

# A QUESTION OF COVERAGE

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Insurance law cases are a lot like the book reports we prepared back in grammar school. For both, the key question is/was: "what does the text say?" In the insurance context, this calls for analysis of the precise language of the policy, which is essentially a contract between two parties. The courts look to determine exactly what was agreed, and what that agreement means in light of the factual setting presented.

Some cases involve the determination of the breadth of coverage of collector car policies. A recent example was *Sanner v. Zurich-American Insurance Company of Illinois*, decided on May 10, 1995 by the Court of Appeal of Louisiana. The case involved the scope of the uninsured/underinsured motorist ("UM") provisions of such a policy.

According to the Court, on August 23, 1991, Jody Sanner was injured in a vehicular accident in Indiana. She was a passenger in a rental truck owned, leased, and driven by others. The accident allegedly resulted from the truck driver's negligence.

Ms. Sanner sued for the damages she allegedly sustained; her husband sued for loss of consortium. The Sanners claimed UM benefits under an "Antique Policy" issued to them by Zurich to cover certain collector cars they owned.

Zurich filed a motion for summary judgment, asking the Court to dismiss the case because the antique car policy did not provide UM coverage to the plaintiffs under the circumstances. The trial court denied the motion. Zurich appealed.

The Court of Appeal reversed the judgment and ruled in Zurich's favor. It began its analysis by noting that "[t]he purpose of the UM statute is 'to protect the insured at all times against the gener-

alized risk of damages at the hands of uninsured motorists.'" It noted that Louisiana courts recognized that such coverage cannot be limited by a requirement of a relationship with an insured vehicle. "[T]he intent of the statute [is] to provide protection to an insured who becomes the innocent victim . . . even though the insured may be riding in a vehicle which is not insured under his own insurer's policy." Many other states follow this approach.

To determine whether Ms. Sanner was entitled to UM coverage under the Zurich policy, the Court first had to determine whether she was an "insured" under the liability portion of the policy. If Ms. Sanner was covered under the liability portion of the policy, UM coverage would follow her without regard to her relationship with a particular vehicle. However, if Ms. Sanner was not an "insured" under the liability portion of the policy, the Court would have to consider whether she had that status under the definitions in the UM portion of the policy.

The liability portion of the Zurich policy provided that it would "pay damages for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident involving 'your covered auto.'" It defined "insured" here in part as "[y]ou or any 'family member' for the ownership, maintenance or use of 'your covered auto.'"

The liability portion of the policy under "Exclusions" provided that Zurich "[d]id not provide liability coverage for any person arising out of the ownership, maintenance, or use of any vehicle other than 'your covered auto.'" It defined "your covered auto" as "any 'antique vehicle' or 'classic vehicle' shown in the

Declarations" or "any 'antique vehicle' or 'classic vehicle' of which you acquire ownership during the policy period provided that it replaces one shown in the Declarations and you ask us to insure it within thirty days after you become the owner."

It was undisputed that the vehicle in which Ms. Sanner was riding at the time of the accident was neither one of the antique or classic vehicles described in the policy nor a substitute for any of them. Thus, Ms. Sanner was not entitled to liability coverage under the Zurich policy because her need for coverage arose out of use of a vehicle not covered by the policy.

Since she was not insured under the liability portion of the policy, her right to UM coverage depended on the definition of insured given in the UM portion of the policy. The UM portion of the policy stated that Zurich "[w]ould 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' if "[s]ustained by an 'insured' while 'occupying' 'your covered auto,'" and "[c]laimed by an accident." Here, the policy defined "insured" as "You or any 'family member' while 'occupying' 'your covered auto'" or "Any other person 'occupying' 'your covered auto.'"

Since Ms. Sanner was not occupying one of the vehicles listed in the declaration sheet of the Zurich policy, she was also excluded from coverage under the UM portion of the policy.

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