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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUCAS NELSON and SHANNON
ROBINSON NELSON,

Plaintiffs - Appellants,

v.

HARTFORD INSURANCE COMPANY
OF THE MIDWEST; SAFECO
INSURANCE COMPANY OF ILLINOIS;
and IRMA SULLIVAN, individually,

Defendants - Appellees.

No. 12-36042

D.C. No. 9:11-cv-00162-DWN

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Argued and Submitted April 10, 2014
Seattle, Washington

Before: KOZINSKI, Chief Judge, and RAWLINSON and BEA, Circuit Judges.

This case arises in diversity out of Montana. We review de novo the district court's order that granted summary judgment to Appellees, and we affirm. *Autotel*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

v. Nevada Bell Tel. Co., 697 F.3d 846, 850 (9th Cir. 2012). We conclude that under Montana law a common law action for bad faith insurance practices that does not involve workers' compensation does not accrue for statute of limitations purposes solely upon judgment in or settlement of an underlying claim against a defendant insurance company's insured. *Fode v. Farmers Ins. Exch.*, 719 P.2d 414, 417 (Mont. 1986) (holding that a common law bad faith cause of action against an insurance company "may be filed to toll the statute of limitations" during the pendency of an underlying suit against tortfeasor insureds); *O'Connor v. Nat'l Union Fire Ins. Co.*, 87 P.3d 454, 458 (Mont. 2004) (distinguishing *Fode* as "not a workers' compensation case"). Appellants' claims against defendants accrued under Montana law more than three years before they filed this suit and are therefore time-barred. Mont. Code Ann. §§ 27-2-102(1)(a) & 102(2), 27-2-204(1).

AFFIRMED.