MARCH 2012 CASENOTES

Robinson v. Travelers Indemnity Company of America, No. 11-5267 (E.D. Pa. Feb 29, 2012) (Federal Court Invalidates Underinsured Coverage Rejection Form – Finds No Specific Compliance With Section 1731 Of MVFRL).

Nora Robinson ("Robinson") was injured in a car accident with an underinsured motorist while operating her employer's commercial vehicle. The employer allegedly rejected underinsured motorist coverage on the corporate owned vehicle and its insurance carrier Travelers produced a signed waiver of underinsured motorist coverage. Due to the insurance company not producing a form which tracked the language of the mandates of Pennsylvania law, Robinson sought coverage.

As noted, the named insured (Robinson's employer) executed an underinsured motorist waiver *but* inserted the word "motorists" in the phrase "underinsured coverage" in the form mandated by the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). Robinson argued that the additional word "motorists" invalidated the form under Section 1731 of the MVFRL because it was not in specific compliance with the MVFRL.

Judge Ludwig from the Eastern District of Pennsylvania relies upon a recent February 2012 Pennsylvania Superior Court opinion in Jones v. Unitrin, -- A.3d -- (Pa. Super. Ct. 2012) where the court invalidated a similar form when the insurance company used a rejection form which did not track the MVFRL mandate. In Robinson, as in Jones, Judge Ludwig holds that the rejection for is not valid and Robinson is entitled to underinsured motorist coverage.

This case shows the importance of checking to make sure that the insurance company uses the proper forms when an insured has allegedly rejected uninsured or underinsured coverage.

Bumbarger v. Peerless Indemnity Insurance Company, No. 2010-1563-CD (Ammerman, J. Clearfield County Feb. 3, 2012) (Trial Court Follows Sackett Line Of Cases To Award Stacking On Four (4) Car Policy).

This involves the application of the "Sackett" line of cases from the Pennsylvania Supreme and Superior Courts to a stacking situation. In this case, Bumbarger initially had a two (2) car policy in 2007 and rejected stacking. Later in 2007, she then added a third vehicle and added a

fourth vehicle early in 2009. At no time when the additional vehicles were added to the policy later in 2007 or 2009 was a new rejection of stacking waiver signed. She was then injured in a car accident with an uninsured motorist in December 2009.

She made a claim for stacked uninsured motorist benefits by claiming that Peerless owed her stacked coverage and not only coverage on one vehicle because a new rejection of stacking form was never executed after the initial rejection form was signed for the two car policy. Peerless denied that stacking applied because it believed that both of the later added vehicles were added by default under a "newly acquired auto" clause.

The trial court finds that the vehicles were not added by default under the "newly acquired auto" clause but were added instead by endorsement. Adding a vehicle by default only applies when the company is covering a vehicle it does *not* know about. In this case, the company already knew about the new vehicles *before* they were added to the policy by endorsement. Thus, under the Sackett line of cases, stacking applies because a new rejection of stacking for was not signed when the later added vehicle became part of the policy.

Corbin v. Khosla, --- A.3d --- (Pa. 2012) (Pennsylvania Supreme Court Holds Uninsured Motorist Can Recover All Economic Losses From Tortfeasor and Tortfeasor's Liability Carrier).

The Pennsylvania Supreme Court answered a long awaited question regarding the injured victim's ability to recover medical bills from the third party tortfeasor under the third party tortfeasor's liability coverage, *if* the injured person is the owner of an uninsured vehicle. This case was initially heard in the federal court for the Eastern District of Pennsylvania. Then the case was appealed to the Third Circuit Court of Appeals. After the argument in front of the Third Circuit the federal court asked the Pennsylvania Supreme Court to answer the issue. The Pennsylvania Supreme Court agreed to answer the question.

The Supreme Court answers the question posed by the Third Circuit "in the negative: Section 1714 of the MVFRL does not preclude an uninsured motorist from recovering tort damages for economic loss from an alleged third party tortfeasor under the tortfeasor's liability coverage." Importantly, the Court also expressly abrogates any lower court cases such as Bryant v. Reddy and McClung v. Breneman which have ruled to the contrary.

Purcell v. State Farm Mut. Auto. Ins. Co., NO. 11-7004 (E.D. Pa. Feb. 10, 2012) (District Court Renders Ruling On Timeliness Of Motions To Dismiss In Federal Court).

After a car accident the insured filed a claim in state court against her insurer State Farm for unpaid underinsured motorist benefits. As part of the Complaint the insured sought counts for breach of contract, statutory bad faith under Section 8371 and bad faith for violations of the Unfair Trade Practices Act. The case was removed by State Farm from state court to federal court and then six days later State Farm filed a Motion to Dismiss.

Purcell, the insured, opposed the Motion to Dismiss by arguing that the Motion was not timely because under federal rule 12(a) it was not filed within 21 days after service of the complaint. However, the District Court finds that since the action was removed from state court to federal court that Rule 81(c) applies, and not rule 12, which provides that State Farm had seven days after the notice of removal was filed to file the Motion to Dismiss. Since Rule 81 applies then the Motion was timely.

Vanderhoff v. Harleysville, --- A.3d --- (Pa. 2012) (Pennsylvania Superior Court Holds That Insured Not Entitled To Uninsured Motorist Coverage Because Of Prejudice Suffered By Late Reporting).

This case was initially the subject of a Pennsylvania Supreme Court opinion in 2010 where the Court held that an insured need not report a phantom vehicle to his or her insurance company within thirty (30) days *but* the company can deny coverage if it can show prejudice was suffered by the late reporting. Vanderhoff v. Harleysville, 997 A.2d. 328 (Pa. 2010). The case was then remanded back to the trial court for a hearing on the issue of prejudice.

At the trial court level, on remand, to prove prejudice the insurance company presented testimony of an insurance adjuster to explain how the typical uninsured claim is investigated, a local attorney who testified what actions he may have taken if the claim was reported earlier than the eight (8) months in this case, an investigator who testified that the investigation would have been much different if reported sooner, and an accident reconstructionist to testify on the importance of timeliness in reporting the accident. The trial court found that the evidence was insufficient to establish prejudice but did not provide an "explicit, distinct rationale for its finding".

The Superior Court finds that the trial court failing to provide a distinct and explicit reason for its rationale is fatal to affirming the opinion. Therefore, the court accepts the testimony of the insurance carrier and finds that prejudice exists in the case. Specifically, the Court holds that "[u]nder the specific facts of this case, we conclude that this argument constitutes a clear abuse of discretion..." The trial court is reversed.

Jones v. Unitrin, --- 3d --- (Pa. Super. Ct. Feb. 6, 2012) (Pennsylvania Superior Court Invalidates Rejection of UIM Form).

The insured allegedly rejected underinsured motorist (UIM) coverage. However, the form did not "specifically" comply with Section 1731 of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). After being injured in a car accident with an underinsured motorist Jones sought UIM coverage on the policy by arguing that there was UIM coverage because the insurance company utilized a defective form and under the law the UIM limits equal the liability limits. The trial court found that the addition of a sentence to the form was a minor deficiency and upheld the form. Jones appealed.

The Superior Court first notes that the MVFRL in Section 1731 mandates strict compliance with the language of the statute and forms or the forms are void. In this case the form was not specifically complying with Section 1731. The Superior Court holds that the addition of the sentence "By rejecting this coverage, I am also signing the waiver on P. 13 rejecting stacked limits of underinsured motorist coverage" invalidated the form. The trial court decision to uphold the form is reversed.

Allstate Property and Casualty Insurance Company v. Squires, --- F.3d --- (3d. Cir 2012) (Third Circuit Holds Uninsured Motorist Claim May Exists After Box Falls Off A Car).

The case involves the appeal of a District Court order dismissing a claim for uninsured motorist (UM) coverage after an insured was injured in a car accident. The insured Squires sustained injuries in a car accident after swerving to avoid an approximately two-foot square cardboard box lying in the middle of his lane of travel. The parties stipulated that an unidentified vehicle had to have dropped the box. The District Court held that, as a matter of law, the accident caused by a box which fell from an unidentified vehicle cannot be considered to have arisen out of the "ownership, maintenance or use of an automobile." The case was dismissed on a Motion for Judgment on the Pleadings. Squires appealed.

The Third Circuit reverses and holds that, as plead, the box falling off the unidentified vehicle may, as a matter of law, considered to be "arising out of" the ownership, maintenance or use of the vehicle. Relying mainly upon the Pennsylvania Supreme Court opinion in Manufacturers Casualty Insurance Co. v. Goodville Mutual Insurance Co., 170 A.2d 571 (Pa. 1961) the federal appeals court finds that a "but for" test is the necessary analysis to review the pleading for coverage and "Squires at this time only need to have alleged adequately that the unidentifiable vehicle's use was a but-for cause of his injuries" so the case should be re-instated. Squires will still need to show the uninsured vehicle proximately caused his injuries.

Xander v. Kiss, CV - 2010 - 11945 (Zito J., North. Co. Jan. 11, 2012) (Trial Court Dismisses Punitive Damages Claim - Cell Phone Too Vague).

In this Order and Statement of Reasons Judge Zito dismisses a claim for punitive damages when it is alleged the Defendant driver crossed lanes of travel and caused an accident while talking on a cell phone. The claim for punitive damages was pursued under the Restatement (Second) of Torts Section 908. The trial court notes that punitive damages are an extreme remedy available only in the most exceptional of circumstances; Judge Zito holds that the allegations in the Complaint, without more, do not rise to the level of egregiousness required by Pennsylvania law to support such a claim.

The trial court writes that viewing the facts pled in the Complaint in a light most favorable to the plaintiff, it was only alleged by the Plaintiff that the "Defendant simply lost control of his vehicle while speaking on his cellular phone, causing a motor vehicle accident...." He notes that such alleged facts may support a claim of negligence, but the allegations do not arise to a level of an evil motive or reckless indifference to the rights of the plaintiff as required for a punitive damages claim. Without any other facts pled to show recklessness, such as excessive speed or running a red light or stop sign, etc., the court holds that a punitive damages claim is not warranted in this matter.

Accordingly, the defendant's motion to strike the punitive damages claim is granted.