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Recent Decisions - State and Federal: Coverage of Uninsured Motorist Endorsement

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Coverage Of Uninsured Motorist Endorsement

by Andrea Gentile

The Court of Appeals recently considered the scope of an insurance company's liability under its own uninsured motorist's endorsement. By resolving an ambiguous insurance contract in favor of the insured, the court extended coverage beyond the probable intent of the insurer *McKoy v. Aetna Cas. and Sur. Co., Inc.*, 281 Md. 26, 374 A.2d 1170 (1977).

Mrs. McKoy, a Maryland resident insured by the defendant company, was driving in the District of Columbia when she was struck by a negligent D.C. motorist. Thereafter, McKoy began her attempts to recoup damages for personal bodily injuries which she alleged to be $29,000.

The problems confronted in this case resulted from the fact that financial responsibility laws regarding auto insurance vary from state to state. The minimum requirement for coverage in the District of Columbia for bodily injury liability insurance is $10,000 per person with an aggregate of $20,000 for all persons injured as a result of the same occurrence. On the other hand, Maryland demands a minimum of $20,000 coverage per person and an aggregate of $40,000 to insure the injuries of all of the persons involved. Further, Maryland requires Uninsured Motorist Protection Coverage with the same $20,000/$40,000 limits. Maryland views any motorist, such as the Washington driver in this case, as *uninsured* if he has coverage of less than the required Maryland limits of $20,000/$40,000, even though the District's limits are satisfied. Thus, Mrs. McKoy was entitled to collect under the Uninsured Motorist provisions of her policy for an amount in excess of the tortfeasor's $10,000 coverage.

The GEICO Insurance Company paid the $10,000 for which it had assumed liability as the insurer. Since her injuries exceeded this amount, Mrs. McKoy then submitted a claim to Aetna to recover the remainder of the damages under her Uninsured Motorist (U/M) coverage. At this point a difference of opinion arose as to the amount of Aetna's liability. Aetna contended that it was obliged to pay McKoy no more than $10,000; that under the terms stated in the Aetna U/M endorsement, the company was allowed to "set-off" the $10,000, already paid to Mrs. McKoy by GEICO, against the $20,000 face amount of the endorsement. Aetna based its contention on the language contained in Part III of its U/M endorsement which reads as follows:

> III LIMITS OF LIABILITY
> (d) Any amount payable to an insured under the terms of this insurance shall be reduced by (1) all sums paid to such insured for bodily injury or property damage by or on behalf of the person or organization legally liable therefore. . .

Mrs. McKoy found this objectionable and brought an action in the Prince Georges County Circuit Court for a declaratory judgment to determine the amount of the Uninsured Motorist coverage provided by her Aetna policy.

Plaintiff McKoy argued that the sole purpose of the "set-off" clause was to prevent a double recovery of damages; that the amounts recoverable from other sources were to be subtracted from the *total damages incurred* but that they were not to affect the face amount of the policy. Simply stated, she felt that where she sustained damages for bodily injury amounting to $29,000, of which $10,000 was paid by the "responsible person or organization," and she carried a $20,000 limit on her own policy, she should be entitled to recover the remaining $19,000 worth of damages from her insurer.

The Circuit Court rejected Mrs. McKoy's argument and in agreeing with AETNA, stated that McKoy could claim only $10,000 from the insurer because despite total damages of $29,000 the total amount of Aetna liability ($20,000) was to be reduced, under the set-off clause of the Uninsured Motorist provision, by the $10,000 collected from the wrongdoer's insurer.

McKoy then carried the dispute to the Court of Appeals, which reversed.

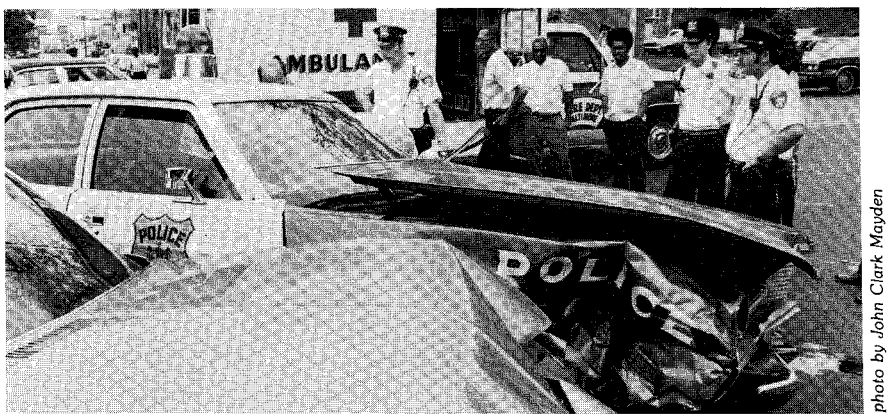

photo by John Clark Mayden

In determining the extent of Aetna's liability *under their own contract*, the Court looked to the language set forth in the U/M endorsement attached to the plaintiff's policy.

Pertinent to the disposition of the case are three parts.

First, Part I outlines the primary liability of Aetna to Mrs. McKoy. The relevant language reads: "The Company will pay *all sums* which the insured or [his] legal representative shall be legally entitled to recover. . ." (emphasis added).

Second, Part III(a) sets forth the dollar limit of Aetna's liability for injuries (to any one person covered by the policy) suffered in an accident "arising out of the

ownership, maintenance or use of an uninsured auto." Under this provision of McKoy's policy, Aetna limits its dollar liability to a single injured person (McKoy) at $20,000.

Third, Part III(d), the set-off clause upon which Aetna relied, also modifies the primary liability of Part I by indicating that "*any amount payable* to the insured under the terms of [the policy] shall be reduced" by the amount of sums paid to the insured "on behalf of the tortfeasor." *See Id.*, at 30, 374 A.2d at 1172.

There was no dispute that Part III(d) meant that the $10,000 from the D.C. driver's insurance already paid to Mrs. McKoy should act as a set-off. The issue became one of determining the proper referent of the phrase "any amount payable." If this meant the total amount corresponding to the total damages, $29,000, suffered by Mrs. McKoy, then the $10,000 set-off would leave Aetna with a $19,000 obligation. On the other hand, if those words in III(d) referred to the amount payable from Aetna to McKoy, $20,000, then the application of the set-off would leave Aetna with a mere $10,000 obligation.

In holding for Mrs. McKoy, the court stated that both III(a) and III(d) were independent modifiers of the total amounts payable clause in Part I. Thus, the set-off did not reduce the Aetna limit of liability, but the total sums to which that liability was to be applied, i.e., the outstanding amount payable to plaintiff McKoy after the application of the $10,000 paid on behalf of the tortfeasor.

In order to remove any doubt about the correctness of the result, the court stated:

> Even assuming that the interpretation of the policy urged upon us by Aetna is an equally reasonable one, this would, at best, create an ambiguity. In such situations, ambiguities are resolved against the author of the instrument. . . *Penn., Etc., Ins. Co. v. Shirer*, 224 Md. 530, 537, 168 A.2d 525, 528 (1961). . .

281 Md. at 31, 374 A.2d at 1173.

The decision of the court rested entirely upon the construction of the Uninsured Motorists Endorsement issued by Aetna. To avoid this result in future cases involving the Uninsured Motorists coverage, Aetna could restructure the language of its endorsement specifically to limit the coverage. While it is evident that the court intended that an insured benefit from as much of her insurance as possible, it could have reached a more enduring result based upon substantive law rather than contract construction had it dealt with the alternative argument that the set-off clause was void under Md. Ann. Code art. 48A §541. This section requires that insurers issuing policies for Maryland drivers provide a minimum of $20,000 U/M coverage for each policy, and a court could construe the Code to require application of the $20,000 obligation to the balance of "any amount payable" to an insured after application of a set-off. The court chose not to reach this question, and thus left this case vulnerable to isolation on its facts. *See id.*, at 28 n.1, 374 A.2d 1171 n.1.

McKoy articulates well the problem of uninsured motorists insurance protection—a problem acute in Maryland, which entertains more than its share of foreign drivers who are without sufficient coverage of their own. It also appears that the result in this case works a two-edged economic sword, with one blade cutting costs to an insurance consumer like McKoy by holding an insurance company to its full obligation in the manner provided by this court. The other edge, however, narrows company profit margin resulting in higher insurance rates.

Terry Examined

by James F. Kuhn

The Court of Special Appeals has rendered invalid an investigatory stop based solely on information received in a police radio broadcast absent other indications of present danger and criminal activity. *Price v. State*, 37 Md. App., 248, 376 A.2d 1158 (1977).

On April 5, 1975, a Prince George's County police officer on routine patrol received a radio broadcast that an armed robbery suspect, James Price, was believed to be driving a silver 1966 Cadillac and that he was in possession of a shotgun, stolen goods, and narcotics. The officer, having sighted an automobile matching the description given in the broadcast down to the tag number, approached the driver when he stepped from the car in a gas station and conducted a patdown of the driver who at that time identified himself as James Price. This limited search, conducted on the basis of the radio alert alone, produced a knife from the person of the appellant. He was arrested on a weapons charge and subsequently convicted on separate charges, relating to a robbery which had occured three weeks earlier on the basis of evidence seized by a second officer while searching the car in the gas station. Price's contention on appeal was that the state had failed to establish the necessary "reasonable suspicion" to justify his being stopped and frisked for weapons, thus violating rights guaranteed by the Fourth Amendment.

Nine years ago, the Supreme Court made clear in *Terry v. Ohio*, 392 U.S. 1, (1968), that police officers may "in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behaviour even though there is no probable cause for making an arrest" and that where the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous" he may conduct a limited frisk for weapons by patting down the outer clothing of the suspect. 392 U.S. at 22. *Terry* requires only that the officer be able to point to specific and articulable facts that would justify a reasonable suspicion that the individual is armed and presents a threat to the officer or bystanders.

In *Price*, the state argued that the patdown was justified under the *Terry* doctrine in that a police broadcast that a suspect is armed and dangerous in and of itself justifies a patdown for weapons even if it does not constitute probable cause for arrest. The danger of too broad a reading