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Post by Pete Dworjanyn

Nationwide Mutual Ins. Co. v. Rhoden, Arrieta and Dickey

In a 3-2 decision, the South Carolina Supreme Court has concluded that public policy is offended by a portability limitation clause which purports to prevent non-resident relatives from importing UIM coverage from an at-home vehicle's policy when the involved vehicle lacks UIM coverage. *Nationwide Mutual Insurance Company v. Rhoden, Arrieta and Dickey* (Op. No. 27131, June 13, 2012).

Kelly Rhoden and her daughters, Ashley Arrieta and Emerlynn Dickey, resided in the same household. The three were involved in an accident while riding in Arrieta's car. Arrieta was operating the car. Arrieta's Nationwide policy did not provide UIM coverage. However, Rhoden insured two cars through Nationwide under a policy that did have UIM coverage. The policy had a portability limitation clause which provided:

3. If a vehicle owned by you or a relative is involved in an accident where you or a relative sustains bodily injury or property damage, this policy shall;

    a) be primary if the involved vehicle is your auto described on this policy; or

    b) be excess if the involved vehicle is not your auto described on this policy. *The amount of coverage applicable under this policy shall be the lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident.*

Nationwide brought a declaratory judgment action seeking a finding of no coverage on the ground that Arrieta's policy had no UIM coverage and therefore clause 3(b) prevented any of the women from recovering under Rhoden's policy. UIM coverage, like UM coverage, is personal and portable; it follows the individual insured rather than the vehicle insured. The South Carolina Supreme Court discussed our state's well-settled public policy regarding the personal and portable rule and concluded that as to Rhoden and Dickey the portability limitation violated public policy and thus was unenforceable.

The Supreme Court agreed that the denial of coverage to Arrieta, the driver and owner of the vehicle, did not violate public policy as public policy is not offended by an automobile insurance policy provision which limits the portability of basic "at-home" UIM coverage when the insured has a vehicle involved in the accident. Public policy is not offended when the insured is driving his own vehicle because he has the ability to decide whether to purchase voluntary UIM coverage.

The court noted S.C. Code § 38-77-160 does not apply in the non-stacking such as the case presented here. Stacking is defined as the insured's recovery of damages under more than one policy until all of his damages are satisfied or the limits of all available policies are met. A dissenting opinion was based in part on that code section.

About Pete Dworjanyn

Pete Dworjanyn is a shareholder and chair of Collins & Lacy's Insurance Coverage Practice Group and founding author of the South Carolina Insurance Law Blog. Pete also practices in workers' compensation. Following law school, Pete served as a law clerk for the Honorable Julius H. Baggett, Eleventh Judicial Circuit and as Assistant Solicitor in the Eleventh Circuit Solicitor's Office. Prior to joining Collins & Lacy in 1999, Pete was in private practice, focusing on civil litigation. Pete's reputation has earned him a BV rating by Martindale-Hubbell. He also is one of the Best Lawyers in America, the oldest and most respected peer-review publication in the legal profession.

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