

## DISTRICT COURT

Meyer v. State Farm Mutual Auto Ins., Roosevelt DV 99-33, 1/26/2000

INSURANCE: No underinsured/uninsured motorist coverage under father and stepmother for son in vehicle owned by father and sister and driven by third party... no "any relative" sex/marital discrimination... Simonton.

Adam Meyer was a passenger in a Buick owned by his father Norman and sister Amanda. Norman was named insured. The Buick was in a 1-vehicle accident while driven by permissive user Olyn Payne.

It was furnished for the primary use of Amanda. Adam lived at home with his father and stepmother Joan. Other vehicles owned and insured by Norman and Joan are a Chevrolet pickup owned and insured by Norman, an Oldsmobile owned by Norman and insured in the name of Norman and Joan, and a Chevrolet van owned by Norman and insured in his and Joan's names.

Each vehicle has \$100,000 liability coverage, \$100,000 uninsured vehicle coverage, and \$100,000 underinsured vehicle coverage through identical State Farm policies. Adam claims that his damages exceed \$100,000 and that he is entitled to underinsured coverage under the Oldsmobile and Chevrolet van policies and uninsured coverage under the Buick and Chevrolet pickup policies, for a total of \$400,000.

State Farm paid \$100,000 under the liability policy of the Buick and denies that either uninsured or underinsured coverage is applicable.

From the perspective of Joan, underinsured coverage is claimed to be available under the Chevrolet van and Oldsmobile because she is a named insured under both, she is not a relative of Adam as defined by the policy, and use of the disjunctive in identifying the insureds creates an ambiguity that must be construed against State Farm. Adam cites Taylor ( Mont. 1986), but ignores language in Livengood ( Mont. 1998) that "when a provision is written in the disjunctive, it is clear that only one of the separately stated factors must exist."

He also ignores the clear policy language and identities of the insureds. Both Norman and Joan were insureds. Norman is the first person named. Taylor was an uninsured rather than an underinsured case, and the policy here specifically excludes vehicles "furnished for the regular use of you or any relative." It also excludes vehicles covered for liability under the policy. "You" is defined as the persons or organizations shown on the declaration page as named insureds. It includes a person regularly residing in the named insureds' household with whom the named insured has a personal relationship arising out of a civil contract.

There is nothing in the policy that requires Adam to be related to all named insureds in order for the exclusion to apply. Joan certainly is an insured and a "you" because she regularly resides in the household with her husband Norman and has a personal relationship with him arising out of the civil contract of marriage. Adam is certainly related as the son of Norman. Underinsured motorist coverage is optional under the MVSRA. §61-6-103 (1998).

Thus parties may freely contract to produce exclusions or limitations of underinsured motorist coverage. Adam's father contracted with State Farm for \$100,000 in liability coverage and underinsured motorist coverage in the amount of \$100,000/\$300,000 on the 4 vehicles. He could have chosen to buy additional liability protection on them but chose not to do so.

Adam argues that uninsured coverage is available to him because although the Buick was insured the driver was not. He again relies on Taylor. Taylor was rear-ended by Moss. The Moss vehicle was uninsured, but Moss personally had liability insurance.

Taylor was allowed to recover the uninsured benefits because Moss was driving a vehicle that was not insured and Montana views the status of the vehicle, not the driver, in determining coverage. Taylor appears dispositive of the uninsured coverage issue, but additionally the policy is clear that uninsured coverage could not apply to the Buick because it was its liability coverage that provided the \$100,000 to Adam from Payne's use of the vehicle. Under Oie ( Mont. 1998), liability coverage and uninsured coverage cannot both be applicable to the same incident.

Adam cites §33-13-210 in support of his claim that insurers may not unfairly discriminate and §49-2-309 that discrimination based solely on sex and marital status is unlawful. He claims that the policies unfairly discriminate against members of the same household and particularly families where the parents are married and the children live in the parents' household. He claims that less coverage is provided for children of married parents than would be provided to children living away from the parent or in non-traditional families. He also claims that the alleged discrimination violates public policy.

However, similar exclusionary language was upheld in Stutzman ( Mont. 1997), which indicated that there is no public policy violation for optional underinsured motorist coverage because it is not mandatory and that an exclusion for "any relative" of an insured is clear and not unconscionable." Adam has failed to show how he or Joan are members of a protected class. The coverage applicable to him under his father's policies is blind as to his marital status. Joan is insured because she is a named insured under 2 of the policies and because she is Norman's wife and thus has coverage under all the policies. Norman and Joan received the coverage that they paid for. Further, a discrimination claim must first be submitted to the HRC. Hash ( Mont. 1994).

Summary judgment for State Farm.

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Laura Christophersen (Christophersen & Knierim), Culbertson, for Meyer; Randall Nelson (Nelson Law Firm), Billings, for State Farm.