

August 8, 2007

**MINNESOTA COURT OF APPEALS OPINES WHO IS “INSURED,” THUS ENTITLED TO UNINSURED MOTORIST COVERAGE UNDER MINN. STAT. § 65B.49, SUBD. 3A(5), OF THE NO-FAULT ACT**

In *Carlson v. Allstate Ins. Co.*, 734 N.W.2d 695 (Minn. Ct. App. 2007), the Minnesota Court of Appeals held for the purposes of Minn. Stat. § 65B.49, subd. 3a(5) (2006), a pedestrian must be considered an insured under the policy in order to recover UM benefits.

In *Carlson*, Aaron Carlson was struck by an uninsured motorist while crossing Lyndale Avenue in Minneapolis after having parked his vehicle on the other side of the street. As a result, Carlson suffered several injuries. Carlson’s vehicle was leased by his father, Robert, and was added to Robert Carlson’s insurance policy with Allstate Insurance Company. Aaron Carlson was also listed as an additional driver. The policy included UM benefits to an “insured person.” The policy defined an insured person as (1) “you and any resident”; (2) “any person while in, on, getting into or out of an insured auto with your permission”; and (3) “any other person who is legally entitled to recover because of bodily injury to you, a resident, or an occupant of your insured auto with your permission.” Further, the policy defined “you” as the policyholder named on the Policy Declarations. At the time of the accident, Carlson was not residing with his parents nor was he in, on, getting into or out of an insured auto. Thus, Carlson was entitled to UM coverage only if he was considered a “policyholder.” Carlson brought suit against Allstate after it denied his claim. The parties brought cross-motions for summary judgment. The district court granted Allstate’s motion against Carlson, finding Carlson was not a named insured under the policy, and therefore, not a policyholder covered by the UM provisions of the policy. Additionally, the district court concluded that because Carlson was not considered an insured person under the UM provisions of the policy, Minn. Stat. § 65B.49, subd. 3a(5) (2006) did not entitle him to coverage. Carlson appealed.

The Minnesota Court of Appeals affirmed the lower court’s decision, concluding Carlson was not entitled to UM coverage for his injuries under the plain language of the Allstate policy and Carlson was not insured by the Allstate policy when he was injured by the uninsured motorist. Accordingly, Minn. Stat. § 65B.49, subd. 3a(5) (2006) does not mandate coverage for Carlson’s injuries. The court rejected the argument that Carlson had a reasonable expectation that UM coverage extended to him because his father was told by the Allstate agent that his children were covered to the same extent as him and his wife. The Minnesota Court of Appeals agreed with the district court’s determination that any expectation of coverage Carlson may have had was defeated by the plain language of the policy, regardless of what Robert Carlson was told by the Allstate agent. Further, the doctrine of reasonable expectations does not eliminate the policyholder’s obligation to read the policy.

We will follow this case in the event of an appeal 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](http://www.johnson-condon.com). If you would prefer to receive our case law updates by email only, please sign up at [www.johnson-condon.com/contactus.htm](http://www.johnson-condon.com/contactus.htm)

Sincerely,

**THE JOHNSON & CONDON, P.A., MOTOR VEHICLE PRACTICE GROUP**

Mark J. Condon

Timothy J. Leer

B. Jon Lilleberg

Paul S.  
Hopewell

Matthew M. Johnson

Jacob M. Tomczik

Lee A. Hutton, III

Michael M. Skram