SECREST SW WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

04.24.12

Court Rewrites No Fault Policy to Add Named Insureds Based on Public Policy and Legislative Intent

By Mark Vanneste

At the heart of American contract law is the fundamental principle that parties are free to contract as they see fit. Courts are charged with enforcing these contracts as they are written by the parties, except when the contract is in violation of law or public policy. The Michigan Court of Appeals recently found such a violation in regard to an insurance policy, and, as a result, reformed the policy of insurance issued by Chrysler Insurance.

In *Auto Club Insurance Association v DaimlerChrysler Insurance Company*, _ Mich App _ 2012, three insurance companies fought over priority. The injured parties, a husband and wife, were both named insureds in an Auto Club policy, the insurer of an uninvolved vehicle owned by the couple. The husband, only, was a named insured in a Foremost policy, the insurer of the couple's motor home. Chrysler Insurance insured a vehicle leased by the couple. The Chrysler Insurance policy's named insured was the Chrysler Corporation and its United States subsidiaries, and not the husband or wife. Chrysler Insurance's policy's stated PIP benefits were available to a leasee except when they were entitled to Michigan No-Fault benefits as a named insured under another policy.

After the couple was involved in an accident in the leased vehicle, the husband received PIP benefits from Auto Club and Foremost, the two policies in which he was a named insured. The wife received PIP benefits from Auto Club, the only policy in which she was a name insured. Chrysler Insurance refused to contribute benefits because the injured parties were not named insureds and were entitled to benefits under another policy. In response, Auto Club brought suit against Chrysler Insurance seeking reimbursement. The trial court dismissed the case indicating that Chrysler Insurance was not liable under the terms of the policy.

On appeal, the Court of Appeals reversed the trial court's ruling. The Court found that the Chrysler Insurance policy was invalid under the No-Fault Act because the named insureds, Chrysler and its U.S. subsidiaries, did not have an insurable interest and because the policy contravened the legislative intent of the No-Fault Act.

SECREST WARDLE NOTES:

At times, a possible defense to an action seeking benefits is that a claimant does not have an insurable interest and, therefore, the policy of insurance in question is invalid. *Auto Club v DaimlerChrysler Insurance* sets precedent for courts to have the option of modifying the policy to create an insurable interest. As a result, even when circumstances are such that the named insured does not have an insurable interest, an insurer may not be off the hook, even when other insurance is available.

In short, the defense that a policy is invalid due to the insured lacking an insurable interest may be defeated by a court's decision to modify the policy on grounds of public policy or Legislative intent. In situations similar to this one, the court may do so by replacing a named insured without an insurable interest with one who does have an insurable interest, creating a liability for No-Fault benefits.

CONTINUED...

The Court pointed out that "under Michigan law, an insured must have an insurable interest to support the existence of a valid automobile liability insurance policy." An insured may have an insurable interest without having actual ownership of the vehicle. The Court found that neither Chrysler nor its U.S. subsidiaries had an insurable interest. These entities were not the owner or registrant of the vehicle nor reaped any benefit from it and, because they were not people, could not suffer accidental bodily injury. Ultimately, the Court found that the policy must be reformed to be compatible with public policy and the No-Fault Act to create an insurable interest belonging to a named insured.

In regard to the Legislature's intent, the Court pointed out that insurance policies are subject to statutory regulation and that courts are charged with the duty of reading into them mandatory statutory provisions. In *Enterprise Leasing*, a case decided by the Michigan Supreme Court, a vehicle rental agreement was found to be invalid because it shifted responsibility for providing primary insurance from the owner to the renter. This shifting of responsibility avoided the Legislature's intent that a vehicle's owner be primarily responsible for providing insurance coverage.

The Court found that the Chrysler Insurance policy violated the intent of the Legislature by improperly shifting responsibility for No-Fault coverage. The injured husband was the constructive "owner" of the vehicle and even paid insurance premiums as part of the lease agreement. Therefore, because Chrysler and its U.S. subsidiaries were the named insureds instead of the injured parties, the Chrysler Insurance policy shifted responsibility for coverage away from the owner. Ultimately, the Court reformed the Chrysler Insurance policy to add the husband and wife as named insureds instead of Chrysler and its U.S. subsidiaries.

After the husband and wife were added as named insureds to the Chrysler Insurance policy, Chrysler Insurance was in equal priority with Auto Club and Foremost. The husband was covered by all three policies, being a named insured on each, and with each insurer contributing a pro rata share. The wife was covered by both the Auto Club and Chrysler Insurance policies, the two in which she was a named insured.

CONTACT US

Farmington Hills
30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECREST SW WARDLE

Copyright 2012 Secrest, Wardle, Lynch, Hampton, Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs
Thomas J. Azoni
John H. Cowley, Jr.

Editor
Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newsline, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at **swsubscriptions@secrestwardle.com** or **248-539-2850**.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowner's Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability