

Fall, 2023

AEI CLAIMS LAW QUIZ

Interpreting “Legally Entitled to Recover” in a UM/UIM Statute

[Ref. *Law of Automobile Insurance: UM and UIM, Para 1.04*]

FACTS: Bufkin was a passenger in a vehicle owned and operated by her employer when she was injured in an accident due to the employer's negligence. Both Bufkin and the employer were within the course and scope of their employment at the time of the accident. Bufkin received workers' compensation benefits for her injuries and then filed suit against her employer. The employer was immune from liability for common law negligence under the Mississippi Workers' Compensation Act (WCA) and, therefore, the suit against the employer was dismissed. Bufkin then sought to recover uninsured motorist (UM) benefits from GEICO, her auto insurer, on the grounds that the immunity of workers' compensation effectively rendered her employer an uninsured motorist. GEICO denied the claim and Bufkin filed suit.

GEICO filed a motion to dismiss, arguing that Bufkin's claim was barred by the express provisions of the UM statute, Miss. Code Ann. § 83-11-101, which limits UM coverage to those sums which the insured would be “legally entitled to recover” as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle. According to GEICO, Bufkin wasn't legally entitled to recover UM benefits because the alleged uninsured motorist was her employer who had immunity from tort liability under the WCA. GEICO's motion was granted and Bufkin appealed.

QUESTION: Should the phrase “legally entitled to recover” in the UM statute preclude Bufkin from recovering UM benefits under her auto policy?

ANSWER: Yes, according to the Supreme Court of Mississippi in *Bufkin v. GEICO Insurance Agency*, 337 So3d 1049 (Miss. 2022). The court began its discussion by stating that it had already held that the clear and unambiguous meaning of the phrase “legally entitled to recover” found in Mississippi's UM statute limits the scope of that coverage to those instances in which the insured would be entitled at the time of injury to recover through legal action. *Medders v. U.S. Fidelity & Guaranty Co.*, 623 So2d 979 (Miss. 1993). Accordingly, in order to recover UM benefits, Bufkin was required to show that she not only suffered damages caused by the fault of the uninsured motorist, but also that a legal cause of action against the uninsured motorist would not be barred under substantive law. In these circumstances, Bufkin's action against the uninsured motorist – her employer – would be barred because her employer is immune from common law tort liability under the WCA and, therefore, Bufkin could not recover UM benefits.

In *Medders*, an employee was a passenger in a vehicle owned by his employer and operated by a

co-employee. An accident occurred due to the co-employee's negligence and all of the occupants in the vehicle died. Both the employee and the co-employee were in the course and scope of their employment when the accident occurred. Among other claims, the heirs of the deceased employee sought to recover UM benefits under the employer's business auto insurance policy. The WCA provided that an employee injured in a work related accident by the negligence of a co-employee could not recover damages from the co-employee, at common law or otherwise, because workers' compensation was the employee's exclusive remedy for work related injuries against either his employer or co-employees. The court in *Medders* held that no UM coverage was available under the policy because the insured was not legally entitled, at the time of the injury, to recover damages "through legal action" against the immune co-employee.

Ten years later, in *Wachtler v. State Farm Mutual Automobile Insurance Co.*, 835 So2d 23 (Miss. 2003), the Supreme Court of Mississippi applied the same rationale to hold that sovereign immunity also precludes UM coverage. In *Wachtler*, UM coverage was denied because the insured could not show that he was "legally entitled to recover" damages from the uninsured motorist who had sovereign immunity under Mississippi law. In response to this decision, however, the legislature amended the UM statute in 2020 to expressly allow UM coverage when the uninsured motorist is immune under the Mississippi Tort Claims Act. Mississippi Code Ann. § 83-11-101, now provides:

(1) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death, or would be legally entitled to recover as damages for bodily injury or death but for the immunity provided under the Mississippi Tort Claims Act, from the owner or operator of an uninsured motor vehicle . . .

Although Bufkin acknowledged the relevant precedent, she nonetheless argued that the prior cases were wrongly decided and should be overruled because the UM statute should be liberally construed. According to Bufkin, the phrase "legally entitled to recover" should be interpreted to only require her to show that the uninsured motorist was at fault in causing her damages and the extent of those damages. The fact that the uninsured motorist – her employer – was immune from tort liability under the WCA should not operate to limit UM coverage. This interpretation, Bufkin argued, does nothing to impede the immunity that the WCA affords to employers and co-employees. Her employer would remain immune from tort liability, but she could recover UM benefits in accordance with the contract of insurance that she acquired and paid for. This interpretation promotes the legislative purpose of the UM statute because it protects the innocent victims of vehicular accidents from the irresponsible conduct of uninsured motorists. Bufkin argued that to interpret the phrase in a way that would preclude UM coverage would unnecessarily limit that coverage and impede the legislative purpose of the UM statute.

The court refused to overrule *Medders* and held that when the uninsured motorist is immune from liability due to the exclusivity provision of workers' compensation, there can be no UM coverage. The court previously rejected the same public policy rationale for allowing UM coverage that Bufkin argued for because despite the legislative purpose of the UM statute a court must still apply the clear and unambiguous language of that statute. Language in insurance policies as well as statutory law must be construed in accordance with its plain and usual meaning even when such a construction does not promote what may be a desired result. In addition, the court dismissed Bufkin's argument that *Medders* should be overruled because it no longer represents the majority view on the meaning of the phrase "legally entitled to recover." The court said that its holding in *Medders* was not based on whether it represented the majority position at the time, but on long held principles that courts apply to determine the meaning and application of statutory language. Courts apply rules of statutory construction only if a particular word or phrase is ambiguous and, therefore, susceptible to more than one meaning. On the other hand, if the word or phrase is clear and unambiguous the rules of statutory construction are unnecessary and the court should simply apply the clear and plain meaning of the statutory

language. After having weighed the arguments presented by both sides the court decided that the meaning of the phrase “legally entitled to recover” found in Mississippi’s UM statute limits the scope of that coverage to those instances in which the insured would be entitled at the time of injury to recover through legal action.

Lastly, the court observed that when the legislature amended the UM statute it only extended coverage to insured claimants who were injured by uninsured motorists with sovereign immunity. Since the legislature was aware of the court’s decision in *Medders* and did not extend UM coverage to immune employers and co-employees under the WCA, the court concluded that the legislature implicitly endorsed that decision and agreed with its interpretation of the phrase “legally entitled to recover” in the UM statute.

Based on its interpretation of the phrase “legally entitled to recover” the court held that Bufkin was not legally entitled to recover any damages from her employer who was immune from tort liability under the WCA and, therefore, was not entitled to UM benefits from her personal auto insurer. The decision of the lower court was affirmed.

CONCLUSION: Like Mississippi, many other courts have held that the phrase “legally entitled to recover” in its UM statute and the policy language that tracks those statutes is unambiguous and means the insured must not only show that the uninsured motorist was at fault in causing his damages and the extent of those damages, but also that the insured’s action against the uninsured motorist is not barred under substantive law. In circumstances that involve an employee who is injured in a work related auto accident due to the negligence of either his employer or co-employee the question arises whether the injured employee can recover UM benefits in addition to workers’ compensation. Since the typical exclusivity and immunity provisions in a workers’ compensation statute bar common law tort actions against the employer and, in most states, a co-employee as well, the injured employee would not be “legally entitled to recover” against those parties and, therefore, UM coverage would not be available.

Be aware, however, that some states allow employees who are injured in work related auto accidents due to the negligence of their employer or co-employees to recover UM benefits especially when the employee is claiming those benefits under his own auto policy. Courts that permit recovery in these circumstances interpret the phrase “legally entitled to recover” as only requiring the injured employee to prove that the uninsured motorist was at fault in causing his damages and the extent of those damages. The rationale for allowing UM benefits in these circumstances is the absence of any conflict between the legislative purpose of the workers’ compensation statute and the UM statute. According to these courts, to preclude employees from claiming UM benefits from their own auto insurance would effectively deny them the protection from irresponsible drivers that the UM statute was enacted to provide. And allowing employees to claim UM benefits from their own auto policy would not affect the immunity provided to employers and co-employees by a workers’ compensation statute since they remain immune from any tort liability.

If presented with a UM claim that involves the immunity of workers’ compensation be sure to determine how the courts have interpreted the meaning of the phrase “legally entitled to recover” in the UM statute. The meaning of that phrase is likely to control the outcome of the claim.