

The Underinsured Nash

ALTHOUGH, AS A GENERAL

principle, I am categorically opposed to mayhem of any sort, I am a big fan of the uproarious “Mayhem” insurance television commercials. In these clever spots, actor Dean Winters graphically illustrates what could happen if you do not have proper coverage.

But what if you do have good coverage, but the yutzy driver who caused an accident either doesn’t have any insurance (despite the fact that most states require it) or doesn’t have enough to cover your damages? It is estimated that in some states, as many as 25 percent of drivers don’t have any auto insurance.

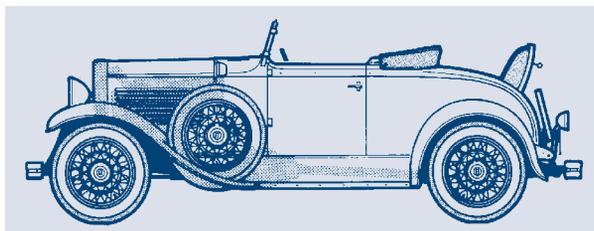
The answer here is to make sure you have uninsured motorist coverage, which will usually pay for many of your damages if you are hit by an uninsured driver who is at fault. Also useful is underinsured motorist coverage, which can pick up what remains when the driver at fault only has the bare minimum of coverage and/or a large deductible that he or she cannot pay.

In some states, it is mandatory for your insurance company to provide uninsured/underinsured motorist coverage. However, some policies contain exclusions under which coverage is not provided under certain circumstances.

All of this brings us to the classic car case of *Sabatucci vs. Metropolitan Property & Casualty Insurance Company*, decided on August 16, 2012, by the Superior Court of Connecticut.

According to the court, Kristine Sabatucci’s husband owned a 1929 Nash. On June 8, 2008, Kristine was a passenger in the Nash when it was involved in a multi-vehicle traffic accident; she was injured. Tobin Rhodes, the driver of the car causing the accident, was underinsured. Kristine had an underinsured motor vehicle policy with Metropolitan. In 2011, she sued Metropolitan, claiming damages under her policy.

On April 18, 2012, Metropolitan filed a motion for summary judgment, asking the court to dismiss the case without need for a trial. Metropolitan’s motion focused on the fact that Kristine and her husband were insured under the Metropolitan policy, but that the policy only covered two vehicles, a 2004 and a 2003 Mercury, both jointly



owned by Kristine and her husband. The policy did not cover the Nash, which was wholly owned by Kristine’s husband. The policy contained a specific coverage exclusion for “any person occupying... a motor vehicle owned by you or a relative, other than a covered automobile.” The policy defined “relative” as, among other things, a person related to the insured by marriage. The motion thus claimed that since, at the time of the accident, Kristine’s husband owned and operated the Nash in which she was a passenger, and the car was not insured by Metropolitan, there was no coverage for the accident.

Kristine conceded that if the coverage exclusion provision was applied to the facts presented, she could not recover under the policy. The accident in question occurred while she was occupying a motor vehicle owned by her husband, and that vehicle was not a “covered vehicle.” She contended, however, that the coverage exclusion provision was void (that is, it could not be enforced) as contrary to the public policy expressed in state statutes requiring underinsured motorist coverage be provided.

The Superior Court agreed with Kristine, and therefore denied Metropolitan’s motion for summary judgment, allowing the case to proceed.

The court noted that the applicable Connecticut statute set forth a general requirement that insurers provide underinsured motorist coverage. It then noted that the statute further set forth two specific exceptions to that requirement. “For purposes of this case, these exceptions can be referred to as Exception A and Exception B. Exception A applies to ‘a named insured or relatives residing in his household when occupying...an uninsured or underinsured motor vehicle...that is owned by the named insured.’ Exception B applies to ‘any insured occupying an uninsured or underinsured motor vehicle...that is owned by such insured.’”

“Before the applicability of these exceptions can be determined, it is necessary to identify the exact claim made by Sabatucci against Metropolitan. A considerable amount of confusion underlies the parties’ arguments, because two underinsured motor vehicles were involved in the accident in question. The motor vehicle

driven by Tobin Rhodes was underinsured. As it happens, the Nash was also underinsured. The complaint in the present action, however, plainly identifies Rhodes as the underinsured motorist who provides the basis of the cause of action against Metropolitan. The complaint in no way depends on the Nash’s status of being an underinsured vehicle.

“With this analysis in mind, it is evident that neither Exception A nor Exception B apply to the facts of this case.

“Exception A does not apply because the underinsured motor vehicle causing Sabatucci’s injuries—the vehicle driven by Rhodes—was not owned by ‘a named insured.’ While it is true that “a named insured”—Sabatucci’s husband—owned a separate underinsured motor vehicle (the Nash) that Sabatucci was occupying, that is a happenstance that does not affect the validity of her claim. Sabatucci’s injuries were not caused by the Nash. The Nash was simply the vehicle which Sabatucci happened to occupy at the time of the accident. Her injuries were caused by Rhodes’s vehicle. Sabatucci could have been in any vehicle, and her injuries would have been the same.

“Exception B does not apply because Sabatucci neither occupied Rhodes’s vehicle nor owned either vehicle in question.

“Because neither Exception A nor Exception B apply, [the Connecticut statute] requires coverage. Under these circumstances, the policy provision denying coverage is void as contrary to public policy.

“The Motion For Summary Judgment is denied.”

Some would view this case as reflecting the uphill battles insurance companies can often face in trying to enforce coverage exclusion provisions. A sense of such hostility was provided by British humorist Alan Coren, who in his “A Short History of Insurance” lamented that the “Act of God” exclusion in policies “means, roughly, that you cannot be insured for the accidents that are most likely to happen to you.” ☞