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A PUBLICATION OF LEITNER, WILLIAMS, DOOLEY & NAPOLITAN, PLLC

U/M Carrier Can Offset an Insured's Settlement Proceeds

Lisa Dawn Green et. al. v. Vicki Renee Johnson, et al.

Docket No. E2006-02666-SC-R11-CV

2008 WL 657685

The Supreme Court of Tennessee recently held that an uninsured motorist carrier may reduce amounts owed under the uninsured motorist provision by the amounts of settlement proceeds the insured receives from a non-motorist defendant. Further, the Court held that when the insured's settlement proceeds from a non-motorist defendant are equal to or greater than the uninsured motorist carrier's limit of liability under the policy, then the uninsured motorist carrier would have no remaining liability.

FACTS

Early in the morning on September 28, 2002, Lisa Green was struck by an automobile while walking in a marked crosswalk in Knoxville, TN. The driver of the vehicle was Vicki Johnson who was eighteen years old and intoxicated when she ran a red light and struck Mrs. Green. Tabatha Connor, a passenger and co-owner of the vehicle, was also intoxicated. Both Ms. Johnson and Ms. Connor had been drinking that night at The Pub, a local tavern near the scene of the accident.

At the time of the accident, the Greens had auto insurance with State Farm Mutual Automobile Insurance Company. The policy included uninsured motorist coverage and had liability limits of \$50,000.00 per person, \$100,000.00 per accident. The policy included language stating that if the limits of liability under the policy were the minimum limits required by law then any amount payable under the policy shall be reduced by any amount "paid or payable to or for the insured: (a) by or for any person or organization who is or may be held legally liable for the bodily injury...sustained by the insured."

PROCEDURAL HISTORY

On October 9, 2002, Mrs. Green, her husband, and minor children filed suit against Ms. Johnson, Ms. Connor, Carol Blakenship, the other alleged co-owner of the vehicle, KJC of Knoxville, Inc., d/b/a The Pub, and Chad Corcoran and Stuart Jason Myers, employees at The Pub who sold Ms. Johnson and Ms. Connor alcohol. The Greens alleged that the defendants were liable for their injuries under the doctrines of negligence, agency, comparative fault, and pursuant to the Dram Shop statutes.

On May 27, 2005, an Order of Default Judgment was entered against Ms. Johnson and Ms. Connor. The Order of Default Judgment included the court's determination that Mrs. Green was entitled to compensatory damages in the amount of \$3.65 million and punitive damages in the amount of \$1 million. Moreover, the trial court determined that Ms. Johnson and Ms. Connor were 65% at fault and The Pub, Mr. Corcoran, and Mr. Myers were 35% at fault. Finally, the court noted that The Pub and its employees had entered into a settlement with the Greens and that all matters pertaining to uninsured motorist benefits and whether Ms. Johnson and Ms. Connor were reserved for a later hearing.

On August 28, 2006, State Farm filed a motion for summary judgment arguing that it had been relieved of all liability under the terms of the policy. State Farm conceded that neither Ms. Johnson nor Ms. Connor had automobile insurance at the time of the accident and that the policy applied. However, State Farm argued that its total exposure under the policy was \$50,000.00, that the Greens had received settlement funds from other sources which were equal to or greater than \$50,000.00, and that pursuant to the uninsured motorist statutes, it was entitled to an offset to reduce its coverage amount by the amounts the Greens had received from the other defendants. Since State Farm was entitled to an offset by the \$50,000.00 or more the Greens had already received from the other defendants, State Farm was relieved from all liability under the policy and was entitled to judgment as a matter of law. The trial court agreed and granted State Farm's motion for summary judgment.

The Greens appealed arguing that pursuant to the Tennessee Uninsured Motorist Statutes and the court's previous holding in Sherer v. Linginfelter, 29 S.W.3d 451 (Tenn. 2000), State Farm could only offset payments made on behalf of an *uninsured/underinsured motorist*, but not payments from a *non-motorist defendant*. The Court of Appeals upheld the trial court's ruling and the

Tennessee Supreme Court granted the Green's application for permission to appeal.

ISSUE

Whether an uninsured motorist carrier may reduce its liability under an uninsured motorist provision of any automobile insurance policy by the amount of settlement proceeds received by the insured from a non-motorist defendant who is alleged to share responsibility for the bodily injury of the insured.

ANALYSIS

The Greens cited the court's holding in Sherer that uninsured motorist coverage provisions are for "the protection of person insured thereunder who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles because of bodily injury." The Greens argued that the tavern and its employees were not "owners or operators" of uninsured motor vehicles and therefore, it would be contrary to the intent of the legislature to allow State Farm to reduce its liability by the settlement proceeds received from the tavern. However, the Court held that Sherer dealt with an insurer's subrogation rights as well as damages recoverable in a product liability action for "enhanced injuries." Accordingly, the Court found that Sherer was not applicable to the present case.

The Court held that is previous holding in Poper ex rel. Poper v. Rollins, 90 S.W.3d 682 (Tenn. 2002) was applicable to this case. In Poper, the Court held that uninsured motorist statutes unambiguously allow "an uninsured motorist insurance carrier to limit its liability by offsetting 'all liability and/or primary uninsured motorist insurance policies, bonds, and securities applicable to the bodily injury or death of the insured.'"

Further, the Court noted that the legislature has no made distinction between monies received from "owners and operators of uninsured motor vehicles" as compared to non-motorist tort-feasors. Tenn. Code Ann. 56-7-1201 (d) specifically entitles uninsured motorist carriers to limit their liability by the "sum of the limits collectible under all liability and/or primary uninsured motorist insurance policies, bonds, and securities applicable to the bodily injury or death of the insured." Further, Tenn. Code Ann. 56-7-1206(i) specifically

entitles uninsured motorist carriers to offset amounts due under uninsured motor vehicle policy provisions by “the total amount of damages collected by the insured from all parties alleged to be liable.”

CONCLUSION

Tennessee Uninsured Motorist Statutes unambiguously allow an uninsured motorist carrier to limit its liability by off- setting settlement proceeds received by the insured from any party alleged to be liable whether it be a motorist or non-motorist defendant. Therefore, the Court affirmed the trial court and the Court of Appeals’ grants of summary judgment to State Farm as the settlement proceeds received by the Greens were equal to or greater than State Farm’s liability under the policy.

The lesson from this decision is to identify the source and amount of all settlement proceeds received by a U/M insured, because the U/M carrier is entitled to an off-set of all such payments, even if such payments come from a non-motorist defendant.

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