LGR REALTY, INC., APPELLEE, *v.* FRANK AND LONDON INSURANCE AGENCY, APPELLANT.

[Cite as *LGR Realty, Inc. v. Frank & London Ins. Agency*, 152 Ohio St.3d 517, 2018-Ohio-334.]

Delayed-damage rule does not apply to cause of action alleging negligent procurement of professional-liability insurance policy or negligent misrepresentation of the terms of the policy when the policy at issue contains provision specifically excluding the type of claim the insured alleges it believed was covered by the policy.

(No. 2016-1307—Submitted September 12, 2017—Decided January 16, 2018.*)

APPEAL from the Court of Appeals for Franklin County, No. 15AP-1072, 2016-Ohio-5044.

KENNEDY, J.

{¶ 1} This discretionary appeal from the Tenth District Court of Appeals presents the question whether the delayed-damage rule, which modifies the general rule for when a cause of action accrues, is applicable to this cause of action alleging negligence related to the procuring of a professional-liability insurance policy. Because we agree with appellant, Frank and London Insurance Agency ("F&L"), that the delayed-damage rule does not apply and that the cause of action in this case accrued on the date the policy was issued, we reverse the judgment of the court of appeals and reinstate the trial court's judgment dismissing the complaint filed by appellee, LGR Realty, Inc. ("LGR"), as untimely.

*Reporter's Note: This cause was decided on January 16, 2018, but was released to the public on January 31, 2018, subsequent to the resignation of Justice William M. O'Neill, who participated in the decision.

I. Facts and Procedural History

{¶ 2} F&L procured for LGR a "Real Estate Agents Errors and Omissions Liability Insurance Policy" from the Continental Casualty Insurance Company ("Continental") that was effective from May 12, 2010, through May 12, 2011.

{¶ 3} A liability claim was made against LGR within the policy period in a complaint styled *Milligan Communications, L.L.C. v. Plaza Properties, Inc.*, Franklin C.P. case No. 10 CV 1471 ("*Milligan* lawsuit"). LGR made a claim against the policy for Continental to defend LGR against the *Milligan* lawsuit and to indemnify LGR for any damages that it might be liable for. However, on April 26, 2011, Continental denied the claim on the basis of an exclusion provision in the policy regarding Plaza Properties. LGR incurred over $420,000 in attorney fees and expenses defending against the *Milligan* lawsuit.

{¶ 4} On April 17, 2015, LGR brought an action against F&L alleging that F&L had been negligent in failing to procure an appropriate professional-liability insurance policy and had negligently misrepresented the coverage contained in the policy. As a result, LGR claimed, F&L had breached its duty to procure an appropriate insurance policy—one that would have provided coverage for defending and indemnifying LGR in the *Milligan* case. Attached to LGR's complaint was a copy of the policy, which included a specific-entity-exclusion endorsement explaining that the policy does not apply to any claim made against LGR by Plaza Properties. F&L filed a Civ.R. 12(B)(6) motion to dismiss LGR's complaint. Relying in large part on *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, F&L argued that the cause of action accrued on the date the policy went into effect, May 12, 2010, and therefore, LGR's complaint, which was filed on April 17, 2015, was time barred by the four-year statute of limitations set forth in R.C. 2305.09.

{¶ 5} LGR, relying primarily on *Kunz v. Buckeye Union Ins. Co.*, 1 Ohio St.3d 79, 437 N.E.2d 1194 (1982), countered that under the delayed-damage rule,

its cause of action did not accrue until it suffered an "injury," which occurred, at the earliest, when Continental denied LGR's claim for defense and indemnity on April 26, 2011. Therefore, LGR argued, its April 17, 2015 complaint was filed within four years of the accrual date and was not time barred.

{¶ 6} The trial court determined that LGR's cause of action accrued on the day the insurance policy went into effect, May 12, 2010, and it dismissed LGR's action on the basis that it had been filed outside the four-year statute-of-limitations period set forth in R.C. 2305.09(D). Concluding that *Kunz* had been "eroded" by subsequent cases, including *Flagstar*, the court "decline[d] to apply the delayed damages rule to this case involving insurance agents."

{¶ 7} The court of appeals, holding that *Flagstar* did not overrule *Kunz*, reversed the trial court's judgment. In its decision, the court of appeals noted that although language in the body of the *Flagstar* opinion suggests a broad holding that would overrule *Kunz*, the syllabus of *Flagstar* is written more narrowly, leaving *Kunz* intact.

{¶ 8} On appeal to this court, F&L presents two propositions of law for consideration. The first proposition of law asserts that the delayed-damage rule enunciated in *Kunz* was abrogated by *Flagstar* and therefore "[a] cause of action for insurance agent or agency negligence accrues for purposes of the four-year R.C. 2305.09(D) statute of limitations when the allegedly wrongful act is committed." F&L's second proposition of law quotes Rep.Op.R. 2.2, which provides that the law in an opinion of the Supreme Court is "contained in its text, including its syllabus, if one is provided, and footnotes," and asserts that under this rule, all parts of the decision are coequal, "with no part of the decision taking precedence."

{¶ 9} In response to F&L's first proposition of law, LGR argues that *Kunz* has not been overruled and that its holding is determinative in this case. In response to F&L's second proposition of law, LGR agrees that this court's entire opinion

sets forth the law but it argues that *Kunz* is distinguishable from *Flagstar* and that *Kunz* controls in this case.

II. Standard of Review

{¶ 10} "An order granting a Civ.R. 12(B)(6) motion to dismiss is subject to de novo review." *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. In reviewing a motion to dismiss for failure to state a claim, we accept as true all factual allegations in the complaint. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). A complaint should not be dismissed unless it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. Under Civ.R. 10(C), "[s]tatements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument attached to a pleading is a part of the pleading for all purposes." A motion to dismiss based upon a statute of limitations may be granted only when the complaint shows conclusively on its face that the action is time-barred. *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982), paragraph three of the syllabus.

III. Law and Analysis

{¶ 11} The parties do not dispute that R.C. 2305.09(D) provides a four-year statute-of-limitations period for tort actions not specifically covered by other sections of the Revised Code. Nor do the parties dispute that the professional-negligence claims at issue here are governed by R.C. 2305.09(D). *See also Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 179, 546 N.E.2d 206 (1989) ("R.C. 2305.09 provides a general limitations period of four years for tort actions not specifically covered by other sections of the Ohio Revised Code" [footnote deleted]).

{¶ 12} The parties do not agree, however, on *when* the negligent-procurement and negligent-misrepresentation claims in this case accrued, triggering the start of the statute of limitations. F&L argues that the claims accrued and the four-year statute-of-limitations period began to run when the professional-liability insurance policy containing the exclusion was issued, and it directs the court's attention to *Investors REIT* and *Flagstar*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672.

{¶ 13} LGR argues that the claims accrued and the four-year statute-of-limitations period began to run when the claim to defend and indemnify was denied, and it directs our attention to the application of the delayed-damage rule in *Kunz*, 1 Ohio St.3d 79, 437 N.E.2d 1194.

{¶ 14} This court has long recognized that a "[s]tatute of limitations commences to run so soon as the injurious act complained of is perpetrated, although the actual injury is subsequent * * *." *Kerns v. Schoonmaker*, 4 Ohio 331 (1831), syllabus. While this remains the general rule in Ohio today, *see O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 87, 447 N.E.2d 727 (1983), and *Flagstar* at ¶ 13, there are two primary exceptions to the rule.

{¶ 15} One exception to the general rule is the discovery rule, which provides that "[w]hen an injury does not manifest itself immediately, the cause of action does not arise until the plaintiff knows or by the exercise of reasonable diligence should have known, that he had been injured by the conduct of the defendant, for purposes of the statute of limitations." *O'Stricker* at paragraph two of the syllabus.

{¶ 16} The second exception to the general rule is the delayed-damage rule, which this court first adopted in *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982). Under the delayed-damage rule, "where the wrongful conduct complained of is not presently harmful, the cause of action does not accrue until actual damage occurs." *Id*. at 379.

{¶ 17} In reversing the trial court's judgment granting the motion to dismiss, the Tenth District Court of Appeals agreed with LGR that *Kunz* is still good law, and it relied on *Kunz* in holding that the delayed-damage rule was applicable in this case. Therefore, an examination of *Kunz* is central to resolving this matter. However, we first turn our attention to F&L's second proposition of law regarding the Rules for Reporting Opinions.

A. Rep.Op.R. 2.2

{¶ 18} Neither party disputes the import of Rep.Op.R. 2.2 as it is currently written, and F&L's second proposition of law correctly restates the rule—no part of an opinion takes precedence over another part. However, because the current Rep.Op.R. 2.2 became effective in 2012 and the cases upon which the parties rely were decided between 1982 and 2011, the current rule cannot be relied upon when determining which part of those opinions, if any, takes precedence over another. In fact, at the time *Kunz* was decided, in 1982, this court had not yet adopted rules for reporting opinions. *See* 3 Ohio St.3d xxi-xxiii (setting forth the Rules for the Reporting of Opinions "applicable to all cases reported on and after March 1, 1983"). However, before the rules were promulgated, case law determined the matters later addressed in the Rules for Reporting Opinions. In *State ex rel. Canada v. Phillips*, we held that "[o]nly what is stated in a syllabus or in an opinion *per curiam* or by the court represents a pronouncement of the law by this court." *Id*., 168 Ohio St. 191, 151 N.E.2d 722 (1958), paragraph six of the syllabus. And a per curiam opinion must be read in light of the facts of the particular case. *See Simpson v. Holmes*, 106 Ohio St. 437, 440, 140 N.E. 395 (1922).

B. Accrual of Cause of Action for Professional Negligence Related to Procuring Insurance

{¶ 19} In *Kunz*, a per curiam opinion without a syllabus, the insureds, Walter Kunz and his concrete company, began purchasing business insurance from their insurance agent in 1952. *Id.*, 1 Ohio St.3d 79, 437 N.E.2d 1194. In 1969, the

insureds purchased an insurance policy written by Buckeye Union Insurance Company ("Buckeye Union") that provided "all risk" coverage on a crane. Later that year, Kunz and his insurance agent discussed consolidating the various individual policies on the insureds' equipment into a single omnibus policy.

{¶ 20} In April 1970, the insurance agent presented Kunz with a three-year consolidated policy from Buckeye Union that Kunz believed provided the same "all risk" coverage that the insureds formerly had. In 1973, the insureds renewed the consolidated policy, again assuming that the coverage was as good as the pre-1970 individualized policies.

{¶ 21} On April 21, 1975, the crane owned by the insureds was damaged. Initially, Buckeye Union informed Kunz that the loss would be covered. But in June 1975, Buckeye Union denied the claim, citing exclusions in the consolidated policy that had not been part of the pre-1970 insurance contract on the crane.

{¶ 22} On April 20, 1977, the insureds filed a complaint alleging that their insurance agent had negligently failed to obtain the requested coverage for the crane or failed to disclose a change in the coverage of the crane. Holding that the four-year statute of limitations in R.C. 2305.09 applied and that it began to run no later than April 1, 1973—the date the consolidated insurance policy was renewed—the trial court granted summary judgment in favor of the insurance agent. The court of appeals affirmed the trial court's judgment.

{¶ 23} On appeal to this court, the insureds argued in support of applying the delayed-damage rule. In determining that the delayed-damage rule applied, this court relied on the reasoning set forth in *Austin v. Fulton Ins. Co.*, 444 P.2d 536 (Alaska 1968). In that case, the Alaska Supreme Court held that a cause of action for negligent failure to procure insurance coverage for damage caused by an earthquake accrued not when the defective policy was issued but years later, when an earthquake caused property damage. Therefore, even though the insureds' policy in *Kunz* was purchased in 1970 and renewed in 1973, the court held that their

cause of action did not accrue until their crane was damaged in 1975. Consequently, the insureds' complaint filed in April 1977 was timely filed.

{¶ 24} While this case, like *Kunz*, involves the purchase of insurance, the factual similarities of the cases end there. LGR purchased a professional-liability insurance policy, and when the policy was issued to LGR, the specific-entity exclusion upon which Continental relied in denying the claim was contained in the policy. In *Kunz*, the insureds purchased a property insurance policy providing "all risk" coverage on a crane. When that individual policy was consolidated into the omnibus policy, the insureds believed, incorrectly, that the "all risk" coverage continued.

{¶ 25} Because the pronouncement of law in a per curiam opinion must be read in light of the facts of the case, *Kunz* is not controlling here. *See Simpson*, 106 Ohio St. at 440, 140 N.E. 395. Therefore, we turn to the question whether the delayed-damage rule should be extended to apply in this case.

{¶ 26} The general rule is that a statute of limitations begins to run when the injurious act is committed. *See O'Stricker*, 4 Ohio St.3d at 87, 447 N.E.2d 727; *Flagstar*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, ¶ 13. It is only in the narrow circumstances in which application of the general rule " 'would lead to the unconscionable result that the injured party's right to recovery can be barred by the statute of limitations before he is even aware of its existence,' *Wyler v. Tripi* (1971), 25 Ohio St.2d 164, 168, 267 N.E.2d 419," that we have judicially created or recognized an exception. *O'Stricker* at 87, citing *Kunz* and *Velotta*, 69 Ohio St.2d 376, 433 N.E.2d 147. Those narrow circumstances do not exist here.

{¶ 27} To establish actionable negligence, one must show that there was a duty, that the duty was breached, and that an injury resulted from the breach. *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989). On the facts before us, we hold that LGR's cause of action accrued, that is, LGR's injury occurred, when F&L issued to LGR the professional-liability insurance policy that

specifically excluded coverage for claims related to services performed for Plaza Properties.

{¶ 28} If, as LGR argues, it was injured by the insurance policy containing the specific-entity-exclusion provision provided by F&L, then LGR was damaged the moment it entered into the contract and became obligated to pay a premium for a professional-liability insurance policy that was less than the coverage that it believed it would receive. Therefore, the harm to LGR was complete when F&L issued the insurance contract setting forth the specific-entity-exclusion provision.

{¶ 29} We hold that the four-year statute-of-limitations period began to run when F&L issued the insurance policy setting forth the specific-entity exclusion. LGR's action, therefore, is time-barred.

{¶ 30} F&L argues that the holding in *Kunz* has been eroded by *Investors REIT* and *Flagstar*. Because we need not reach that issue to resolve this case, we decline to do so. *See Allen v. totes/Isotoner Corp.*, 123 Ohio St.3d 216, 2009-Ohio-4231, 915 N.E.2d 622, ¶ 9-10 (O'Donnell, J., concurring).

IV. Conclusion

{¶ 31} Based on these facts, the delayed-damage rule does not apply to a cause of action alleging negligent procurement of a professional-liability insurance policy or negligent misrepresentation of the terms of the policy when the policy at issue contains a provision specifically excluding the type of claim that the insured alleges it believed was covered by the policy. The cause of action in such a case accrues on the date the policy is issued. Therefore, the complaint filed by LGR in this case was untimely. Accordingly, we reverse the judgment of the court of appeals and reinstate the trial court's judgment dismissing LGR's complaint.

Judgment reversed.

O'DONNELL and FRENCH, JJ., concur.

DEWINE, J., concurs, with an opinion joined by O'CONNOR, C.J.

ROBB, J., dissents, with an opinion joined by O'NEILL, J.

CAROL ANN ROBB, J., of the Seventh District Court of Appeals, sitting for FISCHER, J.

DEWINE, J., concurring.

{¶ 32} I agree with the majority's determination that the cause of action accrued at the time the insurance policy was issued. I write separately to make explicit what is implicit in the majority's decision today: a cause of action for professional malpractice under R.C. 2305.09(D) will always accrue at the time of the negligent act.

{¶ 33} The majority concludes that under the facts of this case, a cause of action relating to the negligent procurement of an insurance policy accrues at the time the policy is issued. The result the majority reaches is in line with—actually, is mandated by—two prior decisions of this court: *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 546 N.E.2d 206 (1989), and *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672. The result is also irreconcilable with a decision of this court that predates both those decisions, *Kunz v. Buckeye Union Ins. Co.*, 1 Ohio St.3d 79, 437 N.E.2d 1194 (1982). In *Kunz*, we held that a cause of action relating to the negligent procurement of an insurance policy accrued on the date that the insureds suffered property damage, not on the date that the policy was issued.

{¶ 34} The majority opinion states that because we do not need to reach the issue whether *Kunz* has any enduring validity to resolve the case, we will not do so. But it seems to me that we already have. It would be best for everyone if we would just say so.

Kunz Applies the Delayed-Damage Rule

{¶ 35} Like this case, *Kunz* involved a lawsuit against an insurance agency and agent for the negligent procurement of insurance coverage. The insureds believed that they had "all-risk" coverage on a crane; but when the crane was

involved in an accident, the insurance company denied coverage, citing certain exclusions in the policy. The question in *Kunz*, as in this case, was when the cause of action accrued for purposes of R.C. 2305.09. The insurance agency argued that the claim accrued on the date the policy was issued. The court, however, found that the delayed-damage rule applied and, thus, the cause of action "did not accrue and [the] statute of limitations did not begin to run" until the date of the accident. *Kunz* at 82.

Post-*Kunz*: We Hold that a Professional-Negligence Claim Accrues at the time of the Wrongful Act

{¶ 36} A few years after *Kunz*, we switched course. In *Investors REIT*, 46 Ohio St.3d 176, 546 N.E.2d 206, we considered professional-negligence claims brought against an accounting firm and its accountants. The issue was whether the claims accrued and the statute of limitations began to run at the time of the allegedly negligent accounting activities or at the time the injury was discovered. We rejected application of the discovery rule and held that the claim accrued and the statute of limitations "commenced to run when the allegedly negligent act was committed." *Id.* at 182. In reaching this result, we relied on the fact that "[t]he legislature's express inclusion of a discovery rule for certain torts arising under R.C. 2305.09, including fraud and conversion, implies the exclusion of other torts arising under the statute, including negligence." *Id.* at 181.

{¶ 37} Two years later, we decided *Grant Thornton v. Windsor House, Inc.*, 57 Ohio St.3d 158, 566 N.E.2d 1220 (1991). We framed the issue before us for review as "whether this court intends to stand by our 1989 decision in *Investors REIT One v. Jacobs*." *Grant Thornton* at 160. We answered in the affirmative and again held that the statute of limitations for accountant-professional-negligence claims begins to run from the time of the injury, not the time of discovery.

{¶ 38} In *Flagstar*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, at ¶ 27, we made clear that the rule articulated in *Investors REIT* applies to all

professional-negligence claims. The claim in *Flagstar* was that an appraiser had negligently performed real-property appraisals. The bank that had been injured by the faulty appraisals argued that the statute of limitations did not begin to run until it had suffered damage—for example, when some of the properties were sold at foreclosure, leaving a deficiency balance. The bank maintained that *Investors REIT* and *Grant Thornton* were distinguishable because those cases involved the discovery rule and the bank was relying upon the delayed-damage rule. We rejected that theory and held that neither the discovery rule nor the delayed-damage rule was applicable. We said:

> Both the discovery rule and the delayed-damages rule relate to when a cause of action for negligence accrues. Nevertheless, with regard to claims for professional negligence governed by R.C. 2305.09, this court has clearly stated that the cause of action accrues when the allegedly negligent act is committed. * * *
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> We continue to adhere to the rule of law established in *Investors REIT One*. A cause of action for professional negligence accrues when the act is committed.

Flagstar at ¶ 25 and 27.

{¶ 39} *Flagstar* is fairly read as announcing a general rule that all professional-negligence claims governed by R.C. 2305.09(D) accrue at the time of the wrongful act. This holding is directly at odds with our decision in *Kunz*. But we did not say explicitly in *Flagstar* that we were overruling *Kunz*. (We even cited *Kunz* in *Flagstar* in a general discussion of the delayed-damage rule without saying anything about whether it had any continuing validity. *Flagstar* at ¶ 20.) Our

failure to come out and say that we were overruling *Kunz* has proved to be a mistake.

Our Failure to be Explicit Has Caused Confusion

{¶ 40} The case before us today evidences the confusion wrought by our failure to say directly in earlier cases that *Kunz* was overruled. So do a host of conflicting lower-court decisions. For example, the First District and Second District Courts of Appeals concluded that in *Flagstar*, this court "implicitly overruled" *Kunz*. *Chateau Estate Homes, L.L.C. v. Fifth Third Bank*, 1st Dist. Hamilton No. C-160703, 2017-Ohio-6985, ¶ 22; *Auckerman v. Rogers*, 2d Dist. Greene No. 2011-CA-23, 2012-Ohio-23, ¶ 17. Accordingly, both courts held that the statute of limitations on a claim for the negligent procurement of an insurance policy began to run at the time the policy was issued. *Chateau Estate* at ¶ 25; *Auckerman* at ¶ 18. The Ninth District has also read *Flagstar* to hold that the discovery rule and delayed-damage rule do not apply to professional-negligence claims involving the procurement of insurance coverage. *Infocision Mgt. Corp. v. Michael D. Sammy Ins. Agency, Inc.*, 9th Dist. Summit No. 26939, 2014-Ohio-4653, ¶ 28.

{¶ 41} In contrast, the Eleventh District—similar to the Tenth District in the instant case—has said that it will not "discard[] *Kunz* without an express pronouncement by the Supreme Court." *Vinecourt Landscaping, Inc. v. Kleve*, 11th Dist. Geauga No. 2013-G-3142, 2013-Ohio-5825, ¶ 24. Thus, the court held that the statute of limitations began to run when the injury occurred, not when the negligent act occurred. *Id*. at ¶ 26.

We Ought to be Clear

{¶ 42} Unfortunately, the majority decision today lacks the "express pronouncement" that at least some lower courts are waiting for. Instead, the majority opinion states that because we do not need to reach the issue whether *Kunz* has any enduring validity to resolve this case, we will not do so.

{¶ 43} But the majority's opinion today is yet more proof that Kunz has no enduring validity. There are no meaningful distinctions between the facts before the court today and those before the court in *Kunz*. In both cases, an insured received less coverage than it thought it had purchased, an injury occurred, coverage was denied, and a lawsuit was filed more than four years after the policy had issued.

{¶ 44} In today's decision, the majority holds that the insured "was damaged the moment it entered into the contract and became obligated to pay a premium" for a policy that provided "less than the coverage that it believed it would receive." Majority opinion at ¶ 28. Had today's rule been applied in *Kunz*, we would have been compelled to find that the claim there was barred by the statute of limitations. Had the rule that was applied in *Kunz* been applied in today's case, LGR Realty's claim would not be barred by the statute of limitations. The majority's opinion today and the decision in *Kunz* cannot both be the law.

{¶ 45} Clarity matters. "Statutes of limitations foster important public policies: ensuring fairness to the defendant, encouraging prompt prosecution of causes of actions, suppressing stale and fraudulent claims, and avoiding the inconvenience engendered by delay and by the difficulty of proving older cases." *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 2009-Ohio-2523, 909 N.E.2d 1244, ¶ 22, citing *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 88, 447 N.E.2d 727 (1983). It is critical, then, that there not be confusion as to when statutes of limitations begin to run.

Conclusion

{¶ 46} A cause of action for professional negligence under R.C. 2305.09(D) accrues at the time of the wrongful act. *Kunz* has been overruled. We should not be shy about saying so.

O'CONNOR, C.J., concurs in the foregoing opinion.

ROBB, J., dissenting.

{¶ 47} I respectfully dissent because I disagree with the majority's conclusion that a cause of action for professional negligence against an insurance agency accrues on the date the policy is issued. "To establish actionable negligence, one must show * * * the existence of a duty, a breach of that duty and *injury resulting proximately* therefrom." (Emphasis added.) *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989). Until there is "actionable negligence," the statute of limitations should not begin to run. Allowing the statute of limitations to start running on the date of the breach of duty is equivalent to promulgating a rule that automatically attributes an injury when a duty has not been fulfilled. A cause of action does not accrue until there is a discernible injury proximately caused by the breach of duty. Here, the cause of action accrued on the date of the denial of the claim, i.e., when there was an injury proximately caused by the agency's failure to meet its duty. Being uninsured is not in itself an injury; instead, it merely exposes the uninsured to a risk of injury. Therefore, the complaint was filed within the statute of limitations and should not have been dismissed on those grounds.

O'NEILL, J., concurs in the foregoing opinion.

Hollern & Associates and Edwin J. Hollern; and Barkan Meizlish, L.L.P., and Neal J. Barkan, for appellee.

Marshall, Dennehey, Warner, Coleman, & Goggin, Samuel G. Casolari Jr., and David J. Oberly; and Hunton & Williams, L.L.P., and Syed S. Ahmad, for appellant.

Rutter & Russin, L.L.C., and Robert P. Rutter, urging affirmance for amicus curiae, the Ohio Association for Justice.
