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Courts, Legislators Weigh Whether UM/UIM Coverage Should Be Limited to Insureds' Injuries

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Introduction

In recent years, courts in a number of states have wrestled with whether uninsured/underinsured motorist (UM/UIM) statutes should or should not require coverage for claims based on a right to recover from the death of a relative who is not an insured under the policy.

The issue arises when an insured has a right to recover in a wrongful death action[1] because of the death of a close relative who does not qualify as an insured under the policy and asserts a claim for UM/UIM coverage.

State statutes allow only close relatives to recover in wrongful death actions; in most cases, such relatives qualify as insureds as members of the policyholder's household. But relatives typically do not qualify as insureds if they do not reside in the named insured's household. Consequently, the class of cases in which an insured has a right to recover for the death of one who is not an insured is relatively small. Nevertheless, the issue these cases raise is important because it involves the fundamental notion of whether an insurer can limit its exposure to risk. As one court noted, the issue is a "narrow, yet important question."

Arguably, the coverage sought in these cases was never intended either by those who drafted UM/UIM statutes or insurers that provide the coverage outlined in those statutes. UM/UIM coverage is meant to provide a measure of first-party coverage to those who do the responsible thing and purchase insurance but who sustain loss due to the actions of a driver who has little or no liability insurance coverage.

In several states, courts faced with these kinds of claims have recognized that allowing recovery in these cases would be inconsistent with the intent of the statutes. In a number of others, however, courts have seized upon statutory language that seems to mandate coverage.[2] In most such instances, legislatures have subsequently enacted statutory changes so that the statutes can no longer be read to require coverage.

Such changes are appropriate in NAMIC's view because the claims involved in these cases exceed the intended scope of the UM/UIM statutes, and requiring coverage interferes with insurers' ability to measure and assess their exposure to risk.

In recent cases, most judges who have favored coverage have claimed that this outcome is dictated by statutory language. In contrast, judges who have come to a contrary conclusion, that coverage is not required by the statute, have considered the overall intent and statutory scheme of UM/UIM laws along with public policy considerations.

Likewise, legislatures considering the public policy implications of the issue have enacted language to clarify that the statutes do not mandate coverage of these claims.

The following is a brief summary of recent cases that illustrate the principles involved in this issue.

Georgia

In **Atlanta Cas. Co. v. Gordon**, 266 Ga. App. 666 (2004), a majority of the Georgia Appeals Court thought that language in the statute could be read to require coverage, but asserted that requiring an insurer to pay damages for the death of a person who was not insured by that insurer simply did not make sense.

The Court pointed out that the purpose of the UM statute, as defined by previous cases, does not encompass compensating insureds "for consequential damages arising from the death of a third party."

Two of the court's judges dissented, characterizing the majority opinion as an "activist interpretation" and asserting that the statute clearly allowed an insured to recover from its uninsured motorist carrier for the death of a child who was not an insured under the policy.

The dissenters' position prevailed when the Appeals Court ruling was reversed by the state's Supreme Court, at 279 Ga. 148 (2005).

Maine

In **Butterfield v. Norfolk & Dedham**, 860 A.2d 861 (2004), a majority of Maine's Supreme Judicial Court held that a policy provision limiting UM coverage to injuries sustained by an insured was not valid because it conflicted with the state's uninsured motorist statute.

Two judges dissented, contending not only did the policy limitation not conflict with the statute, but it also made sense. "Without the policy provision at issue in this case, Norfolk & Dedham could not accurately address the risk to which it is exposed in the uninsured motorist part of its policy, and on which it could base a reasonable premium," the dissenters asserted. "That provision limits the risks arising from injuries to a determinable number of persons, i.e. the named insureds under the policy and resident family members of the named insureds, and protects the insurer from risks that are unascertainable."

The dissenters referred to the policy limitation as "reasonable" and characterized it as "a common sense" provision. "The named insured limitation in its policy allows Norfolk & Dedham, as an insurer, to better ascertain its risk in calculating premiums to be paid for the coverage offered," they pointed out.

The position of the dissenters was adopted by the Maine Legislature in corrective legislation (LD-2021), enacted in 2006.

South Dakota

In ruling against coverage in **Gloe v. Iowa Mutual Insurance Co.**, 2005 S.D. 29 (2005), the South Dakota Supreme Court focused on the public policy set forth in the state's UM/UIM laws, and "reiterate[d] that the purpose of these statutes is to protect the insured party who is injured in an accident."

The Court pointed out that several of its cases "have noted that the purpose of UM/UIM coverage is to protect the *insured* party *who is injured* in an automobile accident by the negligence of an uninsured/underinsured motorist." Coverage is required to provide such protection, not "for the consequential losses a wrongful death beneficiary incurs simply because that beneficiary has an auto policy and the decedent happens to be a relative for which the beneficiary is legally entitled to maintain a wrongful death action."

The dissenting opinion in **Gloe** asserted that the claimant "should be allowed to recover from his own underinsured coverage for the wrongful death of his parents" and focused on what it characterized as the "plain meaning of the statutory language," rather than looking at the overall purpose of the UM/UIM statute.

Utah

In **Eaquinta v. Allstate**, 2005 UT 78 (2005), a unanimous Utah Supreme Court engaged in an extensive review of the issue as handled by courts across the country, noting that the majority have ruled consistently with its holding against coverage.

While acknowledging that specific statutory language could be interpreted to require coverage, the Court asserted that such a reading could only hold up when the language was viewed in isolation, but not when viewed in the overall context of the statute.

The Utah Court concluded that limiting coverage was not only permissible, but also sensible from a public policy perspective.

"An interpretation that would allow an insured to recover UIM benefits under her insurance policy for the death of a third party who is not covered under that policy would impose an unfair risk on insurance companies without the attendant consideration in the form of a premium and, possibly, increase the cost of insurance for all consumers," the Court observed.

"Such an interpretation would mandate an insurance company to provide UIM coverage to

a wrongful death beneficiary simply because that beneficiary has an automobile insurance policy and the decedent happens to be a relative for which the beneficiary is legally entitled to maintain a wrongful death action. To judicially extend UIM coverage to include members of the family who are not residing with the insured would, in effect, require automobile insurance companies to insure any lineal descendant from whom an insured may inherit for hazards associated with the operation of vehicles."

Conclusion

These recent rulings show that decisions for coverage tend to involve a strict, arguably myopic reading of statutory language. When broader policy considerations, including the basic intent of UM/UIM statutes, are taken into account, the analysis tends to shift toward a conclusion against a coverage requirement.[3]

Going forward, it is reasonable to expect that many courts will look to the decisions of other jurisdictions and join the growing majority in ruling against coverage. However, there will likely continue to be instances where courts feel it is their duty to adhere to language that seems to permit recovery for these claims, even if the language is inconsistent with the overall purpose of UM/UIM statutes.

As noted, in most instances where courts have ruled for coverage, legislatures weighing the public policy considerations raised by the cases have enacted language to clarify that such a coverage requirement is not intended. When adverse decisions are rendered, therefore, industry advocates can marshal the ample policy arguments provided in the cases while maintaining that legislators should follow the lead of their counterparts in other states in enacting corrective legislation to let insurers limit and measure their exposure in a reasonable fashion.

Endnotes

[1]The issue can also arise in cases involving claims for loss of consortium. See, for example, *Terilli v. Nationwide Mut. Ins. Co.*, 641 A.2d 1321 (R.I. 1994). However, almost all of the reported cases involve wrongful death claims.

[2]For example, Maine's statute requires insurers to provide coverage "for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured, underinsured or hit-and-run motor vehicles … ."

[3]The case of *State Farm v. Leubbers*, 119 P.3d 169 (2005), represents an exception to this tendency. In Leubbers, the Court of Appeals of New Mexico, the Court considered policy issues yet ruled in favor of coverage. The ruling was appealed to the state's supreme court.