

Spring, 2012

THE REASONABLE BELIEF EXCLUSION AND DRIVERS WITHOUT A VALID LICENSE

[Ref. Law of Automobile Liability Insurance, Para. 3.07]

Many auto policies contain an exclusion that applies to anyone using a covered auto who does not have a reasonable belief he is entitled to do so. When the person using the car doesn't have a valid driver's license, can he have a reasonable belief he is entitled to use it?

Courts that have considered the issue have focused on the meaning of the word "entitled." Does it refer to permission from the owner of the vehicle or someone acting on the owner's behalf? Does it refer to legal entitlement to drive by virtue of possessing a valid driver's license? Or does it refer to both?

In *Founders Insurance Company v. Munoz*, 930 NE2d 999 (Ill. 2010), the Illinois Supreme Court considered this issue and ruled that an insured driver who lacks a valid driver's license or is driving with a suspended or revoked license is not entitled to liability coverage for damages that arise from an accident with a third party.

In reaching its conclusion, the court considered several consolidated cases with similar facts. All involved insureds who either never obtained a drivers license or who had a license that was suspended or revoked at the time of the accident. One case involved a permissive user whose license was suspended.

All of the insureds without valid licenses had auto policies with Founders Insurance Company, while the case involving the permissive user involved a Safeway Insurance policy. Coincidentally, the innocent drivers were all insured by Allstate, which made bodily injury and property damage payments to its insureds and then sought to subrogate against Founders and Safeway. The case before the Illinois Supreme Court involved this consolidated subrogation action by Allstate, which asserted that the claims should be covered by Founders and Safeway. Founders and Safeway, on the other hand, argued that the claims were excluded because the unlicensed drivers could not have had a reasonable belief they were entitled to drive.

In analyzing the court decisions on this issue, it's important to carefully consider the policy language. The Founders policies agreed to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages, because of ... bodily injury, or ... property damage arising out of the operation, maintenance or use of the owned automobile or any non-owned automobile."

The policy defined persons insured for purposes of liability coverage with respect to an owned automobile to include "the named insured" and "any other person using such automobile with the permission of the named insured, provided the actual use thereof is within the scope of such permission."

Exclusion (p) of the Founders policies provided that its liability coverage did not apply to "bodily injury or property damage arising out of the use by any person of a vehicle without a reasonable belief that the person is entitled to do so."

The Safeway policy contained similar language.

The Illinois Supreme Court held that there was no coverage for the unlicensed drivers. At the outset, the court framed the arguments this way:

The policy provision at issue here precludes liability coverage when the person using or operating the vehicle does not have a "reasonable belief" that he or she is "entitled" to do so. Based on this language, Founders and Safeway argue that a person who has not been issued a driver's license, or whose license has been suspended or revoked, cannot have a reasonable belief that he or she is entitled to drive merely because he or she owns the vehicle or was granted permission to use the vehicle. ... Founders and Safeway further argue that when the policies are read as a whole, the coverage exclusion does not encompass a reasonable belief that the person is a permissive driver because the exclusion does not apply unless the driver is already a permissive user or a named insured.

Allstate responds that the term "entitled," as used in the coverage exclusion, can only reasonably refer to entitlement based on ownership of the vehicle or permission from the owner. Allstate explains: If the operator is the owner, he obviously has a reasonable belief that he is entitled to use his or her property, regardless of whether the owner has a legal right to drive the vehicle on the public roadways. Similarly, if the owner gives an operator permission to use his vehicle, the operator would have a reasonable belief he is entitled to use the vehicle. Allstate argues in the alternative that even if such interpretation is not the only reasonable one, it is at least a reasonable interpretation of an ambiguous policy provision.

The court initially agreed with Allstate that the word "entitled," depending on its usage, could connote entitlement based on permission or ownership. The court, however, held that in the context of the Founders and Safeway insuring agreements, the word meant something different:

Under both policies, an "insured person" includes the named insured and any person using the owned vehicle with the permission of the named insured. As Founders and Safeway note, unless the person qualifies as an "insured person," the coverage exclusions never come into play because the person is not covered by the policy in the first instance. This means that the term "entitled," as used in the subject exclusion, cannot refer to entitlement based on permission or ownership because the issue of whether the person using the vehicle has a reasonable belief that he or she is entitled to do so only arises after issues of permission or ownership have been

satisfied. If we were to adopt Allstate's interpretation, the coverage exclusion would serve no real purpose, since it would encompass permission and ownership issues already considered at the outset when determining if the person qualifies as an "insured person." We must assume, however, that every provision in an insurance policy was intended to serve a purpose. Because Allstate's reading of the coverage exclusion is inconsistent with the policy as a whole, and would render the exclusion superfluous, we reject Allstate's argument that its interpretation is a reasonable one.

The court was also persuaded by an Illinois statute that makes it a Class A misdemeanor to drive on a revoked or suspended license. Without a valid license, the court reasoned, a person has no "right to drive" and has "not been given proper grounds to do so." Therefore, the unlicensed Founders and Safeway drivers could not, as a matter of law, have had a reasonable belief that they were entitled to drive simply because "they owned the car" or, in the case of the Safeway driver, "was given the keys" to the car.

Allstate countered by arguing that the reasonable belief exclusion violates Illinois's financial responsibility law, which requires the named insured and any permissive users to be covered by liability insurance. The court disagreed and explained:

Section 7-317(b)(2), which is part of the Illinois Safety and Family Financial Responsibility Law, contains an omnibus clause provision. That is, it mandates that a motor vehicle liability policy shall cover the named insured and any other person using the vehicle with the insured's permission. ... We agree with Allstate that an insurance policy provision which conflicts with section 7-317(b)(2) violates Illinois public policy and will be deemed void. ... We disagree, however, that ... the reasonable-belief exclusion conflicts with the statute.

The Illinois Supreme Court concluded that the purpose of the Illinois financial responsibility law is to make certain that an injured party would be financially protected if he was injured by a driver who, with the insured's permission, was operating a vehicle that he did not own. The court reasoned that policy exclusions, like the reasonable belief exclusion, are permissible under the Illinois financial responsibility law because the legislature made them permissible. The legislature could have barred insurers from excluding coverage risks but did not do so and, in fact, created a statutory requirement that "insurance cards contain a disclaimer admonishing policyholders to examine policy exclusions carefully." The court acknowledged that its ruling could leave innocent third parties without insurance policy proceeds from which to obtain compensation for their injuries, but concluded that as a public policy concern, this issue should be addressed by the legislature and not the courts.

Keep in mind that the Illinois Supreme Court made its decision based on the particular language of the Founders and Safeway policies. Those policies, in their definition of insured, include a person using a covered automobile with the permission of the named insured. Not all policies include this reference to permission. For example, ISO's Personal Auto Policy (PAP), Part A – Liability Coverage does not mention permission. It simply states that the named insured, any family member, and any person using a covered auto is an insured. With policy language like this, the rationale employed by the Illinois Supreme Court might not be applicable.

Other courts that have found the reasonable belief exclusion unambiguous and held that it excludes coverage to a driver who lacks a valid driver's license include:

Huggins v. Bohman, 578 NW2d 326 (Mich. App. 1998)

Progressive Northern v. Concord General, 864 A2d 368 (N.H. 2005)

SOME COURTS HAVE USED A MULTI-FACTOR APPROACH ACCORDING TO WHICH NOT HAVING A VALID LICENSE IS ONE FACTOR TO CONSIDER

Some courts consider the operator's possession of a valid driver's license as one of many factors in determining whether he had a reasonable belief he was entitled to operate the vehicle. For example, *Haulers Insurance Company v. Phillip Pounds*, 272 SW3d 902 (S.D. Mo. 2008) involved the unlicensed 15-year-old daughter (Daughter) of a Hauler's insured. One night, Daughter was driving a car owned by the father of her 16-year-old friend, Phillip Pounds, when she crashed into the back of another vehicle. The impact killed both Daughter and her friend, Phillip. Phillip's father filed suit against Daughter's estate, arguing that her negligence killed his son. Daughter's estate sought a defense and indemnification from Haulers. The issue was whether the reasonable belief exclusion barred coverage.

Haulers sought a declaratory judgment and the trial court granted summary judgment in Hauler's favor, ruling that it met its burden of showing that the exclusion barred coverage. A Missouri appellate court, however, disagreed and reversed the trial court. In doing so, the appeals court applied a five-part test to determine whether a driver's belief he was entitled to drive the vehicle was reasonable:

(1) Whether the driver had express permission to use the vehicle; (2) whether the driver's use of the vehicle exceeded the permission granted; (3) whether the driver was "legally" entitled to drive under the laws of the applicable state; (4) whether the driver had any ownership or possessory right to the vehicle; (5) whether there was some form of relationship between the driver and the insured, or one authorized to act on behalf of the insured, that would have caused the driver to believe that he was entitled to drive the vehicle.

Acknowledging that it had no way of knowing exactly what transpired between Phillip Pounds and the insured's daughter that resulted in Daughter driving the Pounds's vehicle, the court ruled that it could not determine as a matter of law that Daughter did not have a reasonable belief that she was entitled to drive the car:

In its statements of uncontroverted material facts, Haulers presented undisputed evidence that Daughter was fifteen years old, unlicensed, and had no ownership interests in Philip's car. While this evidence weighs in favor of a finding of unreasonableness as to the third and fourth factors – whether Daughter could "legally" drive and whether Daughter had an ownership or possessory right to the vehicle – Haulers has not proved that Daughter lacked Phillip's express permission to use the vehicle or that her use exceeded the scope of any such express permission – information necessary to determine the first two factors.

The court continued, suggesting that the evidence implied that the daughter had a reasonable belief that she could drive the vehicle:

In fact, a reasonable inference favorable to Father is that Daughter had permission to operate the vehicle based on the broad unfettered use of the vehicle given to Phillip by its owner. ... Here, Phillip's father stated in his deposition that Phillip was the primary driver of the vehicle; that Phillip had exclusive control of the vehicle and it was Phillip's car; that he trusted Phillip's judgment with regard to Phillip's driving "perimeters," responsibilities, and allowances; and when asked to confirm that he had never given Phillip specific or express authority to allow an unlicensed driver to drive his vehicle, he responded: "Correct. But I guess I trusted his judgment." Such

broad and unfettered use of the vehicle implied authority for Phillip to allow others to use it.

The case was ultimately remanded for further findings of fact, but the point to keep in mind is that if the finder of fact, judge or jury, determined that Daughter had a reasonable belief she was entitled to drive her friend's vehicle, there would be coverage even though she did not have a valid driver's license.

SOME COURTS HAVE HELD THAT THE REASONABLE BELIEF EXCLUSION IS AMBIGUOUS

Some courts have found that the reasonable belief exclusion is ambiguous. In *Farm and City Insurance Company v. Osweiler*, 539 NW2d 154 (Iowa 1995), for example, Farm and City insured a Ford Thunderbird owned by Gary Osweiler. While Gary was in college his younger brother, Brian, began driving the car with Gary's consent. One evening Brian was driving with four passengers in the car. All of them had been drinking, Brian didn't feel well and asked Frank Tuma, one of the passengers, to drive the car. Frank lost control and hit a tree, injuring the other passengers. At the time of the accident, Frank was 15 years old and his student driving permit was under suspension due to various motor vehicle violations.

Farm and City sought a declaratory judgment that it had no duty to defend or indemnify on the grounds that the reasonable belief exclusion barred coverage. The district court, however, found that there was coverage because Frank was operating the vehicle with the express consent of Brian and the implied consent of Gary and, therefore, had a reasonable belief that he was entitled to drive the vehicle. The case was appealed and the district court's decision was upheld by Iowa's Supreme Court.

The court, noting that insurance policy exclusions must be strictly construed against the insurer, held that the reasonable belief exclusion is ambiguous:

The exclusionary language, "using a vehicle without a reasonable belief that that person is entitled to do so," contains words and phrases not defined in the Farm & City policy. There is no definition for the term "entitled" nor is there a definition for the phrase "reasonable belief." Applying the term "entitled" to the facts of this case leads to more than one reasonable interpretation. "Entitled" could mean a legal right or authority to drive under the applicable law. Under this definition, a person must have a valid driver's license to reasonably believe that he is entitled to use a vehicle. Another equally reasonable interpretation is "consent" or "permission" from the vehicle owner or apparent owner. Finally, "entitled" could require both consent and legal entitlement.

Relying on this analysis, the court held that "entitled" was an ambiguous term that must be interpreted in favor of the insured and against the insurer. The court also said that Farm and City could have easily crafted an unambiguous exclusion had it intended to exclude coverage for unlicensed drivers. Applying the law to the facts of the case, the court said:

The district court found that Tuma was driving the vehicle with a reasonable belief that he was entitled to do so. He was driving the vehicle with the permission and at the request of Brian. Tuma could reasonably believe that Brian, who had been driving the vehicle regularly for all his transportation needs, had authority to permit him to drive the vehicle. Tuma had ridden in the vehicle with Brian on numerous occasions prior to the accident and had driven the vehicle earlier that night and on at least one

prior occasion. Although Tuma knew he did not have a driver's license and his actions violated traffic laws, he also believed he not only was driving with the permission of the apparent owner of the vehicle, but was doing so at the specific request of Brian. The actual owner of the vehicle, Gary, never instructed Tuma not to drive the vehicle nor instructed Brian not to allow others to drive the vehicle. We find there is sufficient evidence to support the court's finding. Construing the exclusion strictly against the insurer, we hold that Tuma had a reasonable belief that he was entitled to use the vehicle.

Other courts that have found the reasonable belief exclusion ambiguous include:

Canadian Indemnity v. Heflin, 727 P2d 35 (Ariz. App. 1986)

Lenhart v. Federated National, 950 So2d 454 (Fla. App. 2007)

Hurst v. Grange Mutual, 470 SE2d 659 (Ga. 1996)

State Automobile Mutual v. Ellis, 700 SW2d 801 (Ky. App. 1985)

Safeco v. Davis, 721 P2d 550 (Wash. App. 1986)

THE IMPACT OF FINANCIAL RESPONSIBILITY LAWS

When a court holds that the reasonable belief exclusion bars coverage for drivers who have no valid license, there might still be coverage because of the state's financial responsibility law. For example, in *Progressive Northern Insurance Company v. Concord General Mutual Insurance Company*, 864 A2d 368 (N.H. 2005), John Chestnut owned an auto that was insured by Concord General. Chestnut permitted his step-daughter Christina Brown to use the vehicle but she was not allowed to let anyone else drive it. Despite this, Brown permitted her unlicensed boyfriend, Jeremy Heath, to drive the car and he was involved in an accident with a motorcyclist, Gary Collins. Brown was a passenger in the vehicle at the time of the accident. The motorcycle was insured by Progressive Northern. Collins filed suit against Heath and Brown seeking damages for his injuries and Progressive Northern sought a declaratory judgment that it had no obligation to provide uninsured motorist coverage to Collins and requiring Concord General to defend and indemnify Heath and Brown. Concord General claimed that coverage was excluded under its policy because Heath did not have a valid driver's license at the time of the accident. The applicable policy exclusion read:

We do not provide Liability Coverage for any insured ... using a vehicle without a reasonable belief that the insured is entitled to do so.

On the issue of the reasonable belief exclusion, Progressive Northern argued that Concord General should provide coverage because the term "entitled" is ambiguous and susceptible to more than one meaning. The Supreme Court of New Hampshire, however, held that the exclusion applied. The court found that the term reasonable belief "requires both that the driver have a subjective belief that he is entitled to use the car and that such a belief is objectively sound." Acknowledging that the term "entitled" was not defined in the policy, the court consulted common dictionary definitions and concluded that a person who lacks a valid driver's license could not reasonably believe he could drive on public roadways just because he has the consent of the vehicle's owner. In short, the court held that if a driver did not have a valid license, no further inquiry is necessary – the driver could not have had a reasonable belief he was entitled to use the vehicle as a matter of law.

The effect of New Hampshire's Financial Responsibility Act, however, was not as clear cut and

the supreme court remanded the case to the trial court to determine whether Concord General should be required to provide coverage under the act. The act stated, in part:

The insurance applies to any person who has obtained possession or control of the vehicle of the insured with his express or implied consent even though the use in the course of which liability to pay damages arises has been expressly or impliedly forbidden by the insured or otherwise unauthorized. This provision, however, shall not apply to the use of a vehicle converted with the intent to wrongfully deprive the owner of his property therein.

The trial court had ruled that Concord General would have to cover the claim because Heath had possession and control of the vehicle as a result of Brown's implied consent. Concord General disputed this, arguing that Heath knew Brown did not own the car and that her step-father did not want him operating the car.

The New Hampshire Supreme Court acknowledged that different jurisdictions applied one of three different rules in resolving similar coverage issues and settled on the initial permission rule, which provides that "once initial permission is given by the owner of the vehicle to a permittee, the permittee must conform to the time, place, and uses specified or intended by the parties as of the time of granting such permission." According to the supreme court, the issue was whether Heath could reasonably believe that Brown had the apparent authority to grant him the right to use the vehicle and whether Heath actually knew that Brown's step-father owned the car and did not want anyone using it other than Brown. If Heath knew that Brown had no authority to grant permission to use the car or that her step-father owned the car and did not want anyone else using it, then Heath lacked the required "possession or control" under the financial responsibility act, and Concord General would not have to provide coverage under the act. On the other hand, if Heath had a reasonable belief that he was entitled to drive the vehicle, Concord General would have an obligation to provide coverage under the terms of the financial responsibility act despite the application of the reasonable belief exclusion. The act only requires permissive use, regardless of whether the driver was licensed.

CONCLUSION

If you are handling a claim in which an auto accident is caused by an insured without a valid driver's license, or by an unlicensed driver using the insured's vehicle, it's important to understand how the reasonable belief exclusion can impact the claim. The Illinois Supreme Court, dealing with two policies defining insured to include permissive users, ruled that the reasonable belief exclusion bars coverage under the policy and that the application of the exclusion is not contrary to the state's financial responsibility law. The New Hampshire Supreme Court also held that the exclusion can be enforced against a driver who operates an auto without a valid license, but that the insurer might still be required to provide some coverage under New Hampshire's financial responsibility law if the unlicensed driver had permission. Some courts have ruled against the insurer on the basis that the reasonable belief exclusion is ambiguous, while other courts attempt to assess the reasonableness of the unlicensed driver's belief that he could drive the auto based on a combination of factors including permission of the owner and possession of a valid driver's license.