

**IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA**

TERRY OWENS,

Plaintiff,

v.

JACK PROCTOR,

Defendant.

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CIVIL ACTION FILE NO:

14-CV-63057

FILED
Clerk Superior Ct., Gordon County
FEB 12 2015
Grant Walraven
Clerk

ORDER ON DEFENDANT GEICO'S MOTION FOR SUMMARY JUDGMENT

The above matter is presently before this Court on a Motion for Summary Judgment filed by non-party Geico Indemnity Company ("Geico"). After considering oral argument and reviewing the briefs, responses and exhibits of the parties, the Court finds as follows:

This is a personal injury lawsuit filed February 10, 2014 arising from a car accident occurring on February 29, 2012. Plaintiff seeks damages from Defendant for injuries suffered as a result of the car accident. Although Geico was not named as a Defendant, it was served with a Summons, Complaint, and Discovery Documents on May 23, 2014 as if it were a party to this lawsuit. Geico filed an answer June 23, 2014 raising the defense of insufficient notice under the terms of Plaintiff's contract with Geico.

The facts as to this motion are undisputed. The car accident occurred on February 29, 2012. Plaintiff did not inform Geico that it was seeking benefit from its uninsured/underinsured motorist coverage until September 13, 2013, almost nineteen months after the accident. Geico contends this notice is insufficient

under the terms of its contract with Plaintiff which requires Plaintiff to provide notice “as soon as reasonably possible after the accident.” Plaintiff’s policy also states that a “suit will not lie against [Geico] unless the insured or his legal representative has fully complied with all policy terms.”

Based on the record before the Court, Plaintiff failed to comply with the notice requirement of the insurance policy. Georgia law provides that an insurer is not obligated to provide coverage when notice is a condition precedent to coverage and the insured fails to comply with the provision in a timely manner. *Manzi v. Cotton Mutual Insurance Co.*, 243 Ga. App. 277, 531 S.E.2d 164 (2000), *Lankford v. State Farm Mutual Automobile Insurance Co.*, 307 Ga. App. 12, 14, 703 S.E.2d 436 (2010).

Here, the nineteen month delay is an unacceptable period of time as a matter of law. The Georgia Court of Appeals has found delays significantly shorter than nineteen months unreasonable as a matter of law in many cases. *See, e.g., Allstate Insurance Co. v. Walker*, 254 Ga. App. 315, 562 S.E.2d 267 (2002) (one year delay), *Snow v. Atlanta Intl. Ins. Co.*, 182 Ga. App. 1, 354 S.E.2d 644 (1987) (ten month delay).

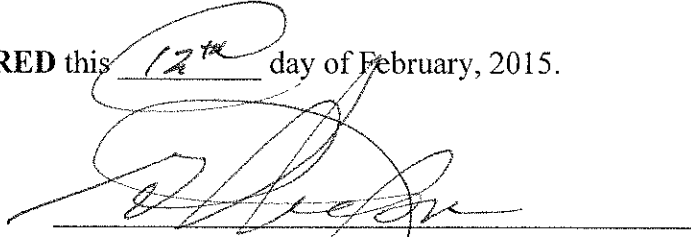
Plaintiff contends that he complied with the notice provision because he contacted Geico within a reasonable time after learning that Defendant Proctor was uninsured/underinsured. However, *Lankford* addresses this issue and concludes that the notice provision required the insured to provide notice as soon as reasonably possible after the accident, and not as soon as reasonably possible

after the point that the insured became aware of the other driver's status as uninsured or underinsured. *Id.* at 14.

JUDGMENT

THEREFORE, Geico's Motion for Summary Judgment is hereby
GRANTED.

IT IS SO ORDERED this 12th day of February, 2015.

A handwritten signature in black ink, appearing to read "G. Carey Nelson", is written over a horizontal line. The signature is stylized and cursive.

HONORABLE G. CAREY NELSON
JUDGE, SUPERIOR COURT OF BARTOW COUNTY
CHEROKEE JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I, Megan Cox, do hereby certify that I have served the parties in the above matter with the within and foregoing ORDER ON DEFENDANT GEICO'S MOTION FOR SUMMARY JUDGMENT by placing copies thereof in the United States Mail in properly addressed envelopes with adequate postage thereon, as follows:

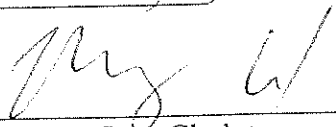
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This 12th day of February, 2015.



Megan Cox, Law Clerk to
Hon. Judge G. Carey Nelson
Superior Court of Gordon County
Cherokee Judicial Circuit