

SUPREME COURT OF LOUISIANA

No. 99-C-0942

BILLY BOULLT

Versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

LEMMON, J., Dissenting

Uninsured and underinsured motorist (UM) coverage is designed to provide protection to persons insured under the UM feature of the policy who sustain damages through the fault of uninsured or underinsured motorists. As restricted by policy limits and by anti-stacking provisions, UM coverage provides insurance protection to insured persons that is otherwise absent or inadequate because of the tortfeasor's insurance deficiencies.

Resolution of the issue in the present case requires an analysis of the scope of UM coverage. La. Rev. Stat. 22:1406D(1)(a)(i) requires a UM policy to include coverage "for the protection of persons insured thereunder who are legally entitled to recover nonpunitive damages . . . because of bodily injury, sickness or disease, including death resulting therefrom." The statute therefore contemplates two types of recovery under UM coverage. First, in cases of non-fatal injury, payment of nonpunitive damages will be made to any directly injured person who is an insured under the policy. Second, in cases of fatal injury, payment of nonpunitive damages will be made to the tort victim's beneficiaries, specified in the survivorship and wrongful death statutes, when the tort victim was an insured under the policy.

Since the present case did not involve a non-fatal injury, no payment to the directly injured tort victim was implicated. This fatal injury case only implicated

payment to the tort victim's statutory beneficiaries who were entitled to recover survivorship damages and wrongful death damages from the tortfeasor. The statutory beneficiaries in this case were both of the tort victim's parents, each of whom was entitled to recover from the tortfeasor (if there had been adequate insurance) the survivorship damages sustained by the tort victim and the wrongful death damages that each parent sustained.

The survivorship damages were paid to both parents (according to a stipulation) by the tortfeasor's liability insurer. The only damages at issue are the wrongful death damages due to each parent by the underinsured tortfeasor. The complicating factor is that each parent owned a policy with UM coverage that was available for recovery by both parents of the wrongful death damages sustained by both.

If only one parent (for example, the father) had owned a policy with UM coverage, then both the father and the mother would have been entitled to recover wrongful death damages from that UM insurer, up to the policy limits.¹ Indeed, the UM carrier in the present case did pay both parents wrongful death damages under one policy, but the policy limits did not allow full recovery.

Because there were two policies with UM coverage, each parent also would have been entitled to recover wrongful death damages under the second policy (up to the policy limits), except for the second limitation on recovery (in addition to policy limits). That second limitation is the anti-stacking statute which prohibits (with exceptions not applicable here) recovery under a second policy with UM coverage after there has been recovery by the same claimant(s) under another policy with UM coverage. This prohibition applies whether the claimant is the injured tort victim (who

¹As noted above, in the case of a fatal injury sustained by a person insured under the policy, all of the tort victim's statutory beneficiaries are entitled to recovery of survivorship and wrongful death damages up to the limits of the UM coverage.

was insured under the policy) in the case of a non-fatal injury or the statutory beneficiary of the fatally injured tort victim (who was insured under the policy).

But for the anti-stacking statute, both parents would have been entitled to recover wrongful death damages under both policies, up to the policy limits of each policy. However, the anti-stacking statute unambiguously prohibits recovery under the second policy by the claimants, each of whom has already recovered some wrongful death damages under another policy with UM coverage.

The majority seems to refuse application of the anti-stacking statute because each parent owns a separate policy with UM coverage applicable when his or her child is fatally injured. However, neither the UM statute nor the UM provisions of the policy provides for payment to a person simply because he or she is the owner of a policy with UM coverage. For the owner of the policy to be a successful claimant under the UM coverage, the owner must be either the insured person injured in a non-fatal accident or a statutory beneficiary of the insured person who was fatally injured. While each parent in the present case falls under the second category of claimants, the fact that each parent happens to be the owner of a separate policy with UM coverage does not entitle each to defeat the clearly applicable non-stacking statute, despite the fact that each paid a separate premium for a separate policy with UM coverage.²

²The anti-stacking statute probably was designed to cover less unique situations, but the statute clearly applies here.