SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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It Still Is What It Is!: Supreme Court Strictly Applies A UIM Policy's Plain Language, Holds That Coverage Equaling Statutory Minimum Is Not Illusory

By Drew Broaddus

For years, the Michigan Supreme Court has consistently held that, because uninsured motorist (UM) and underinsured motorist (UIM) coverages are optional and not mandated by the No-Fault Act, the policy language alone controls when a claimant is entitled to such benefits. For example, *Rohlman v Hawkeye-Security Ins*, 442 Mich 520 (1993) noted that although the No-Fault Act is the "rule book" for coverages mandated by statute, the insurance policy itself is the "rule book" for non-mandatory coverages like UM and UIM. The Court issued even stronger pronouncements in 2005. In *Rory v Cont'l Ins*, 473 Mich 457 (2005) the Court held that a contract's one-year limitations period barred plaintiff's suit for UM benefits, even though two lower courts had found this limitation to be unreasonable. In reversing, *Rory* announced that ordinary contract principles (in other words, the policy's plain language, absent fraud or illegality) govern UM coverage. The same year, in *Jackson v State Farm*, 472 Mich 942 (2005) the Court held that a UM's policy's notice-of-claim provision was unambiguous and enforceable without a showing of prejudice to the insurer. The central holding of *Jackson* was reaffirmed last year in *DeFrain v State Farm*, 491 Mich 359 (2012).[1]

SECREST WARDLE NOTES:

Ile **underscores the current Supreme Court majority's adherence to the principle that non-mandatory coverages will be rigidly applied in accordance with their plain language. This is consistent with *DeFrain*, *Rory*, and *Jackson*.**

Because the memorandum order does not contain a statement of facts, *Ile's* precedential value may be debated. Supreme Court orders *can* be, but are not necessarily, binding precedent; the order must be a final disposition of an application and contain a concise statement of the applicable facts and the reason for the decision. *People v Crall*, 444 Mich 463, 464, n 8 (1993). This concept was recently discussed by the Supreme Court in some detail in *DeFrain*.

Last month, in *Ile v Foremost Ins Co*, __ Mich __ (2012) (No. 143627), the Court addressed the issue of whether UIM coverage, with limits of $20,000 per person and $40,000 per accident (the minimum coverages allowed under the No-Fault Act, MCL 500.3009), was illusory. The Court of Appeals had found that "because the policy's limit is equal to the statutory minimum … the policy will never provide excess coverage" and "a policy with UIM coverage under which no benefits will ever be paid is illusory because it will never be triggered in practice." *Ile v Foremost Ins Co*, 293 Mich App 309, 318 (2011). However, the Supreme Court reversed in a 4-3 memorandum order, released on December 20, 2012.

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[1] See No-Fault Newsline, June 1, 2012, "It Is What It Is! Supreme Court Strictly Applies UM Policy's Plain Language, Holds Insurers Do Not Need To Show Prejudice In Order To Enforce 30-Day Notice Requirements," by Drew Broaddus.

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The facts of *Ile*, taken from the Court of Appeals opinion, were as follows: Foremost issued a motorcycle insurance policy to Ile's decedent, which included "bundled" UM and UIM coverage for the period of January 30, 2006 to January 30, 2007. The insurance policy provided UM and UIM coverage in an amount equal to the minimum liability coverage limits permitted under Michigan law of $20,000/$40,000. Although Foremost offered higher limit options, Ile's decedent selected this amount of coverage and paid a single, unallocated premium amount of $26 for UM/UIM coverage. Under the language of the policy, Foremost agreed to pay "compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of 'bodily injury' and compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of 'bodily injury.'" *Ile*, 293 Mich App at 311-313.

On June 18, 2006, Ile's decedent was killed when he struck a parked vehicle while driving the motorcycle insured under this policy. Ile's estate recovered the policy limit of $20,000 from Titan Insurance Company, the insurer of the parked vehicle. The estate then sought to recover an additional $20,000 from Foremost under the decedent's UIM policy. Foremost denied the claim and declined any additional payment on the grounds that Ile's estate had already received the maximum amount payable under the decedent's policy from Titan. The estate sued Foremost for breach of contract and misrepresentation. The trial court and the Court of Appeals both found that Foremost was responsible for UIM benefits under the policy.

In reversing, the Supreme Court explained: "The Court of Appeals erroneously concluded that the underinsured motorist coverage in the insurance policy issued by the defendant to Darryl Ile was illusory because Ile could reasonably believe that his insurance premium payment included some charge for underinsurance when there are no circumstances in which Ile could recover underinsured motorist benefits given the policy limits Ile selected. We have expressly rejected the notion that the perceived expectations of a party may override the clear language of a contract. … Moreover, when read as a whole, the clear language of the policy provides for combined uninsured and underinsured motorist coverage that, as promised, would have operated to supplement any recovery by Ile to ensure that he received a total recovery of up to $20,000/$40,000 (the policy limit) had the other vehicle involved in the crash been either uninsured or insured in an amount less than $20,000/$40,000. That such coverage would, under the terms of the policy, always be labeled 'uninsured,' as opposed to 'underinsured,' does not make the policy illusory."

Justices Young, Markman, Zahra, and Mary Beth Kelly voted to reverse. Justice Marilyn Kelly (who retires this month) authored a dissent which Justice Cavanagh signed. Justice Hathaway also wrote a separate dissent.

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