RECENT COURT DECISIONS

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Recently, courts in several states have limited the applicability of uninsured motorist coverage. The following cases discuss those decisions.

In *Welker v. Worldwide Underwriters Insurance Company,* 19 Fla. Law Weekly, S153 (March 31, 1994), the Florida Supreme Court denied coverage to a resident relative who owned a vehicle that was insured under another policy. Welker owned a pick-up truck and had a policy of automobile liability insurance. However, he had expressly declined uninsured motorist coverage under that policy. Welker was injured in an accident in 1986. Because he had no recourse against the uninsured motorist or his own insurer, he attempted to collect uninsured motorist benefits from Worldwide, his mother's insurer. His mother's policy provided coverage to her as the named insured and also to resident relatives. Because Welker lived with his mother, he claimed that he was a resident relative entitled to uninsured motorist coverage. The policy, however, provided an exclusion under the liability coverage for any vehicle other than a "covered vehicle" which was owned by any family member. Additionally, the uninsured motorist coverage excluded benefits for bodily injuries sustained by a person while occupying or struck by any motor vehicle owned by the policyholder or any family member not insured for uninsured motorist coverage under the policy. Worldwide denied benefits citing those exclusions. Welker brought suit.

The trial court found that the policy failed to provide liability or uninsured motorist coverage to Welker, who then appealed. The district court reversed, finding that the policy exclusion pertaining to accidents involving Welker's vehicle was unenforceable based upon the Supreme Court case of *Mullis v. State Farm Automobile Mutual Insurance Company.* The supreme court, however, found that the district court's decision conflicted with *Valiant Insurance Company v. Webster,* 567 So.2d 408 (Fla. 1990) and *Bolin v. Massachusetts Bay Insurance Company,* 518 So.2d 393 (Fla. 2nd DCA 1986). In *Bolin,* the court had found that a resident relative injured in his own car was not covered by the insurer's policy; thus, the uninsured motorist benefits were not available to him. In *Valiant,* the court had found that in *Mullis* the statute requires only that uninsured motorist coverage be provided to those covered for liability.

The supreme court in *Welker* wrote, "Because the Worldwide policy did not provide liability coverage to Welker for accidents involving his vehicle, Worldwide was not obligated to provide uninsured motorist coverage to Welker for this accident." The supreme court framed the issue as follows:

> The issue in this case is whether an insurance company is required to provide uninsured motorist coverage to an insured for damages incurred in an accident involving the vehicle owned by the insured but not listed in the policy and the policy contains express provisions excluding coverage for both liability and uninsured motorist coverage in these circumstances. Welker...argues that because he is generally insured under the Worldwide policy, the exclusions set forth in his mother's policy cannot limit his entitlement to uninsured motorist coverage for his accident. In response, Worldwide asserts that it was not obligated to provide uninsured motorist coverage to Welker for this accident involving his vehicle because it did not provide reciprocal liability coverage. Worldwide further asserts that the cases relied on by the district court in its decision are distinguishable from the instant case because those cases involved automobile liability policies under which the resident family member was insured for liability for the accident in question. Worldwide also argues that it is fundamentally unfair to expect Worldwide to provide uninsured motorist coverage to Welker under a policy issued to his mother when he has expressly rejected such coverage under his own automobile policy and has thereby avoided paying the associated premium. We find merit in the arguments presented by Worldwide.

The court, in addition to discussing *Bolin* and *Valiant,* also discussed *Government Employees Insurance Company v. Wright.* The court wrote, "We agree with Judge Downey's opinion in *Wright* that the analysis proposed by the district court would make it extremely difficult for the insurer to accurately determine its risk exposure." The court then concluded that, pursuant to legislative intent, if the liability provisions in an automobile insurance policy would provide liability coverage to the insured for the particular accident giving rise to the insured's injury, then the policy must also provide uninsured motorist coverage to that insured. The court found, "There is no requirement that the insurer provide uninsured motorist coverage to an insured for an accident involving a vehicle owned by the insured and not listed in the policy when the policy would not provide liability coverage to the insured had the insured been responsible for the particular accident." The court thus approved the decisions of the 4th district in *Wright* and the 2nd district in *Bolin* and disapproved the 5th district decision in *Nationwide Mutual Fire Insurance Company v. Phillips,* 609 So.2d 1385 (Fla. 5th DCA 1992), review granted 620 So.2d 761 (Fla. 1993). *Phillips* held that a husband who was injured by an uninsured motorist while operating his own vehicle was entitled to uninsured motorist coverage under a policy issued to his wife. The district court reached this conclusion despite the fact that the policy specifically excluded the husband from coverage while operating his own vehicle. The supreme court, in this opinion, disapproved the 5th district decision in *Nationwide*.

One factual distinction the court noted is that, "The record reflects that, unlike the son in *Mullis*, Steven Welker was the owner of an automobile involved in the accident and that Welker accepted financial responsibility for his truck by obtaining liability coverage, but expressly decided, as the law allowed, to reject uninsured motorist coverage when he was operating the truck." The court had noted that the factual situation in *Mullis* involved the minor son of Shelby Mullis being injured by an uninsured motorist while operating a motorcycle owned by Mullis' wife.

In *Raudonis v. Insurance Company of North America*, 623a.2d 746 (N.H. 1993), the Supreme Court of New Hampshire also denied underinsured motorist coverage to one who was not insured under the liability section of the policy. A resident of a group home was injured while crossing the street as a pedestrian. The driver of the automobile was underinsured.

The plaintiff filed a declaratory action seeking to determine whether the uninsured motorist coverage held by the non-profit organization which provided care and education for the injured party (who was developmentally disabled) provided coverage. The policy defined who was an insured for the purposes of underinsured motorist coverage. The court found that the injured party did not fall within the definitions of insured and thus was denied coverage. The court wrote that New Hampshire law requires that uninsured motorist coverage be provided with the same monetary limits as are provided under a policy for general liability coverage. New Hampshire law also requires that a person who is an insured in a particular situation under a policy's general liability coverage also be covered in that situation under the policy's uninsured motorist section. The court found that the pedestrian was not an insured under the general liability section of the policy when she was injured while crossing the street on foot, therefore the law did not mandate she be covered under the policy's uninsured motorist section.

The supreme court also rejected the plaintiff's argument that an endorsement, which had expired three months prior to the accident, had created ambiguities. The court found that the endorsement constituting the policy in effect on the day of the accident was clearly cataloged in the policy.

In *Middlesex Insurance Company v. Castellano*, 623a.2d 55 (Conn. 1993), the Connecticut Supreme Court found that the definition of a covered person under the automobile policy's uninsured motorist provisions excluded resident relatives who owned a car. Such an exclusion did not violate public policy.

In that particular case, Castellano was injured while riding on a motorcycle when hit by a hit-and-run vehicle. Castellano lived with his parents and his sister and he owned a motor vehicle for which he had purchased insurance. Castellano exhausted the uninsured motorist coverage on his auto liability policy and then sought underinsured coverage under the insurance policies issued to his father and his sister. The trial court found no coverage existed.

In affirming the trial court, the supreme court found that an automobile insurance policy definition that limits liability and uninsured motorist coverage to resident relatives of the named insured who do not own a car is consistent with the public policy of Connecticut's uninsured motorist laws. The policies in question in this case provided that a covered person included a resident relative of the named insured who did not own a car. Castellano owned a vehicle and thus was not a covered person under the policies issued to his father and sister.

In yet another case, the Florida Supreme Court upheld the exclusions in an uninsured motorist policy. In *Grant v. State Farm Fire and Casualty Company,* 19 Fla. Law Weekly S333 (June 24, 1994), the Florida Supreme Court found that an insured was not entitled to coverage for injuries received while operating a motorcycle owned by the insured but not insured under the policy. The court found that a motorcycle is a "motor vehicle" for purposes of exclusion from coverage.

In this case, Michael Grant was injured when a motorcycle owned and operated by him collided with an uninsured motorist. At the time of the accident, Grant had an insurance policy with State Farm, and the only vehicle listed was a 1978 Corvette.

State Farm denied coverage because the policy provided that there was no coverage for bodily injury to an insured while occupying a motor vehicle owned by an insured or resident relative which is not insured for uninsured motorist coverage under the policy. Grant argued that he was entitled to uninsured motorist coverage because the no-fault section of the insurance policy as well as Florida Statute 627.732 which pertained to personal injury protection coverage both defined motor vehicles as vehicles with four or more wheels.

The supreme court rejected his argument and found that the definition of motor vehicle found in the Financial Responsibility Law (§ 324.021(1)) was the applicable definition. The court wrote that definitions under the no-fault section of the policy were not relevant to exclusions discussed in the uninsured motor vehicle section of the policy. The Financial Responsibility Law should be applied, and it defined a motor vehicle as a self-propelled vehicle which is designed to require a license for use upon the highway. The court, therefore, held that a motorcycle was a motor vehicle in the context of the case and the exclusion applied.