

Maine uninsured-motorist law trumps policy language

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Relying on its prior interpretations of Maine's uninsured-motorist law, the state's Supreme Judicial Court ruled that an insurance company unlawfully limited a father's damages when it denied recovery because his daughter, who died in a car crash, did not qualify as an insured under his uninsured-motorist policy. (*Butterfield v. Norfolk & Dedham Mut. Fire Ins. Co.*, No. Cum-03-223, 2004 WL 2187160 (Me. Sept. 30, 2004).)

Neither car involved in the collision that killed Gregory Butterfield's 21 year-old daughter was insured. Maine's uninsured-motorist law specifies that these policies must provide "protection of persons insured there under who are legally entitled to recover damages from...uninsured, underinsured, or hit-and-run motor vehicles, for bodily injury."

Butterfield attempted to recover wrongful death damages under his own uninsured-motorist policy from Norfolk & Dedham Mutual Fire Insurance Co. But his policy stated that his recovery was limited to injuries sustained by "insured persons," which the policy defined as family members residing with the insured. Because Butterfield's daughter did not live with him, the company denied his claim.

Butterfield sued the insurance company for breach of contract and sought a declaratory judgment that he was entitled to coverage because the tortfeasor was uninsured. A trial court in Cumberland County found in his favor. Norfolk appealed to Maine's high court, which affirmed the lower courts judgment.

The court had two separate issues: whether an insured can recover damages when the victim was not named in the insured's policy and, if so, whether and insurer can use policy language that limits such coverage.

The court cited earlier rulings in which it held that Maine's statute extends "coverage to wrongful death claims caused by an uninsured motorist, when the deceased was not under the claimant's policy." (*Jack v. Tracy*, 772 A. 2d 86g (Me. `999); *Flaherty v. Allstate Ins. Co.*, 822 A. 2d 1159 (Me. 2003)). Courts in other states have reached the opposite conclusion. (See, e.g. *Livingston v. Omaha Prop. & Gas. Ins. Co.*, 927 S.W. 2d 444 (Mo. Ct. App. 1996)).

The Maine high court surmised that perhaps because of it's prior rulings, "insurers began adding limited language to their insurance contracts." Butterfield's policy with Norfolk attempted to get around the minimum requirements of Maine's uninsured-motorist statute, the court said.

Two dissenting justices that "uninsured-motorist coverage exists not to increase the exposure of insurers to indeterminable risks, but to allow policyholders a minimum of

coverage against uninsured motorists." They noted that the limiting language in Butterfield's policy "allows the insurer to assess and calculate the risk, and to charge a reasonable premium to cover the risk, and to charge a reasonable premium to cover that risk." The majority decision, they wrote, "when taken to its logical conclusion, means that an insurer offering uninsured-motorist protection is prevented from restricting in any way the scope of coverage."

Thimi Mina, Butterfield's lawyer in Portland, said concerns about restrictions are misplaced. "The insurance company in this case listed a whole series of exceptions to policies that have been approved by courts, including ours," he said. "We never argued that you couldn't limit coverage on reasonable grounds. What you can't do is limit coverage to the point where it renders the statute meaningless."

-VALERIE JABLOW