

Statute of Limitations Period – Time Of Injury Or Claim

Reported Case:	Sadhu v. Driver
Citation:	2009 CarswellOnt 2109
At Issue:	Whether the limitation period for an action pursuant to underinsured/OPCF 44 had expired.
The Court:	Ontario Superior Court of Justice
Judgment Rendered:	April 23, 2009
Factual Summary:	<p>The plaintiff was involved in a motor vehicle accident on May 14, 2001. She was the driver and owner of a vehicle. She issued a claim against her own insurance company on May 26, 2008 for unidentified, uninsured and underinsured coverage. In the interim, the plaintiff and her passengers had settled their claims against the tortfeasor with the tortfeasor's insurer. All were resolved within the statutory minimum limits so no <i>pro rata</i> sharing was required.</p> <p>Plaintiff's insurer brought a motion for summary judgment, arguing the claim was statute barred pursuant to the limitation period under the policy. The plaintiff brought a cross-motion seeking leave to amend the claim and allow for its issuance, pursuant to the plaintiff's underinsured coverage only.</p>
Decision:	<p>The motion was allowed and the cross-motion was dismissed. Section 17 of the underinsured endorsement makes it clear that the 12-month limitation runs from when the quantum of the claim, not the quantum of the damages, is or ought to have been known. Having settled with the at-fault driver for less than her limits, and without her insurer's consent, the plaintiff could not the claim for the same damages from her underinsured carrier.</p>