

**IN THE COURT OF APPEALS OF IOWA**

No. 1-763 / 11-0219  
Filed November 23, 2011

**ROBERT E. BLANCHARD, JR.,**  
Plaintiff-Appellant,

**vs.**

**COUNTRY PREFERRED  
INSURANCE COMPANY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Muscatine County, Gary D. McKenrick, Judge.

A plaintiff appeals the district court's ruling granting an insurance carrier's motion for summary judgment, contending that the court erred in determining that the contractual limitations period for filing a claim for underinsured motorist benefits was reasonable and enforceable. **REVERSED AND REMANDED.**

John O. Moeller, Davenport, and James A. Tappa, Rock Island, Illinois, for appellant.

Michael C. Walker and Amanda R. Newman of Hopkins & Huebner, P.C., Davenport, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**VAITHESWARAN, P.J.**

Robert Blanchard Jr. was injured in a motorcycle accident. At the time of the accident, Blanchard had automobile insurance coverage, including underinsured motorist coverage, through Country Preferred Insurance Company. Blanchard's policy provided that any suit against Country Preferred for underinsured coverage would "be barred unless commenced within two years after the date of the accident."

Blanchard timely sued the woman who collided with him and the owner of the vehicle she was driving, but he did not add Country Preferred as a defendant until well over two years after the accident. Country Preferred filed a motion for summary judgment on the ground that Blanchard's claim against the company was time-barred. The district court granted the motion, reasoning that "[t]he policy clearly and unambiguously states that any suit against the insurer by the insured to recover benefits under the underinsured provisions of the policy must b[e] commenced within two years of the accident giving rise to the claim." Blanchard appealed.

On appeal, Blanchard cites *Nicodemus v. Milwaukee Insurance Co.*, 612 N.W.2d 785 (Iowa 2000), for the proposition that Country Preferred's limitation provision is unreasonable. See *Nicodemus*, 612 N.W.2d at 787 ("[A] contractual limitations provision is enforceable if it is reasonable."). In *Nicodemus*, the insured's policy required her to sue her insurance company for underinsured benefits "within two years after the date of the accident." *Id.* at 786. *Nicodemus* argued the provision was unreasonable when read in the context of other policy provisions. *Id.* at 787. She specifically noted that her insurer was "not obligated

to make any payment” until the liability limits of the tortfeasor’s insurance policy were “exhausted by payment of judgments or settlements.” *Id.* at 786. Additionally, no suit could be brought against her insurer until she had “fully complied with all the terms of” her policy. *Id.*

The Iowa Supreme Court stated that

the practical effect of these policy provisions is that an insured has no claim for UIM benefits and may not even institute suit against the insurance carrier until she has obtained a judgment against the tortfeasor or reached a settlement with the tortfeasor.

*Id.* at 787–88. In light of these additional restrictions, the court concluded the two-year limitations period was unreasonable and that the ten-year statutory limitations period for bringing contract claims governed. *Id.* at 788–89 (citing Iowa Code § 614.1(5) (1999)).

We agree with Blanchard that *Nicodemus* is controlling. As in *Nicodemus*, Country Preferred required Blanchard to bring suit against it for underinsured coverage within two years of the accident. And, as in *Nicodemus*, Country Preferred required Blanchard to first exhaust the limits of the tortfeasor’s policy. Indeed, the exhaustion language in the two policies is virtually identical. In *Nicodemus*, the policy stated,

We are not obligated to make any payment under this insurance until the limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments or settlements.

*Id.* at 786. In Blanchard’s case, the policy stated:

If you have Underinsured Motorists coverage (see the declarations page), a. and b. apply:

• • • •

b. We will pay only after all liability bonds or policies have been exhausted by judgments or payments.

While Country Preferred contends this language “merely provides there will be no payment until the underlying coverage is exhausted,” it does not cogently explain why similar payment language in *Nicodemus* was not construed in this fashion. See *Nicodemus*, 612 N.W.2d at 789.

Country Preferred’s remaining arguments in favor of affirmance are also unpersuasive in light of *Nicodemus*. We conclude that Country Preferred’s two-year limitations period for filing an underinsured motorist claim was unreasonable as a matter of law, and the ten-year statutory limitations period governs. See Iowa Code § 614.1(5) (2009) (setting statute of limitations period for claims based on written contracts); *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 806 (Iowa 2003) (noting that we must determine whether the record establishes “no genuine issue as to any material fact” and whether “the moving party is entitled to a judgment as a matter of law” (quoting Iowa R. Civ. P. 1.981)). Accordingly, we reverse and remand for further proceedings.

**REVERSED AND REMANDED.**