Summary of SC92408, *Nathaniel James Manner v. Nicholas Brian Schiermeier, et al., and American Family Mutual Insurance Company and American Standard Insurance Company*

Proceeding originating in the St. Charles County circuit court, Judge Nancy L. Schneider
Argued and submitted Sept. 13, 2012; opinion issued Jan. 8, 2013

Attorneys: Manner was represented by Gretchen Garrison, Maurice B. Graham and Morry S. Cole of Gray, Ritter & Graham PC in St. Louis, (314) 241-5620; and the insurers were represented by Robert J. Wulff and Mary Anne Lindsey of Evans & Dixon LLC in St. Louis, (314) 552-4054.

Overview: This appeal involves a challenge by an insured man to the trial court's grant of summary judgment to the insurance companies. The trial court found that the "owned-vehicle" exclusion to the underinsured motorist coverage endorsement unambiguously applied to the motorcycle that the man was riding at the time of the accident giving rise to his insurance claims. In a 5-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment and remands the case, holding that the owned-vehicle exclusion does not apply in light of the policies' "other insurance" provision, which permits an insured to stack the policies' underinsured motorist coverages, and that insurers are not entitled to an offset because the man's damages exceed the amount already recovered and the total policy limits.

Facts: In 2004, Nathaniel Manner suffered extensive bodily injury while riding a Yamaha motorcycle when it was hit by a vehicle driven by Nicholas Schiermeier. Manner sued Schiermeier for negligence, and Schiermeier's insurer paid its $100,000 liability limit to Manner. Manner's total damages amounted to $1.5 million, leaving him with $1.4 million in unpaid damages. He sought additional recovery under the $100,000 underinsured motorist endorsements of the three policies he maintained with American Family Mutual Insurance Company and under an American Standard Insurance Company policy belonging to his father. The insurers denied all underinsured motorist coverage. Manner then sued the insurers to recover under each of the underinsured motorist endorsements and to stack each coverage limit for a total of $400,000. The trial court denied Manner's motion for summary judgment but granted summary judgment in favor of the insurers, finding that the underinsured motorist endorsements of the policies did not apply. Manner appeals.

REVERSED AND REMANDED

Count en banc holds: (1) The "owned-vehicle" exclusion does not apply. This exclusion merely says that coverage will not be provided if a person is injured "[w]hile occupying … a motor vehicle that is not insured under this policy if it is owned by you …." The policy does not define "owned," so this Court gives the word its ordinary meaning, interpreting it as it would be understood by a person buying a policy. Any ambiguity in the meaning must be interpreted against the insurer as the drafter of the policy. The word "owned" can have different meanings depending on context but most commonly depends on having title or having the power to destroy or sell the property. Insurers cite no authority that the word “owned” normally is understood to apply to any person with an insurable interest and possession. At best, the meaning of the word is ambiguous, and it will be interpreted in favor of the insured.

(2) The underinsured motorist coverage of each policy applies. Manner’s insurance policies define an “underinsured motor vehicle” as one covered by a policy that provides bodily injury liability limits less than those provided by the insured’s policies. As each of the insured’s policies, as well as Schiermeier’s policy, provided $100,000 in coverage, the underinsured motorist coverage applies only if the coverage provided by two or more of the insured’s policies can be added together (“stacked”) and the stacked amount exceeds Schiermeier’s policy limits. All four of Manner’s policies contain an “other insurance” provision stating that its underinsured motorist coverage “is excess over any other similar insurance.” Prior Missouri cases have recognized that this language authorizes stacking. Even if the insurers are correct that other policy provisions appear to deny stacking, the ambiguity resulting from such conflicting provisions must be interpreted in favor of the insured to permit stacking. The stacked limits of Manner’s coverage are $400,000, which is in excess of the $100,000 liability limit of the underinsured vehicle.

(3) Because Manner’s damages exceed the total of the amount previously received from Schiermeier’s policy when added to the $400,000 in underinsured motorist coverage to which he is entitled under his policies, no offset is permitted. As this Court held in *Ritchie v. Allied Property. & Casualty Insurance Co*., 307 S.W.3d 132, 140 (Mo. banc 2009), to the extent there is a conflict in the policy’s language, this conflict at best creates an ambiguity that must be resolved in favor of coverage up to the amount listed in the liability limits section if, after deducting the amounts already paid, damages equaling or exceeding those limits still are outstanding.