

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Policy Prevents Recovery of Both Uninsured and Underinsured Motorist Benefits

By John H. Cowley, Jr.

Plaintiff Brenda Dunlap was injured while a passenger in a vehicle which was struck by another vehicle, whose driver was not identified. Plaintiff submitted a claim for uninsured motorist benefits to Allstate which insured the car in which she was a passenger. Allstate paid Dunlap the maximum benefits available under its policy. Plaintiff then sought “underinsured” motorist benefits under her policy with Defendant Farmers. Farmers refused to pay and Plaintiff filed a lawsuit claiming breach of contract for failure to pay the “underinsured” motorist benefits pursuant to the Farmers policy. Farmers moved for summary disposition based upon an exclusion in its policy and the “other insurance” clause. The trial court denied Farmers’ motion. The Court of Appeals reversed in *Dunlap v Farmers Insurance Exchange*, an unpublished decision released November 22, 2005.

Farmers moved for summary disposition with respect to the uninsured motorist claim based upon the following policy exclusion titled “Part II—Uninsured Motorist” and “Coverage C—Uninsured Motorist Coverage”:

This coverage does not apply to bodily injury sustained by a person:

- (4) If the injured person was occupying a vehicle you do not own which is insured for this coverage under another policy.

The Defendant also relied upon a separate “other insurance” provision in the contract.

The trial court denied Farmers’ motion on the grounds that the policy language was intended to prevent double recovery. The trial court reasoned that Plaintiff was not trying to obtain

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Farmers prevailed in this case because its policy contained specific definitions and exclusions. When presented with an uninsured or underinsured motorist claim, the policy language must be consulted and reviewed carefully, as policy language and exclusions differ between carriers and types of policies.

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double recovery but was seeking payment from Defendant only to the extent that her damages exceeded the amount recovered from Allstate.

There was no dispute that at the time of the accident, Brenda Dunlap was occupying a vehicle she did not own and which was insured under another policy, specifically, the Allstate policy. The applicability of Exclusion (4) concerns the scope of the phrase “this coverage.” Farmers argued that the phrase “this coverage” referred to uninsured motorist coverage and, because the Allstate policy provided uninsured motorist coverage, the exclusion applied.

Plaintiff conceded that she received uninsured motorist benefits from Allstate and Exclusion (4) precluded recovery of those benefits under the Farmers policy. However, she argued that because the vehicle she occupied did not provide underinsured motorist benefits, and because her policy with Farmers did provide this coverage, Farmers was obligated to pay “underinsured” motorist benefits. The Court of Appeals found this argument to be without merit. The Court commented that the policy had a specific provision in place for recovering benefits in conjunction with a “hit and run vehicle.” Further, the policy included “a hit and run vehicle” in the definition of “uninsured motor vehicle.” Accordingly, the court felt it was logical for Plaintiff to seek benefits under the “uninsured” provision, but there was no basis for Plaintiff to seek benefits under the specifically defined underinsured provision in the policy. The court conceded that under the policy, Plaintiff would be “legally entitled to recover...damages from the operator of the vehicle that struck her.” However, because the vehicle that struck Ms. Dunlap was a “hit and run” vehicle, it is not possible to determine whether the vehicle was underinsured as defined in the policy. Therefore, the benefits in conjunction with the “underinsured motorist definition” were not available.

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, S.E. Suite 103, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secretwardle.com

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Nelson

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