

Several years passed before these issues again came to the court's attention in *Faeth v. State Farm Mutual Auto Insurance Co.* in 2005.[73] Faeth was injured in a collision with a self-insured driver and later attempted to bring a claim against his insurer after the tortfeasor became insolvent.[74] State Farm, Faeth's insurer, had a provision in his policy requiring that any uninsured motorist claims must be filed within two years of the date of the accident.[75] The tortfeasor in question did not become insolvent until *after* the two years had passed.[76] Faeth argued, and the court agreed, that the enforcement of the limitation provision would extinguish his claim before it accrued.[77] As a result, the court held:

> An uninsured-motorist claim in that situation does not accrue until the occurrence of the insolvency. Because the application of the contractual limitation on time to sue contained in State Farm's policy would serve to extinguish Faeth's uninsured-motorist claim before it accrued, it is unreasonable and may not be enforced.[78]

Because the contractual limitation was invalidated, as in *Hamm*, the ten-year statutory limitation period applied to Faeth's claim.[79]

In summary, the court's holdings between 1993 and 2005 clearly showed provisions that contractually limited the time to file underinsured motorist and uninsured motorist insurance claims were enforceable.[80]

71. *Nicodemus*, 612 N.W.2d at 788.
72. *Id.* at 789.
73. Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 330 (Iowa 2005).
74. *Id.*
75. *Id.* at 331.
76. *Id.* at 330.
77. *Id.*
78. *Id.*
79. *Id.* at 335; *see* Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 775, 784 (Iowa 2000).
80. *See* Morgan v. Am. Family Mut. Ins. Co., 534 N.W.2d 92, 100 (Iowa 1995), *overruled by Hamm*, 612 N.W.2d 775; Douglass v. Am. Family Mut. Ins. Co., 508 N.W.2d 665, 668 (Iowa 1993), *overruled by Hamm*, 612 N.W.2d 775.

However, in the cases upholding those limiting provisions—*Douglass* and *Morgan*—there was no evidence presented that the plaintiffs were *unable* to determine their need for underinsured motorist benefits.[81] In each of the cases in which an underinsured motorist or uninsured motorist insurance provision was found unreasonable or unenforceable, the plaintiffs presented evidence that they either could not have known the claim needed to be filed in a limited time period based on the contract—as in *Hamm* where the language of the limitation was found to be ambiguous—or that the claim did not accrue until after the limitation period had ended—as in *Nicodemus* and *Faeth*.[82] However, until 2011, the courts had never determined whether a limitation of a time to file would be enforceable when, though it was *possible* to file a claim against the insurer, it was *not possible* for the insured to know whether the extent of her injuries would exceed the policy limits of the tortfeasor until after the contractual limitation had expired.

B. *Recent Changes Under* Robinson

In 2011, the Iowa Court of Appeals heard *Robinson v. Allied Property and Casual Insurance Co.,* the case of an insured who brought suit against her insurer, Allied Property and Casualty Insurance, seeking benefits under her underinsured motorist policy.[83] Robinson received physical injuries in a collision with another motorist in June of 2004.[84] The negligent driver of the other vehicle was insured for $100,000 with State Farm Insurance.[85] Robinson sought treatment for her injuries and negotiated with State Farm for settlement, eventually filing suit against the negligent driver.[86] At the time, according to her doctors, Robinson's prognosis was good and the injury she sustained was expected to repair itself over time.[87] Because of the prognosis of her treating physician, Robinson attempted to settle with the tortfeasor's insurance carrier, but

81. *See Douglass*, 508 N.W.2d at 667 ("[E]xhaustion of the plaintiff's remedies against the tortfeasor was not a condition precedent to an action for uninsured motorist benefits."); *Morgan*, 534 N.W.2d at 95 (noting the family had originally claimed uninsured motorist benefits within two years of the accident).

82. *See Faeth*, 707 N.W.2d at 335; Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 788 (Iowa 2000); *Hamm*, 612 N.W.2d at 783.

83. Robinson v. Allied Prop. & Cas. Ins. Co., No. 10-1721, 2011 WL 2556951, at *2 (Iowa Ct. App. June 29, 2011), *vacated*, 816 N.W.2d 398 (Iowa 2012).

84. *Id.* at *1.

85. *Id.* at *1–2.

86. *Id.* at *1.

87. *Id.*

settlement could not be reached and in October of 2005, Robinson sued the tortfeasor and State Farm.[88] While the lawsuit progressed, Robinson sought additional treatment and eventually underwent a surgical procedure with a new physician who indicated Robinson's condition was much more serious than previously believed.[89]

As a result of the new findings, Robinson was able to settle for policy limits with State Farm and sent a notice to her insurer, Allied, in June 2008 indicating she was asserting an underinsured motorist claim against Allied.[90] However, Allied denied the claim and asserted Robinson had not filed in a timely manner in accordance with the two-year period of limitations in Robinson's policy, and Robinson filed suit in 2010.[91] The district court granted summary judgment for Allied, finding the two-year period of limitations in the contract was reasonable and Robinson's claim was barred by her failure to timely file her claim.[92]

On appeal, the court found the two-year limitation was not reasonable for determining the extent of the plaintiff's injuries.[93] The decision of whether a provision is reasonable, according to the court, is based on an analysis of the provision in "light of the provisions of the contract and the circumstance of its performance and enforcement."[94] In determining the limitation to be unreasonable, the court relied, in part, on the Iowa Supreme Court's ruling in *Faeth*—in which the insured was allowed to bring a claim outside the contractually limited time period against her insurer when the negligent self-insured driver became insolvent *after* the claim had accrued.[95] The *Robinson* court reasoned the "later occurrences"—the discovery of additional injuries that were previously indiscernible despite "diligent effort on her part"—which rendered the tortfeasor underinsured after the limitations had expired in Robinson's case made the limitation unreasonable and entitled her to bring a claim for underinsured motorist benefits.[96]

88. *Id.*
89. *Id.* at *2.
90. *Id.*
91. *Id.*
92. *Id.* at *2.
93. *Id.* at *5.
94. *Id.* at *3 (quoting Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 787 (Iowa 2000) (internal quotation marks omitted)).
95. *Id.* at *5; *see* Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 330 (Iowa 2005).
96. *Robinson*, 2011 WL 2556951, at *1, 5.

Allied appealed the ruling and the Iowa Supreme Court issued a 4–3 decision in 2012, vacating the decision of the Iowa Court of Appeals and upholding the district court's grant of summary judgment for Allied.[97] The majority distinguished the facts in Robinson's case from those in *Faeth* and *Nicodemus*, stating that in both cases, the plaintiffs were *unable* to file a claim against their insured.[98] The tortfeasor in *Faeth* was considered insured throughout the duration of the limitation period and the plaintiff in *Nicodemus* was required to conclude tort action against the tortfeasor prior to filing any claim against the insurer.[99] Robinson, meanwhile, could have brought her claim against her insurer when she filed against the tortfeasor.[100] Additionally, the court went further and held that a two-year contractual limitation, as a matter of law, is reasonable given that it is the same amount of time allowed for filing a personal injury claim under state tort law.[101]

The majority dismissed the plaintiff's policy argument that attorneys would be forced to file lawsuits against underinsured motorist insurance carriers even when there is no evidence in existence that such a claim is warranted because damages appear to be within the limits of the tortfeasor's insurance policy.[102] The majority indicated filing suit against the tortfeasor and the UIM carrier at the same time is "common practice in Iowa" and did not create a problem for attorneys. They stated the reasonableness standard used to determine whether an attorney's conduct amounted to the filing of a frivolous lawsuit is judged against what a reasonably competent attorney would do, and the court had already determined such action was permissible in *Nicodemus*.[103] The majority suggested attorneys could adequately protect their clients' interest and ensure the claim against the UIM carrier was preserved by either filing against the carrier at the time they filed against the tortfeasor or by procuring a tolling agreement from the UIM carrier.[104] The court also expressed extreme reluctance to interfere with the right to contract and indicated that invalidating a contractual deadline to file is an extraordinary

97. Robinson v. Allied Prop. & Cas. Ins. Co., 816 N.W.2d 398, 409 (Iowa 2012).
98. *Id.* at 403.
99. *Id.*
100. *Id.*
101. *Id.* at 405.
102. *Id.* at 406–07.
103. *Id.*
104. *Id.* at 407.

measure.[105]

The dissent strongly disagreed with the majority and argued *Faeth* and *Nicodemus* respected the right to contract but tempered such freedom in the cases of insurance contracts due to their "adhesionary" nature.[106] The dissenters pointed out that:

> Iowans who purchase automobile liability insurance do not have an opportunity to bargain with their insurance company about the amount of time they will be permitted to sue to collect UIM benefits if they are badly injured and later discover the person who caused the injury failed to purchase enough liability insurance to cover the damages. Instead, the insurance company dictates this term of the coverage. The insured takes what the insurance company offers and pays the premium. Because they are largely "take-it-or-leave-it" propositions, public policy considerations underlying the law have led to certain mandates imposed on insurance contracts that are not imposed in other contractual contexts.[107]

The dissent stressed that the logic of *Faeth* and *Nicodemus* should be carried through to Robinson's circumstances and that an evaluation of reasonableness should be conducted on a case-by-case basis, dependent upon the circumstances faced by the individual insured[108]—an argument the majority believed would result in an overload of cases and place a strain on the court system.[109] In response, the dissent argued that an increase in cases will result from the *majority's* rule because policy holders will be forced to sue their insurance companies even when there is no reason to believe their injuries will exceed the policy limits of the tortfeasor.[110]

As to the majority's argument that an insured should be held to the two-year period to file against their insurance company because it is the same period they have to file against the tortfeasor, the dissent brought forth strong objections. It pointed out that an injured party is in no doubt as to his need to sue the tortfeasor in the two-year period following an accident—he need only know he was injured and who caused the accident

105. *Id.* at 408.
106. *Id.* at 409 (Hecht, J., dissenting).
107. *Id.*
108. *Id.* at 410.
109. *Id.* at 407 n.4 (majority opinion).
110. *Id.* at 413 (Hecht, J., dissenting).

to have the knowledge that such a claim should be filed.[111] However, the dissent argued that the same is not true of an underinsured motorist insurance claim—the injured party must know he had been injured severely enough that the damages will exceed the value of the policy carried by the tortfeasor, and such information is not always available at the time of the accident.[112] As a result, the limitations period is running, and in Robinson's case, expired, before that knowledge was even gained.[113] Pointing to the goal of underinsured motorist coverage—full compensation for the victim—the dissent argued the majority's holding undermines that goal and creates problems for the injured motorist.[114] Additionally, the dissent highlighted that the ruling in *Robinson* created a significant, but unanswered, question: Did the "per se reasonable" ruling overrule the "well-settled tenet of contract interpretation that [t]he reasonableness of a contractual limitations period is determined in light of the provisions of the contract and the circumstances of its performance and enforcement"?[115]

C. *Implications of the Current State of Law*

The dissent in *Robinson* raises very valid points about the effect of the decision on consumers in Iowa. The way the law currently stands, a motorist who pays for underinsured motorist coverage and is injured in an accident but does not realize the extent of their injuries until after the contractually-mandated limitations period must either file before they know they need the coverage or risk giving up their opportunity to receive coverage if they later determine it is needed.[116] While the majority argued that consumers' demand for longer limitations periods can change the availability of such policies, it seems logical that consumers would have to know the basics of underinsured motorist and uninsured motorists policies and understand how they work before such demands could be brought to bear on the market.[117] However, a recent survey of automobile insurance consumers indicated that about two-thirds of consumers did not

111. *Id.* at 412.
112. *Id.* at 411.
113. *Id.*
114. *Id.*
115. *Id.* at 411 n.7 (alteration in original) (quoting Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 785, 787 (Iowa 2000)) (internal quotation marks omitted).
116. *See id.* at 406 (majority opinion) (declining to view this as a "choice between filing frivolous claims or losing what might be a meritorious UIM claim").
117. *See id.* at 408 n.5.

understand even the basics of automobile insurance coverage.[118] With those statistics in mind, combined with the adhesionary nature of such contracts, it is difficult to believe that average consumers can or will adequately understand the implications of the *Robinson* ruling, and how the ruling will impact their rights under their automobile policy.

V. FINDING AN ACCEPTABLE SOLUTION THAT BALANCES BOTH THE FREEDOM TO CONTRACT AND THE PROTECTION OF IOWA'S CONSUMERS

While *Robinson* may be a consistent application of existing Iowa law allowing insurers the freedom to contract as they wish—as argued by the majority—it is hard to overlook the valid concerns related to the protection of the consumers brought forth by the dissent.[119] The case has decided the current course of contractual limitations on the time to file uninsured motorist and underinsured motorist claims, but, as the majority pointed out in *Robinson*, the legislature is free to act to extend the protection of these types of policies.[120] If the legislature were to institute more protections for the consumers in these contracts, several possibilities exist, including: (1) eliminating the insurer's right to limit the time to file; (2) creating a statutory provision mandating the applicable period of limitations for all uninsured motorist and underinsured motorist claims; and (3) statutorily defining when the limitation time commences, whether controlled by statute or the terms of a contract. The difficult challenge of finding a balanced solution through any legislative action is highlighted by the strongly conflicting issues in *Robinson*: the right of the insurance company to contract and the concerns about the protection of consumers who are

118. Paul A. Eisenstein, *Only 32% of Motorists Know Car Insurance Basics*, NBC NEWS (Mar. 11, 2013), http://www.nbcnews.com/business/only-32-motorists-know-car-insurance-basics-1C8793603. In fact, only 2% of consumers surveyed could even correctly identify "comprehensive coverage"—a coverage most lenders require on every vehicle that is either leased or financed. *Id.* These numbers are more striking when considered in light of the fact that nearly 89% of Americans either lease or finance their vehicle, and have therefore likely been required to carry comprehensive coverage. *See* Colin Bird, *Credit Threshold Eases for Car Lessees and Borrowers*, CARS.COM (Aug. 9, 2010), http://blogs.cars.com/kickingtires/2010/08/credit-threshold-eases-for-car-lessees-and-borrowers.html (reporting leasing and financing statistics); Colin Bird, *Should I Pay Cash, Lease or Finance My New Car?*, CARS.COM (May 13, 2013), http://www.cars.com/go/advice/Story.jsp?section=fin&subject=loan-quick-start&sto (noting auto lessors and finance companies "usually want you to have a comprehensive [car insurance] policy").

119. *Compare Robinson*, 816 N.W.2d at 408, *with id.* at 409 (Hecht, J., dissenting).

120. *See id.* at 408 n.5 (majority opinion).

parties to those contracts.

A. *Eliminating the Insurer's Right to Limit the Time to File a Claim*

One approach that could offer greater protection to consumers is to remove the insurer's right to contractually limit the time to file an uninsured motorist or underinsured motorist claim. If that type of legislation were passed, the current Iowa statute addressing contract claims would govern and an insured would have ten years to bring a claim under their insurance policy.[121]

This is the approach Florida takes. Florida's law does not allow parties to contractually agree to shorten the applicable statute of limitations.[122] Florida law is clear that claims related to insurance policies are governed by contract law.[123] Because the statute of limitations for contracts in Florida is five years, all claims related to insurance policies, including underinsured and uninsured motorist claims, are subject to the five-year statute of limitations—and any provision in an insurance contract attempting to limit that time period is void.[124]

By not allowing any contractual limitations to the statutory limitations period, all parties to contracts, including insurers and insureds, have certainty as to the expiration of any claims.[125] However, this approach may not be easily transposed onto the framework of Iowa's legal system. Iowa's statute of limitations for contract actions is ten years, while the

121. *See* IOWA CODE § 614.1(5) (2013).

122. FLA. STAT. ANN. § 95.03 (West 2002) ("Any provision in a contract fixing the period of time within which an action arising out of the contract may be begun at a time less than that provided by the applicable statute of limitations is void.").

123. *See* Woodall v. Travelers Indem. Co., 699 So. 2d 1361, 1362 n.2 (Fla. 1997); Burnett v. Fireman's Fund Ins. Co., 408 So. 2d 838, 838 (Fla. Dist. Ct. App. 1982); Mendlein v. U.S. Fid. & Guar. Co., 277 So. 2d 538, 539 (Fla. Dist. Ct. App. 1973).

124. *See* FLA. STAT. ANN. § 95.11(2)(b) (stating that "[a] legal or equitable action on a contract" is subject to a five year statute of limitation.); Montroy v. State Farm Mut. Auto. Ins. Co., No. 8:12-cv1871-T-24EAJ, 2012 WL 4746407, at *3–4 (M.D. Fla. Oct. 4, 2012) (holding that, despite a contractual provision indicating the insured had to bring a claim within two years of the accrual of the claim, the five year statute of limitations for contract law governs and the provision is void under FLA. STAT. ANN. § 95.03).

125. Florida law has established that, generally, the cause of actions for UM/UIM claims accrue at the time of the accident. *See Woodall*, 699 So. 2d at 1363. Therefore, insurers and insureds can have confidence that the statute has begun to run at that time and will expire five years from the date of the subject accident. *See id.*

limitations period for tort causes of action is only two years.[126] This varies sharply from Florida, in which the difference in the statute of limitations period between contract claims and tort claims is only one year—five years for contractual claims and four years for tort claims.[127] Even if Iowa instituted a law disallowing contractual limitations on the time to file uninsured motorist and underinsured motorist claims only—as opposed to Florida's statutory prohibition against limitations in *all* contracts[128]—the difference in the two-year limitations period on the underlying tort claim and the ten-year limitation on the remaining uninsured motorist and underinsured motorist insurance contractual claims means cases arising from the same set of facts may be adjudicated nearly a decade apart. This could lead to the type of difficulty the *Robinson* majority speculated would occur—"the burden of adjudicating stale claims after memories have faded, witnesses have died, and evidence has been lost."[129] So, while the additional time to resolve legitimate uninsured motorist and underinsured motorist insurance claims, like those in *Robinson*, would be much more protective of the consumers in Iowa, it would come at a sharp cost for both the insurers and the judicial branch—forcing insurers to defend, and courts to adjudicate, cases based on events that may have transpired nearly a decade earlier.[130] Rather than creating balance between the interests of the insurers and the insureds, because of Iowa's extremely generous statute of limitations for contract actions, the adoption in Iowa of the Florida approach would likely create a new imbalance—one heavily favoring plaintiffs.[131]

B. *Creating a Statutory Provision Clearly Outlining the Applicable Period of Limitations for Filing an Underinsured Motorist or Uninsured Motorist Claim*

Another option available to the legislature would be to statutorily mandate a longer amount of time allowed to file a claim on an

126. *See* IOWA CODE § 614.1(2), (5).

127. *See* FLA. STAT. ANN. § 95.11.

128. *See id.* § 95.03.

129. Robinson v. Allied Prop. & Cas. Ins. Co., 816 N.W.2d 398, 404 (Iowa 2012) (quoting Wetherbee v. Econ. Fire & Cas. Co., 508 N.W.2d 657, 662 (Iowa 1993) (McGiverin, C.J., concurring) (internal quotation marks omitted)).

130. *See id.*

131. It is not irrelevant to note, as the *Robinson* majority pointed out, that any cost incurred by insurers in extending the time to file UM/UIM claims will ultimately affect the consumers of Iowa by being passed on through increases on insurance premiums. *See id.* at 408 n.5.

underinsured motorist or uninsured motorist policy. This type of action would leave the legislature free to set an amount of time that would give the insured a reasonable amount of time to determine the state of his or her injuries, conclude litigation or settlement with the tortfeasor, determine the status of the negligent driver's insurance, and file a claim against the insurer if necessary—all without subjecting the insurer to the full ten-year limitation period allowed by statute for contract claims.[132]

Connecticut takes this approach in dealing with uninsured motorist and underinsured motorist insurance claims.[133] The statute in question deals specifically with insurance companies and is aimed at these claims.[134]

This approach benefits both the insured and the insurer by allowing additional time for the insured to determine the full extent of the injuries and to settle or adjudicate claims with the tortfeasor—while not exposing the insurance company to liability for a time that is so extended as to risk loss, destruction, or deterioration of evidence necessary to defend themselves from such a claim.

However, a clear criticism of this approach is the difficulty in determining what a reasonable amount of time is for insureds to determine their damages. Connecticut has decided on a three-year period, but, as in the *Robinson* case, there are cases in which insureds cannot know the extent of their damages within the three-year period and, under Connecticut law, would be forced either to file a claim not knowing if it is necessary or risk losing their right to bring a claim at all.[135]

132. *See* IOWA CODE § 614.1 (2013).

133. *See* CONN. GEN. STAT. ANN. § 38a-336(g) (West 2012) (establishing specific guidelines for handling the time in which a suit may be brought by insureds against their insurer for claims related to uninsured or underinsured motorist policies).

134. *Id.* ("No insurance company doing business in this state may limit the time within which any suit may be brought against it or any demand for arbitration on a claim may be made on the uninsured or underinsured motorist provisions of an automobile liability insurance policy to a period of less than three years from the date of accident, provided, in the case of an underinsured motorist claim the insured may toll any applicable limitation period (A) by notifying such insurer prior to the expiration of the applicable limitation period, in writing, of any claim which the insured may have for underinsured motorist benefits and (B) by commencing suit or demanding arbitration under the terms of the policy not more than one hundred eighty days from the date of exhaustion of the limits of liability under all automobile bodily injury liability bonds or automobile insurance policies applicable at the time of the accident by settlements or final judgments after any appeals.").

135. *See id.*; *Robinson*, 816 N.W.2d at 400–01 (discussing that the accident occurred in June 2004 and Robinson was not aware of the full extent and permanent

C. *Changing the Focus from the Reasonableness of the Limitation Period to the Question of When Such a Period Begins*

A third possible solution would be to continue to allow contractual limitations but create a more protective standard for when those limitation periods begin. A standard that indicates any limitation period, contractual or statutory, begins when an insured knew or should have known the at-fault driver was uninsured or underinsured, allows the insured the time necessary to investigate the insured status of the other driver and the extent of his or her own injuries, while, at the same time, allowing an insurance company to contract for a filing period shorter than the statutorily allowed time to bring a claim. This would seem to match well with the generally recognized rule "that the time allowed should be sufficient to allow the plaintiff to investigate and file his case within the limitation period, and that periods which are so short as to amount to a practical abrogation of the right of action *before his loss or damage can be ascertained*, are unreasonable."[136]

Arizona has included the following wording in its statute governing underinsured motorist claims:

> [A] person may make an underinsured motorist claim within three years after the earliest of the following:
>
> 1. The date the person knew that the tortfeasor was uninsured.
>
> 2. The date the person *knows or should have known* that coverage was denied by the tortfeasor's insurer.
>
> 3. The date the person *knows or should have known* of the insolvency of the tortfeasor's insurer.[137]

The language makes clear that insureds have three years from the date they knew, or a reasonable person would have known, that the insurance coverage carried by the tortfeasor is insufficient to cover any injuries.[138]

If Iowa were to adopt a similar code provision, consumers could be offered greater protection while insurers could maintain their ability to limit the time in which an insured could file a claim. Even if this type of statute existed at the time *Robinson*'s case was filed, the outcome would

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nature of her injuries until July 2007, a period of time exceeding three years).

136. Glenn, *supra* note 58, at 1202–03 (emphasis added).

137. ARIZ. REV. STAT. ANN. § 12-555(A) (Supp. 2012) (emphasis added).

138. *Id.*

have been the same—assuming the code provision mandated two years—because Robinson delayed nearly three years after learning that the tortfeasor's insurance coverage was not adequate in July 2007.[139] Under this type of standard, the limitations period would have begun in July 2007 and expired in July 2009—leaving Robinson outside the limitations period when she filed the action in May 2010.[140]

While a statutory change of this nature would bring significant protection to consumers, the fact that *Robinson*'s outcome would not change under that standard illustrates that many of the concerns raised by the majority in *Robinson* would be adequately addressed by this type of statutory standard. Insurers could still limit their exposure with contractually limited periods for filing claims and courts would not be forced to deal with stale cases since the events that trigger the beginning of the limitations period would likely be tied to the discovery of new information about the plaintiff's injuries or the tortfeasor's coverage.[141] At the same time, a standard that took into account when a reasonable insured knew or should have known the need for underinsured coverage would protect consumers who cannot discover the extent of the injuries, despite diligent effort, until after a contractually limited time to file had expired.[142] Those consumers would still be required to use diligence in detecting their injuries and the tortfeasor's insurance status and coverage amounts, but could still receive the coverage they paid for in their insurance contract if they timely file upon a realization of that need. It seems this type of statutory addition may be the most practical and most balanced approach—working well with the existing framework of Iowa law and balancing the important concerns of the right to contract and the protection of consumers.

VI. CONCLUSION

As the law currently stands in Iowa, it appears the interest of consumers may not be equally balanced with the interest of insurers. Consumers purchase insurance with uninsured motorist and underinsured motorist insurance coverage and have the expectation that, if a negligent driver is uninsured or underinsured, the premiums they have paid to their insurance company entitle them to recovery. However, the recent finding

139. *See Robinson*, 816 N.W.2d at 401.
140. *See id.*
141. *See id.* (noting Robinson's injury prognosis got worse in July 2007).
142. *See id.* at 410–11 (Hecht, J., dissenting).

that a two-year contractual limitation in a uninsured motorist and underinsured motorist insurance policy is valid as a matter of law has raised serious concerns about the level of protection offered to consumers—especially those who are not in a position to determine their need for such coverage during that time period.[143]

To protect consumers and fulfill the purpose of the statute that requires uninsured motorist or underinsured motorist insurance coverage in Iowa—which is to protect drivers from underinsured and uninsured drivers[144]—the adoption of new legislative standards relating to these contractual limitations is sorely needed. These standards should offer more protections to consumers who are at a distinct disadvantage when entering adhesion-style contracts with insurers, but should also continue to protect the important right to contract.[145] As the majority in *Robinson* pointed out, the state legislature is free to act to protect the citizens of the state and can mandate changes and more extensive coverages.[146] Alternatives to our current standards exist, but those alternatives can only be implemented at the legislative level now that our judicial branch has clarified the discrepancies that previously existed. The *Robinson* decision should be a call to action for Iowa legislators—showing them that Iowa consumers may not be getting the protections they need with the current state of our uninsured motorist and underinsured motorist insurance laws.

*Amy Costello**

143. *See id.* at 409.

144. *See* Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 334 (Iowa 2005) ("It is plain the legislature intended to assure protection to an insured against motorists whose liability to the insured is not covered. Under the uninsured motorist statute we believe an automobile or motor vehicle liability policy must protect the insured in any case to the same extent as if the tortfeasor had carried liability insurance covering his liability to the insured in the amounts required to establish financial responsibility." (quoting Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, 909 (Iowa 1973))).

145. *See Robinson*, 816 N.W.2d at 408 (majority opinion) (stressing the importance of freedom of contract).

146. *See id.* at 408 n.5.

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