



# Arkansas Association of Defense Counsel

June 20<sup>th</sup> 2016

## **ALL POLICIES ARE NOT CREATED EQUAL: GOVERNMENTAL UNIT OR AGENCY EXCLUSION TO DEFINITION OF UNDERINSURED MOTOR VEHICLE IS ENFORCEABLE IN COMMERCIAL AUTO POLICIES**

By: Staci Dumas Carson

Recently, our firm was faced with a case involving underinsured motorist coverage and the validity of an exclusion to the definition of underinsured motor vehicles for vehicles owned by a governmental unit or agency. The facts were fairly straightforward.

Anthony Williams was working as a paramedic for and riding as a passenger in an ambulance owned by Metropolitan Emergency Medical Service (MEMS) when it was involved in a motor vehicle collision with a city bus owned by Central Arkansas Transit Authority (CATA). It was undisputed that CATA, a public transit system and political subdivision of the City of Little Rock, was a governmental unit or agency.

Williams suffered injuries as a proximate result of the bus driver's negligence in causing the collision. Williams filed suit against CATA and the bus driver in the Pulaski County Circuit Court. Following a three-day jury trial, Williams obtained a judgment against both in the amount of \$475,000.

CATA carried the statutorily mandated minimum limits of \$25,000 per person/\$50,000 per occurrence. CATA paid its liability limits of \$25,000 to Williams in satisfaction of the judgment entered against it and its driver. CATA and the driver had liability coverage in an amount less than the damages and harm suffered by Williams. As a result, Williams made a claim for underinsured motorist (UIM) benefits with MEMS's carrier, American Alternative Insurance Corporation (AAIC).

AAIC issued a commercial auto policy to MEMS that was in force on the date of the collision. There was no dispute that Williams met the definition of an "insured"

under MEMS's policy. However, the policy excluded from the definition of underinsured vehicle one owned by a governmental unit or agency. Because the CATA bus was a vehicle owned by a governmental unit or agency, AAIC concluded that no UIM coverage existed for Williams. AAIC denied his claim.

AAIC filed a declaratory judgment action in federal court arguing there was no coverage for Williams because of the governmental unit or agency exclusion. The parties filed cross-motions for summary judgment.

In his motion, Williams argued the exclusion was contrary to public policy, based principally upon Ark. Code Ann. § 23-89-209 and cases interpreting it, including *Shepherd v. State Auto Prop. & Cas. Ins. Co.*, 312 Ark. 502, 850 S.W.2d 324 (1993) and *Clampit v. State Farm Mut. Automobile Ins. Co.*, 309 Ark. 107, 828 S.W.2d 593 (1993).

Ark. Code Ann. § 23-89-209 provides in relevant part:

(a) (1) No *private passenger automobile* liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicles in this state shall be delivered or issued in this state or issued as to any *private passenger automobile* principally garaged in this state unless the insured has the opportunity, which he or she may reject in writing, to purchase underinsured motorist coverage.

Ark. Code Ann. § 23-89-209(a)(1) (emphasis added).

There was no dispute that section 23-89-209 mandated UIM coverage; however, AAIC, relying upon the Supreme Court's decision in *Monday v. Canal Ins. Co.*, 348 Ark. 435, 73 S.W.3d 594 (2002), countered that the statute only applied to insurers issuing private passenger automobile liability insurance, which AAIC was not.

In *Monday v. Canal Ins. Co.*, *supra*, Monday was involved in a motor vehicle accident while driving a truck for his employer. He argued his employer was statutorily mandated to provide UIM coverage for him under § 23-89-209. The trial court ruled that § 23-89-209 did not apply to insurers issuing commercial automobile policies, and the Supreme Court affirmed.

[C]onstruing the plain language of section 23-89-209(a)(1) together with the stated purpose of the underinsured-motorist statute, we conclude that the legislature intended to require insurers to offer underinsured-motorist coverage when issuing “private passenger automobile liability insurance” policies covering personal or private vehicles. The statute does not require insurers issuing commercial automobile liability policies to offer underinsured-motorist coverage.

*Id.* at 443, 73 S.W.3d at 599.

In its motion, AAIC argued that absent a statute mandating coverage, an insurer may contract with its insured on whatever terms the parties may agree upon, which included an exclusion for vehicles owned by a governmental unit or agency. *See Western World Ins. Co. v. Branch*, 332 Ark. 427, 965 S.W.2d 760 (1998); *Shelter Gen. Ins. Co. v. Williams*, 315 Ark. 409, 867 S.W.2d 457 (1993).

The district court agreed with AAIC, and in granting its motion, reasoned the following:

Because there is no statutory requirement that commercial automobile policies provide underinsured motorist coverage, AAIC was not required to provide underinsured motorist coverage to MEMS. . . . MEMS and Plaintiff, agreed, pursuant to the contract in question, to exclude from the definition of underinsured vehicle one owned by a governmental unit or agency. This restriction is unambiguous and does not violate public policy.

Williams appealed the district court’s order, and on

appeal, the Eighth Circuit affirmed in an unpublished per curiam decision.

For more information, the district court case can be found at *American Alternative Insurance Corporation v. Anthony Williams*, USDC, Eastern District, Western Division, No. 4:14-CV-00038 (JM). The appeal was docketed as *American Alternative Insurance Corporation v. Anthony Williams*, USCA, Eighth Circuit, No. 15-2262.

**The thanks of the AADC go out to Staci Dumas Carson of the Watts Donovan & Tilley Law Firm for writing this article.**



**Watts Donovan & Tilley P.A.**

**Arkansas Capitol Commerce Center**

**200 River Market Avenue Ste 200**

**Little Rock Arkansas 72201**

**501-372-1406**

**We Welcome your articles and thoughts for future editions.**

**We Are Better Together:  
Support The AADC**

**Membership Applications available at <http://www.arkansasdefensecounsel.net/application.php> Please share this with friends and colleagues.**