Arkansas Association of Defense Counsel

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Cross v. State Farm Mut. Auto. Ins. Co., expanding uninsured motorist coverage.

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On February 7, 2018, the Arkansas Court of Appeals handed down an opinion that impacts uninsured motorist coverage. In *Cross v. State Farm Mut. Auto. Ins. Co.*, a woman lost control of her vehicle after driving over loose pea gravel on a section of the highway where the Arkansas Highway and Transportation Department ("AHTD") was performing road construction. *Cross v. State Farm Mut. Auto Ins. Co.,* 2018 Ark. App. 98 (2018). The plaintiff sought to recover under her uninsured motorist provision, claiming the AHTD dump trucks that applied the gravel to the roadway the day before were uninsured motorists. The trial court granted summary judgment in favor of the defendant first-party insurance company. On appeal, the appellate court reversed and remanded the circuit court's decision. This ruling 1) expanded the interpretation of the word "use" within the policy, allowing uninsured motorist provision to apply to more removed automobile related incidents; 2) departed from the Arkansas Supreme Court's decision in *Gailey v. Allstate Insurance Co.* based on policy language; and 3) deemed all "government-owned-vehicle" exclusions void.

1. Broad interpretation of the word "use" as set forth in the policy

The appellant presented evidence that a dump truck owned and operated by the Arkansas Highway and Transportation Department improperly performed a construction project in which a dump truck applied pea gravel directly to the road way. The next day, the appellant lost control of her car and crashed due to the loose gravel on the highway. The appellate court found that the AHTD dump truck applying the pea gravel was a strong enough causal connection to her subsequent accident to be considered an accident arising out of the "use of an uninsured motor vehicle," as set forth in the policy. The expansion of the definition of "use" to deem a vehicle that acted twenty-four hours before the accident as an uninsured motorist increases the potential for more situations to be covered under uninsured motorist provisions in the future.

2. Departure from the Arkansas Supreme Court's *Gailey v. Allstate Insurance Co.* decision based on the uninsured motorist policy language

The court also recognized that a plaintiff is "legally entitled to recover from an uninsured motorist" when the plaintiff proves that the other vehicle is uninsured. The circuit court held that because the appellant could not identify

the exact driver and truck that caused the accident, that the UM provision was inapplicable and the "hit-and-run" provision was the only avenue for recovery. Yet, because there was not a collision between the car and the dump truck, appellant could not recover under the "hit-and-run" provision of her UM policy.

However, the appellant provided evidence identifying AHTD as the owner of the dump truck used in the construction project and the names of the five employees who drove the dump truck on the day in question. The appellate court determined this to be sufficient identification that legally entitled the appellant to recover from her uninsured motorist policy. Based on this, the court stated that the driver was not unknown, so the analysis of the "hit-and-run policy" was inappropriate.

The court acknowledged that its decision seemed inconsistent with *Gailey v. Allstate Insurance Co.,* as the supreme court in *Gailey* stated that a plaintiff must prove that *both* the driver of the vehicle **and** the vehicle itself were uninsured**.** *Gailey v. Allstate Insurance Co.,* 362 Ark. 568, 577 (2005). Here, the court distinguishes this case from *Gailey* due to the lack of recitation of the policy language in the *Gailey* opinion, and because the language of the appellant's policy states that the insured is legally entitled to collect from the owner **or** operator of the uninsured motor vehicle. In short, the choice of conjunction in the policy determined whether the Supreme Court's precedent was followed and if the uninsured motorist provision applied.

3. Declared that all "government-owned-vehicle" exclusions are void as they are contrary to the public policy purpose behind the uninsured motorist statute.

Despite the lack of a clear prohibition of the exclusion by statute or supreme court decision, the appellate court adopted the argument made in *Vaught v. State Farm Fire & Casualty Co*., 413 F.2d 539 (8th Cir. 1969), and held that the government-owned-vehicle exclusion frustrated the purpose of UM coverage's intent to protect insured from uninsured tortfeasors. Therefore, the court held that all "government-owned-vehicle" exclusions are void as they are inconsistent with public policy.

Not only did this decision abrogate all "government-owned-vehicle" exclusions, but it also serves as a cautionary instruction putting all on notice of the liberal construction of uninsured motorist provisions. Perhaps the court stretched the interpretation of the policy in the interest of justice so that the plaintiff could recover under these circumstances. However, the repercussions of this decision has the potential to create more instances of uninsured motorist coverage as it expands policy language to encompass more remote and removed incidents. This increase in UM coverage is likely greater than anticipated or contemplated at the time the policies were created. This may lead insurers to revise policies

not only to eliminate “government-owned-vehicle” exclusions, but also to clarify the meaning of “use” and examine its choice of conjunctions.

The thanks of the AADC go out to Amelia Fuller, Anderson, Murphy & Hopkins for writing this article.

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