

SUPREME COURT OF LOUISIANA

No. 96-C-1382

GARY L. VALENTINE

versus

BONNEVILLE INSURANCE COMPANY, ET AL.

ON WRITS OF CERTIORARI
SECOND CIRCUIT COURT OF APPEAL

CALOGERO, Chief Justice, dissenting.

The majority concludes that the plaintiff, a deputy sheriff, is not a "named insured" for purposes of U.M. coverage under the policy issued by the defendant. I disagree.

The pertinent policy provision reads as follows:

- B. Who is an insured
 - 1. You.
 - 2. If You are an individual, any "family member."
 - 3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto."

"You" refers to the "named insured," which the policy identifies as "Webster Parish Sheriff's Department." Under Louisiana law, the sheriff's department, unlike a corporation, is not a legal entity with its own separate existence apart from its members. *See Riley v. Evangeline Parish Police Jury*, 630 So. 2d 1314 (La. App. 3d Cir. 1993), *reversed on other grounds*, 94-0202 (La. 4/04/94), 637 So. 2d 395

(per curiam).¹ Thus, because the sheriff's department lacks a separate legal identity, the term "Webster Parish Sheriff's Department" is ambiguous with respect to the scope of coverage as a "named insured"--or a "You"--under the policy, and it is hornbook law that ambiguity in an insurance policy is construed against the insurer, the drafter of the policy. *See, e.g., Pareti v. Sentry Indem. Co.*, 536 So. 2d 417, 420 (La. 1988).

Having determined that the Sheriff's Department is not a recognized legal entity, the inquiry then becomes: What or who is the sheriff's department? In my view, the sheriff's department is most analogous to an association, which *Black's Law Dictionary* defines, in pertinent part, as follows:

An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. It is not a legal entity separate from the persons who compose it.

BLACK'S LAW DICTIONARY 81 (6th ed. 1991). Thus, for all legal purposes, an association is defined by its membership.

Who then are the "members" of the sheriff's department? The answer is clear: the sheriff and the sheriff's employees. As such, it is entirely reasonable to conclude through a two-step process that, in the instant case, (1) "You" refers to the sheriff's department, which is an association, and (2) the association, having no separate legal existence, is only defined by its membership--the sheriff and his employees. Therefore, construing the ambiguous policy language in favor of the insured, the

¹The Third Circuit's interpretation of the legal identity of a sheriff's department is in accord with the jurisprudence of other states, such as Alabama (*Dean v. Barber*, 951 F.2d 1210 (11th Cir. 1992)); Florida (*Hutchison v. Prudential Ins. Co. of America*, 645 So. 2d 1047 (Fl. App. 3d Dist. 1994)); Indiana (*Slay v. Marion County Sheriff's Dep't*, 603 N.E.2d 877 (Ind. App. 4th Dist. 1992)); Michigan (*Rhodes v. McDannel*, 945 F.2d 117 (6th Cir. 1991)); Minnesota (*Maras v. City of Brainerd*, 502 N.W.2d 69 (Minn. App. 1993)); North Carolina (*Hughes v. Bledsoe*, 913 F. Supp. 420 (E.D.N.C. 1994)); Tennessee (*Bradford v. Gardner*, 578 F. Supp. 382 (D.C. Tenn. 984), all of which conclude that a sheriff's department is not an entity that can sue or be sued.

sheriff and his employees are covered, in my view, under the policy as "named insureds."

The policy at issue also provides coverage to family members if and only if "you" is an individual. "You," as discussed above, refers to the sheriff's department, an association, which although comprised of individuals is *not* in and of itself an individual. Therefore, the family members of the sheriff and his employees would not be covered, unless, of course, they were found to be "occupying" a covered vehicle.

For the reasons given above, I respectfully dissent.