Caution
As of: Jul 05, 2013

TRUDY ANN GOODMAN vs. AMERICAN CASUALTY COMPANY.

M-6487

SUPREME JUDICIAL COURT OF MASSACHUSETTS

419 Mass. 138*; *643 N.E.2d 432*; *1994 Mass. LEXIS 674

October 3, 1994, Argued
December 13, 1994, Decided

PRIOR HISTORY: **[***1]** Middlesex. Civil action commenced in the Superior Court Department on September 17, 1992. The case was heard by Charles T. Spurlock, J., on motions for summary judgment. The Supreme Judicial Court granted a request for direct appellate review.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff injured pedestrian appealed the judgment of the superior court (Massachusetts), which entered summary judgment in favor of defendant insurer in the injured pedestrian's action seeking a declaration that the insurer was liable for underinsured motorist coverage. The insurer applied for direct review of the injured pedestrian's appeal.

OVERVIEW: An injured pedestrian was struck by a vehicle and was paid the limits of the tortfeasor's insurance coverage. The injured pedestrian filed an action against the insurer of her husband, seeking a declaration that the insurer was liable to her as a household member for underinsured motorist coverage under her husband's policy. The trial court entered summary judgment in favor of the insurer, and the injured pedestrian appealed. The insurer filed an application for direct review, which the court granted. The court vacated the judgment, which did not declare the rights of the parties. A new judgment was entered declaring that the insurer's policy provided no underinsurance coverage to the injured pedestrian. The court held that a household member who had a Massachusetts automobile policy of her own providing underinsured motorist coverage was not permitted to recover underinsured motorist benefits under a policy issued to another household member. In order to settle the question for future cases, the court held that a late-notified insurer seeking to deny coverage on that basis had to prove that it was prejudiced by any delay in giving notice of an underinsured motorist claim.

OUTCOME: The court allowed the application for direct review of the injured pedestrian's appeal. The court vacated the judgment and directed that a new judgment should be entered declaring that the Massachusetts automobile insurance policy issued by the insurer provided no underinsurance coverage to the injured pedestrian.

CORE TERMS: motorist coverage, underinsured, insurer's, coverage, household member, policy issued,

prejudiced, uninsured, notice, underinsured motorist, automobile policy, insured, insurance policy, automobile insurance, late notice, standard form, occurrence, declaration, underinsured motorist, question of prejudice, liability coverages, prospectively, prejudicial, motorist, claimant, notify, motor vehicle, entitled to recover, underinsurance, late-notified

LexisNexis(R) Headnotes

Insurance Law > Motor Vehicle Insurance > Coverage > Underinsured Motorists > General Overview
[HN1] A household member who has a Massachusetts automobile policy of her own providing underinsured motorist coverage may not recover underinsured motorist benefits under a policy issued to another household member.

Insurance Law > Motor Vehicle Insurance > Coverage > Underinsured Motorists > Stacking Provisions
Insurance Law > Motor Vehicle Insurance > Coverage > Uninsured Motorists > Stacking Provisions
Insurance Law > Motor Vehicle Insurance > Stacking Provisions > General Overview
[HN2] The 1988 amendment to *Mass Gen. Laws ch. 175, § 113L (5)*, made by 1988 Mass. Acts ch. 273, § 47, states a public policy against the "stacking" of uninsured and underinsured motorist coverage. In no event shall the limit of liability for two or more vehicles or two or more policies be added together combined or stacked to determine the limits of insurance coverage available to injured persons.

Insurance Law > Claims & Contracts > Notice to Insurers > Prejudice to Insurer
Insurance Law > Motor Vehicle Insurance > Coverage > Underinsured Motorists > Notice Requirements
Insurance Law > Motor Vehicle Insurance > Obligations > Notice Requirements
[HN3] A late-notified insurer seeking to deny underinsured motorist coverage must prove that it was prejudiced by an insured's delay in notifying it.

Insurance Law > Claims & Contracts > Claims Made Policies > General Overview
Insurance Law > Claims & Contracts > Notice to Insurers > Prejudice to Insurer
Insurance Law > Motor Vehicle Insurance > Obligations > Notice Requirements
[HN4] Under *Mass. Gen. Laws ch. 175, § 112* (1992), an insurance company providing motor vehicle insurance against liability to another may not deny coverage because of the insured's failure to notify the company seasonably of an occurrence that might give rise to liability unless the insurance company has been prejudiced by the unseasonable notice. The same rule applies prospectively to any liability insurance policy not covered by *§ 112*, so that an insurance company has to prove that a breach of the policy's notice provision prejudiced its position.

COUNSEL: Frank C. Corso for the plaintiff.

Alice Olsen Mann (Karyn T. Hicks with her) for the defendant.

JUDGES: Present: Liacos, C.J., Wilkins, Lynch, & Greaney, JJ.

OPINION BY: WILKINS

OPINION

[*138] [433]** WILKINS, J. This is the second of three cases decided today in which a household member, having his or her own Massachusetts automobile insurance policy, seeks to recover under the higher underinsurance motorist coverage provided in a spouse's or parent's automobile insurance policy. See *Depina* v. *Safety Ins. Co., ante* (1994); *Smart* v. *Safety Ins. Co., post* (1994). We conclude, as we did in the *Depina* case, **[*139]** that [HN1] a household member who has a Massachusetts automobile policy of her own providing underinsured motorist coverage may not recover underinsured motorist benefits under a policy issued to another household member.

On January 23, 1992, the plaintiff was **[***2]** injured when she was struck by an allegedly negligently operated motor vehicle, while she was walking on a public way in Cambridge. The tortfeasor's insurer paid the plaintiff $ 15,000, the limits of the tortfeasor's coverage, but an amount less than the plaintiff's damages. The plaintiff owned her own vehicle and thus was the named insured on a Massachusetts automobile insurance policy, issued by the Hanover Insurance Company, providing underinsured motorist coverage in the amount

of $ 25,000 for each person. Her rights under that policy are not directly involved here. The plaintiff's husband also owned a motor vehicle, insured by the defendant (American) under a policy, issued to him effective January 14, 1992, providing underinsured motorist coverage of $ 100,000 for each person.

The plaintiff commenced this action seeking a declaration that American is liable to her as a household member for underinsured motorist coverage under her husband's policy. American denied that it was liable under that policy and additionally asserted a counterclaim seeking a declaration of the rights of the parties and a declaration that no coverage applies for the underinsured motorist claim because **[***3]** the plaintiff failed promptly to notify American of the accident. We allowed American's application for direct review of the plaintiff's appeal from a summary judgment entered in favor of American.

A judge of the Superior Court determined that, because the plaintiff had failed to provide American with prompt notice of her claim, she was not entitled to recover and that, in any event, the plaintiff who had her own Massachusetts automobile insurance policy was not entitled to recover under her husband's policy. We need not reach the issue whether the plaintiff is barred from coverage because of an untimely late notice to American because we conclude that the judge was correct in deciding that the plaintiff did not have underinsured **[*140]** motorist coverage available under her husband's policy. We shall discuss the question, however, whether a late-notified underinsured motorist insurer may deny coverage if it was not prejudiced by the delay.

1. The significant language in the American policy concerning underinsured motorist coverage provides that "we will not pay damages to or for any household member who has a Massachusetts auto policy of his or her own or who is covered by a Massachusetts **[***4]** auto policy of another household member providing similar coverage with higher limits." Because this language in the standard Massachusetts automobile policy is controlled by the Commissioner of Insurance, and not any insurer, we do not construe any ambiguity against the insurer. See *Royal-Globe Ins. Co. v. Craven, 411 Mass. 629, 633 n.6, 585 N.E.2d 315 (1992)*; *Moore v. Metropolitan Property & Liab. Ins. Co., 401 Mass. 1010, 1011, 519 N.E.2d 265 (1988)*.

The plaintiff argues that, if a household member has her own Massachusetts automobile policy, she is not excluded from underinsured **[**434]** motorist coverage under a policy issued to another household member unless the underinsured motorist coverage of her policy is as high as or higher than the limits for such coverage under the other policy. She asserts that the concluding phrase quoted above, "providing similar coverage with higher limits," modifies the reference to a household member's own automobile policy in addition to the reference to any policy of another household member. We are not persuaded.

The plaintiff's argument is inconsistent **[***5]** with controlling legislation. [HN2] The 1988 amendment to *G. L. c. 175, § 113L (5)*, made by St. 1988, c. 273, § 47, states a public policy against the "stacking" of uninsured and underinsured motorist coverage ("In no event shall the limit of liability for two or more vehicles or two or more policies be added together combined or stacked to determine the limits of insurance coverage available to injured persons"). See *Plymouth Rock Assurance Corp. v. McAlpine, 32 Mass. App. Ct. 755, 757-758, 594 N.E.2d 901 (1992)*. The plaintiff had a Massachusetts automobile insurance policy issued to her as an owner that provided her **[*141]** with underinsured motorist coverage. She is explicitly entitled to that coverage under her policy. It would be contrary to the purpose of the 1988 legislation to say that the plaintiff could recover under both policies or to say that the language on which the plaintiff relies should be read to make her husband's insurer alone liable, thus exonerating her own insurer whose standard form policy explicitly and unconditionally states its liability to the plaintiff in these circumstances. That explicit and unconditional statement **[***6]** of the plaintiff's rights under the standard form of policy issued to her would make no sense if it were intended that higher underinsured motorist coverage of a household member under another standard form of policy were to be the only such coverage available to her.

2. As we have stated, because there was no underinsured motorist coverage available to the plaintiff under her husband's policy, we need not deal with American's late notice argument. However, each party asks us to decide whether a late-notified insurer may deny underinsured motorist coverage only when it proves that it was prejudiced by the delay. We are told that the issue is presented in other pending cases. It will no doubt arise in future cases. We, therefore, decide the question, concluding that such [HN3] an insurer must prove that it

was prejudiced by an insured's delay in notifying it.

[HN4] Under *G. L. c. 175, § 112* (1992 ed.), an insurance company providing motor vehicle insurance against liability to another may not deny coverage because of the insured's failure to notify the company seasonably of an occurrence that might give rise to liability "unless the insurance company has been prejudiced [by the unseasonable notice]." **[***7]** In *Johnson Controls, Inc. v. Bowes, 381 Mass. 278, 282-283, 409 N.E.2d 185 (1980)*, this court applied the same rule prospectively to any liability insurance policy not covered by *G. L. c. 175, § 112*, so that an insurance company would have to prove that a breach of the policy's notice provision prejudiced its position.

Uninsured and underinsured motorist coverages do not provide an insured protection against liability to some third **[*142]** person. These coverages, therefore, are not liability coverages. Uninsured and underinsured motorist claims are made to one's own insurer if the claimant or a household member has a Massachusetts automobile policy. The provisions of *G. L. c. 175, § 112*, and the extension of that rule in the *Johnson Controls* opinion, therefore, do not explicitly apply to uninsured motorist coverage. We are aware of no distinction, however, between liability coverage and uninsured or underinsured motorist coverage that would call for the application of a different rule concerning the question whether the insurer must prove that late notice to it was prejudicial.

There is a tendency in this country to require proof of prejudice **[***8]** in uninsured and underinsured motorist coverage cases even when such proof is not required in liability cases. See *State Auto. Mut. Ins. Co. v. Youler, 183 W. Va. 556, 562, 396 S.E.2d 737 (1990)*; 8 J. Appleman & J. Appleman, Insurance Law & Practice § 5083.35 (1981); A. Widiss, Uninsured and Underinsured Motorist Insurance § 16.2, at 17 (2d ed. 1992) (stating **[**435]** that courts "almost uniformly view the question of prejudice as relevant to determine whether coverage is lost by the delay"). In the instance of underinsured motorist coverage, a late notified insurer may well not be prejudiced because, by definition, there is another insurer involved whose investigation of the occurrence could fulfil the investigative needs of the underinsured motorist insurer. The interests of each insurer usually would be similar with respect to the question of liability for, and damages resulting from, the occurrence.

A requirement that an insurer must prove that it was prejudiced by any delay in giving notice of an underinsured motorist claim is a logical extension of well-established principles. We see no likelihood of an insurer's justifiable prejudicial **[***9]** reliance on a contrary rule of law. Therefore, there is no need to make the principle that we announce effective only prospectively. Our opinion in *Royal-Globe Ins. Co. v. Craven, 411 Mass. 629, 585 N.E.2d 315 (1992)*, which concerned a claim arising from one accident that occurred prior to the date of our prospective ruling in the *Johnson Controls* case and where the **[*143]** question of prejudice was not raised by the claimant, does not stand for any principle contrary to our conclusion here.

3. The judgment that was entered did not declare the rights of the parties, as it should have. The judgment, therefore, is vacated, and a new judgment shall be entered declaring that the Massachusetts automobile insurance policy issued by American Casualty Company, provides no underinsurance coverage to the plaintiff with respect to the accident that occurred on January 23, 1992.

So ordered.