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Illinois Supreme Court Rules: No Duty to Defend the Pizza Delivery Man

By Jennifer L. Smith

In *Progressive Universal Insurance Company of Illinois v. Liberty Mutual Fire Insurance Company*, the Illinois Supreme Court decided that a food delivery exclusion as applied to an entrusted driver was valid and not void as against public policy. 2005 Ill. LEXIS 624 (April 21, 2005).

Shirley Abbinante owned a minivan which she insured through Progressive Universal Insurance Company of Illinois ("Progressive"). On August 25, 2000, Mrs. Abbinante allowed her son Ronald to use the van to deliver pizzas for Casale Pizza, Inc. Ronald received gas money and a flat fee of \$1.25 per pizza that he delivered. While he was in the course of making deliveries, Ronald struck a pedestrian. The pedestrian and his wife sued Ronald and Casale Pizza to obtain damages for personal injuries, including brain and spinal cord injuries, sustained as a result of the accident.

Progressive defended Ronald in the personal injury action under a reservation of rights. During this time, the pedestrian and his wife sought and obtained a payment of \$100,000 from their own insurer, Liberty Mutual Fire Insurance Company ("Liberty Mutual"). This payment represented the limits of the uninsured-motorist coverage provided by their Liberty Mutual motor vehicle policy. After paying the policy limits, Liberty Mutual demanded reimbursement of that sum from Progressive. Progressive responded by bringing an action in the Du Page County Circuit Court to obtain a declaratory judgment that it had no duty to defend or indemnify Ronald in the personal injury action. Liberty Mutual asserted a counterclaim against Progressive seeking reimbursement of the sums it had paid under the uninsured-motorist provisions of the pedestrian's policy.

Progressive moved for summary judgment, arguing that it owed no duty to defend or indemnify Ronald because his conduct fell within the terms of an exclusion set forth in the policy issued to Ronald's mother. That exclusion stated that coverage under the policy, including Progressive's duty to defend, did not apply to bodily injury or property damage arising out of the use of the vehicle while being used to carry property for compensation, including the delivery of food. Liberty Mutual countered with a cross-motion for summary judgment arguing that Progressive could not avoid its contractual obligations based on this exclusion because it was ambiguous and contrary to public policy.

SECRET WARDLE NOTES:

The Illinois Supreme Court validated a policy's food delivery exclusion, applying to both a named insured and any permissive vehicle users, and found that it did not contravene public policy. In doing so, the court alluded that it would be more likely to uphold exclusions being questioned on a similar public policy ground if they applied to both the named insured and any permissive users. The court, therefore, distinguished this type of exclusion from a similar exclusion that applied strictly to permissive users, which it had previously found to be in violation of public policy.

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The circuit court found that the food delivery exclusion was both unambiguous and valid, that Progressive had no duty as a matter of law to defend or indemnify Ronald, and granted Progressive's motion for summary judgment. On appeal, the court agreed that the exclusion was unambiguous but ruled that even so, it violated public policy. The court based its decision on an "omnibus clause" located in Section 7-317(b)(2) of the Illinois Safety and Family Financial Responsibility Law (625 ILCS 5/7-317(b)(2)), which provides that a motor vehicle owner's policy of liability insurance shall insure the person named therein, or "any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured." The court held that giving effect to the food delivery exclusion for a permissive user would conflict with this statutory requirement and contravene the goal of Illinois' mandatory motor vehicle liability insurance law. Accordingly, the appellate court reversed the circuit court's entry of summary judgment in favor of Progressive and entered summary judgment in favor of Liberty Mutual.

The sole question for review by the Illinois Supreme Court was whether or not the appellate court erred in holding that Liberty Mutual was entitled to summary judgment on the grounds that the exclusion was void and unenforceable. In its analysis, the Supreme Court stated that an agreement should not be invalidated on public policy grounds unless it is clearly contrary to what the constitution, statutes, or decisions of the courts have declared to be the public policy, or it is manifestly injurious to the public welfare. One of the key factors the court used in making its decision was that the Illinois "omnibus clause" applies only to the entrustment of a vehicle, or in other words, permissive users of vehicles. Although the facts of this case involve a permissive user, the food delivery exclusion applies to both permissive users as well as the named driver. This was a key distinction which placed this case outside the realm of prior case law finding a permissive user exclusion a violation of the "omnibus clause." Since the exclusion applies to all drivers of the vehicle, it does not conflict with the statute and cannot be said to be void as against public policy.

The court pointed out that if they were to invalidate the food delivery exclusion with respect to permissive users, named insureds could easily evade the policy's restrictions by merely lending their vehicles to one another. This would subject an insurer to risks the insurance company had no way to foresee and which the parties to the insurance contract had expressly agreed to exclude. The Illinois "omnibus clause" merely states that permissive users must be insured. It in no way compels the conclusion that exclusions are never permissible.

Instead of analyzing the exclusion as it applies only to permissive users, the policy must be reviewed as a whole. The court stated it best when it wrote, "If a loss is covered by the policy, the fact that the vehicle was operated by a permissive user will not excuse the insurer from its obligation to pay. The loss will continue to be covered. Conversely, if a loss is excluded from coverage by the policy, the fact that the vehicle was operated by a permissive user will not trigger an obligation to pay that would not have existed had the vehicle been driven by its actual owner. The loss will continue to be excluded." As such, the Supreme Court reversed the decision of the appellate court and affirmed the judgment of the circuit court.

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