SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

"Step-grandchild" not a "relative" under UM policy terms

By: Drew W. Broaddus **March 11, 2016**

SECREST WARDLE NOTES

Because UM coverage is not required by the No-Fault Act, "the terms of coverage are controlled by the language of the contract itself, not by statute." *Dawson v Farm Bureau,* 293 Mich App 563, 568 (2011).

Because UM coverage is "purely contractual," ordinary principles governing the interpretation of insurance policies apply. *Id.*

When an insurance contract defines a term, that definition will control. *Lei,* unpub op at 2.

Courts "must interpret a contract in a way that gives every word, phrase, and clause meaning, and must avoid interpretations that render parts of the contract surplusage." *Id.,* citing *Klapp v United Ins Group Agency Inc,* 468 Mich 459, 468 (2003).

"If no reasonable person could dispute the meaning of the contract's plain language, [courts] must enforce" the language of a UM or UIM policy "as written." *Lei,* unpub op at 2.

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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. *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 a 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 more recently in *DeFrain v State Farm,* 491 Mich 359 (2012).[1]

Last month, the Court of Appeals applied these principles in *Lei v Progressive*, unpublished opinion per curiam of the Court of Appeals, issued February 16, 2016 (Docket No. 325168) to determine whether the step-daughter of the son of the named insured, who lived in the same household as the named insured, was a "relative" under the policy language and in turn entitled to UM benefits. In a 2-1 decision, the panel agreed with Progressive (represented by Secrest Wardle) and held that UM benefits were not owed because the Plaintiff was not an insured.

Lei arose out of a motor vehicle accident where the Plaintiff was struck by a car while crossing a street on foot. The Plaintiff's parents were divorced and she lived part of the time with her mother and her stepfather, Brian Goetz, in the home of Merilyn Goetz (the named insured under Progressive's policy). Merilyn died about three months before this accident, but her insurance policy through Progressive continued after her death. Plaintiff sought to recover under Merilyn's policy, which provided UM and UIM benefits to her relatives. Merilyn's policy with Progressive defined "insured person" as "you or a relative," and defines "a relative" as "a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child…." Progressive moved for summary disposition, contending that Merilyn's policy did not cover the Plaintiff because she was not related to Merilyn as a step-child, but rather was Merilyn's stepgrandchild. The trial court denied the motion, stating, "given the Court's review of the specific language clearly the child is a step-grandchild and the child is clearly related to the original policy holder … by marriage, in the sense that she is the grandchild as a result of the marriage[.]" *Lei*, unpub op at 2. Progressive appealed.

As the Court of Appeals majority noted, the appeal centered "on the meaning of 'relative' under the contract." *Id.* Although both sides referred to multiple outside sources to support their arguments that a step-grandchild is or is not a relative, the majority (Judges Peter O'Connell and Donald Owens) found the policy language to be dispositive "because the contract defines the term 'a relative.'" *Id.* The panel focused on the Progressive policy language stating that "a relative" is "a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child." *Lei*, unpub op at 3. "The word 'includes' may be a term of enlargement or limitation … or may signal the presence of an illustrative list. … The word 'and' usually indicates a conjunction that means as well as or in addition to." *Id.* (citations omitted). In the Progressive policy's UM section, the word "includes" followed the word "and." The majority found that "[i]f the phrase 'related to you by … marriage' included not only the marriage, but all additional relationships formed out of the marriage relationship, there would be no need to specify that stepchildren are also relatives under the policy." *Id.* Therefore, the majority could not interpret the phrase "related to you by … marriage" to include step-relationships because this would render the phrase "and includes … step-children" surplusage. *Id*. Courts "must avoid interpretations that render parts of the contract surplusage." *Id.*

Because the phrase "and includes … stepchildren" provides that stepchildren are relatives in addition to persons related to the insured by marriage, the majority found "that this necessarily means the phrase 'related to you by … marriage' does not include steprelationships." *Id.* This interpretation "does not render the phrase 'related to you by … marriage' without effect … [because] this phrase allows the person's

[1] See *No-Fault Newsline*, January 3, 2013, "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.

spouse to be considered a relative under the policy, even though a spouse is not related to the insured by blood or adoption." *Lei*, unpub op at 3.

Judge Jane Beckering wrote a lengthy dissent. The gist of her dissent was that within the policy's definition of "relative," she found the phrase "related to you by blood, marriage, or adoption, *and includes a ward, stepchild, or foster child*" to expand the scope of who can be a "relative," whereas the majority found these to be words of limitation.

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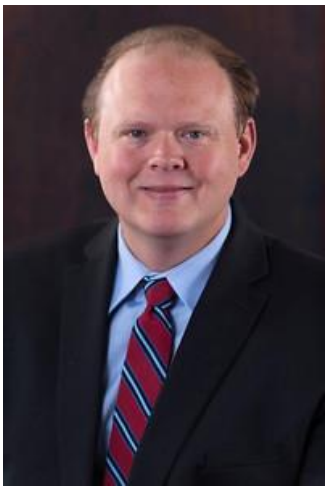

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