

June 18, 2007

MINNESOTA COURT OF APPEALS OPINES ON TWO COMMON AUTOMOBILE LIABILITY ISSUES

In *Auto Owners Ins. Co. v. Perry*, 730 N.W.2d 282 and *Schossow v. First Nat. Ins. Co. of America*, 730 N.W.2d 556, the Minnesota Court of Appeals offered two opinions on commonly disputed and factually-dependent issues related to automobile cases: a claimant's qualification as a "dependant" and as a "resident."

Significant Other Is Not a Dependent Under the No-Fault Act

In *Auto Owners Ins. Co. v. Perry*, 730 N.W.2d 282, the Minnesota Court of Appeals held a person who is the live-in significant other of an insured and who does not meet the definition of "dependent" under the insured's automobile insurance policy, may not receive Survivor's Economic Loss Benefits from the insurer upon the death of the insured in an automobile accident.

In *Perry*, Appellant Chong Suk Perry made a claim to Auto Owners for Survivor's Economic Loss Benefits after her significant other was killed in a December 2004 automobile accident. Auto Owners denied Perry's request on the basis she did not meet the definition of a dependent within the meaning of the insurance policy. At the time of the insured's death, Perry and the insured had lived together for seven years. The couple shared some expenses and a joint bank account and Perry was financially dependent on the insured due to her inadequate income. Perry sought arbitration, which the district court stayed after Auto Owners filed a complaint in district court seeking a declaratory judgment to determine whether Perry qualified as a dependent. The district court granted Auto Owners' motion for summary judgment, concluding Perry did not qualify as a dependent under the insurance policy, and the policy met the minimal coverage provisions required by the Minnesota No-Fault Act. Perry appealed.

The Minnesota Court of Appeals held the district court properly ruled Perry was not entitled to Survivor's Economic Loss Benefits, because she did not meet the definition of dependent under the policy or the Minnesota No-Fault Act. The policy defined a dependent as either a surviving spouse or child of the deceased. As a significant other or live-in girlfriend, Perry did not qualify. Under the No-Fault Act, a dependent is a spouse of the deceased, or any child of a deceased parent. Minn. Stat. § 65B.44, subd. 6. Perry argued that the last sentence of the § 65B.44, subd. 6 definition, which states "[q]uestions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased" creates a broader class of dependents. The Minnesota Court of Appeals rejected the argument, concluding that absent a clear mandate in the language of an insurance policy, the No-Fault Act does not offer a broader classification of dependent. Accordingly, the district court was proper in granting summary judgment for Auto Owners.

An Insured Can Have Multiple Residencies

In *Schossow v. First Nat. Ins. Co. of America*, 730 N.W.2d 556, the Minnesota Court of Appeals held a person living and working in Minnesota at the time of a motor vehicle accident is a Minnesota "resident" notwithstanding evidence that the insured's "domicile" was in another state.

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Johnson & Condon, P.A.

Ann Schossow died in November 2002 from injuries sustained after being struck by a vehicle while walking to work in St. Louis Park, Minnesota. At the time of the accident, Ann and her husband, Steven Schossow, were temporarily working and living in Minnesota. They were planning on moving back to North Dakota in 2005, where they still maintained an address and were domiciled. While living in Minnesota the Schossows obtained automobile insurance coverage from First National for a vehicle they purchased for Ann. First National issued a policy to the Schossows' address in North Dakota. The policy included UIM limits of \$100,000. After Ann's death, Steven Schossow settled with the driver's insurance company for the driver's liability coverage limit of \$100,000. He then sought UIM benefits under the policy with First National. First National denied his claim based on North Dakota law, which provides for "difference-in-limits" UIM coverage. Under North Dakota law, Steven was not entitled to coverage because his UIM policy limit of \$100,000 did not exceed the driver's liability coverage of \$100,000, thus, no difference in limits. Steven Schossow filed suit, and the district court entered judgment for him, concluding Ann Schossow was a Minnesota resident, and, therefore, pursuant to Minn. Stat. § 65B.50, subd. 1 (2006), First National was required to provide Steven Schossow with at least the amount of UIM coverage provided by Minnesota law. Because Minnesota law provides for "add-on" UIM coverage, the district court determined Steve Schossow was entitled to an additional \$100,000. First National appealed, arguing that Ann was not a Minnesota resident, thus, North Dakota's UIM statute applied.

The Minnesota Court of Appeals held Ann Schossow was a Minnesota resident at the time of her accident and Steven Schossow was entitled to UIM benefits in accordance with Minnesota law. First National argued that Ann was not a Minnesota resident because she held herself out as a resident of North Dakota (i.e., renewed her North Dakota driver's license, registered and titled her car in North Dakota, her 2002 W-2 contained only her North Dakota address, and the Schossows' 2002 tax returns indicated they were both full-year residents of North Dakota), and was domiciled in North Dakota. The Minnesota Court of Appeals agreed with the district court's conclusion that Ann was a Minnesota resident because she lived in Minnesota continuously and worked in Minnesota full-time. Further, the fact that Ann's legal domicile was in North Dakota did not determine whether she was a resident of Minnesota. As a general rule while a person can have only one domicile, a person could have more than one residence. Accordingly, First National is required to extend UIM coverage to Steven Schossow pursuant to Minnesota law.

Issues of dependency and residency vary on a case-by-case basis. Ultimate determinations are difficult to predict, due to the courts' significant reliance on the individual facts of each case. We recommend aggressive investigation early in the life of a claim to uncover all relevant facts necessary to fully analyze your company's exposure.

We will follow these cases in the event of appeals to the Minnesota Supreme Court. If you have any questions regarding this case or other automobile-related issues, please contact any member of our Motor Vehicle Practice Group at (952) 831-6544. This letter, and other Minnesota Appellate Court opinion updates, are now available in .pdf form on the News and Resources page of our Firm's website: www.johnson-condon.com. If you would prefer to receive these case updates by email only, please visit the Contact Us page at www.johnson-condon.com/contactus and sign up for the electronic mailing list.

Sincerely,

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