Analysis
As of: Jul 05, 2013

DANIELLE L. CHENARD vs. COMMERCE INSURANCE COMPANY & another.
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1 CNA Insurance Companies, also known as American Casualty Company.

SJC-08973

SUPREME JUDICIAL COURT OF MASSACHUSETTS

440 Mass. 444*; *799 N.E.2d 108*; *2003 Mass. LEXIS 824

October 7, 2003, Argued
November 26, 2003, Decided

SUBSEQUENT HISTORY: **[***1]** As Corrected January 12, 2004.

PRIOR HISTORY: Essex. Civil action commenced in the Superior Court Department on September 30, 1998. Motions for summary judgment were heard by Diane M. Kottmyer, J., on a statement of agreed facts. After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.
Chenard v. Commerce Ins. Co., 56 Mass. App. Ct. 576, 778 N.E.2d 1031, 2002 Mass. App. LEXIS 1461 (2002).

DISPOSITION: Superior court judgment and order affirmed; Appeals Court decision superseded.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff was injured in a collision with an uninsured motor vehicle while she was driving one of her mother's two cars. She brought a declaratory action against defendants, her mother's two insurers, and the superior court granted summary judgment for the second insurer, holding that plaintiff was not an "insured" under that policy. The Appeals Court (Massachusetts) vacated the summary judgment, and the second insurer sought further review.

OVERVIEW: The policy provided payment for damages to any household member while occupying the policyholder's auto and defined "auto" as the vehicle or vehicles described on the coverage selections page. Plaintiff conceded that the car she was driving was not listed, and the court concluded that she plainly was not an insured under that policy. The court also found that the policy language was not inconsistent with *Mass. Gen. Laws ch. 175, § 113L (5)*, which did not create additional coverage or coverage for additional persons beyond that provided by the purchased policies, but rather was a specific response to a series of decisions by the court that permitted "stacking" of insurance policies in certain circumstances. Caselaw did not stand for the proposition that *§ 113L* mandated that uninsured motorist insurance cover all household members, on all policies, in all circumstances. A person was "an insured" for purposes of

§ 113L(5) only if that person was covered by the terms of the policy from which coverage was sought. The second insurer's policy did not provide plaintiff with coverage; hence, *§ 113L(5)* did not authorize plaintiff to recover from it.

OUTCOME: The court affirmed the judgment of the superior court.

CORE TERMS: coverage, insured, policyholder, household member, uninsured, stacking, uninsured motorist coverage, insurance policy, motorist, sedan, pedestrian, occupying, named insured, truck, uninsured motorist, policy provides, sentence, edition, insurer's, uninsured motorist insurance, policy language, automobile policy, summary judgment, entitled to recover, ordinary sense, statutory provision, designated, resident, mandated, driving

LexisNexis(R) Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review
Insurance Law > Claims & Contracts > Policy Interpretation > Appellate Review
[HN1] The interpretation of an insurance policy is a question of law, which the court reviews de novo.

Insurance Law > Claims & Contracts > Policy Interpretation > Ambiguous Terms > General Overview
Insurance Law > Claims & Contracts > Policy Interpretation > Ordinary & Usual Meanings
Insurance Law > Motor Vehicle Insurance > Coverage > Uninsured Motorists > General Overview
[HN2] Because the language of the standard Massachusetts automobile policy is set by the Commissioner of Insurance, it is exempt from the rule of construction requiring ambiguities to be resolved against the insurer. Rather, the language should be construed in its usual and ordinary sense.

Insurance Law > Motor Vehicle Insurance > Coverage > Uninsured Motorists > General Overview
Insurance Law > Motor Vehicle Insurance > Exclusions > Household Members
Insurance Law > Motor Vehicle Insurance > Stacking Provisions > General Overview
[HN3] See *Mass. Gen. Laws ch. 175, § 113L(5).*

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
[HN4] "Stacking" was the practice of combining the uninsured (or underinsured) motorist limits of separate policies to create a larger pool of coverage for a single accident.

Insurance Law > Motor Vehicle Insurance > Coverage > General Overview
[HN5] The term "insured" refers, in its ordinary sense, to a person covered by an applicable insurance policy.

Insurance Law > Motor Vehicle Insurance > Coverage > Uninsured Motorists > Mandatory Coverage
Insurance Law > Motor Vehicle Insurance > Exclusions > Household Members
Insurance Law > Motor Vehicle Insurance > Stacking Provisions > General Overview
[HN6] Case law does not stand for the proposition that *Mass. Gen. Laws ch. 175 § 113L* mandates that uninsured motorist insurance cover all household members, on all policies, in all circumstances. The legislature intended to include household members within the protection of *§ 113L* at the time of its enactment. The term "persons insured thereunder" as used in *§ 113L(1)* refers to those persons who are designated within the applicable policy provision of the Massachusetts automobile insurance policy, second edition as being insured for the purpose of uninsured motorist coverage.

COUNSEL: John G. Ryan for Commerce Insurance Company.

John P. Graceffa (Richard W. Jensen with him) for CNA Insurance Companies.

Peter M. Goldberg for the plaintiff.

JUDGES: Present: Marshall, C.J., Greaney, Ireland, Spina, Cowin, Sosman, & Cordy, JJ.

OPINION BY: CORDY

OPINION

[*444] **[**109]** CORDY, J. This case requires us to interpret a provision of the uninsured motorist law, *G. L. c. 175, § 113L (5)*, which was added by the *Automobile Insurance Reform Act of 1988. St. 1988*, c. 273, §§ 46-47.

[*445] 1. *Background*. The material facts are not in dispute. On November 16, 1994, Danielle L. Chenard (plaintiff) sustained injuries as a result of a collision with an uninsured motor vehicle. At the time of the accident, the plaintiff lived with her mother, Eunice Chenard, and was driving her mother's 1989 Pontiac sedan motor vehicle. Eunice Chenard (policyholder) owned two motor vehicles, **[***2]** the 1989 Pontiac sedan and a 1989 GMC truck, each of which was insured with different companies. CNA Insurance Companies (CNA) insured the Pontiac sedan under a standard Massachusetts automobile policy, sixth edition, with uninsured motorist limits of $ 100,000 per person and $ 300,000 per accident; Commerce Insurance Company (Commerce) insured the GMC truck under a similar standard Massachusetts policy with higher uninsured motorist limits of $ 250,000 per person and $ 500,000 per accident.

The plaintiff filed claims for uninsured motorist benefits with both Commerce and CNA. Both insurers declined coverage, each claiming that the other was responsible. **[**110]** The plaintiff then brought a declaratory action in the Superior Court. A judge in the Superior Court granted summary judgment in favor of Commerce, holding that the plaintiff was not insured under the language of the Commerce policy. The Appeals Court vacated the summary judgment, holding that the Commerce policy conflicted with the language and intent of the uninsured motorist provisions of *G. L. c. 175, § 113L*, and concluding that Commerce is the designated provider. *Chenard v. Commerce Ins. Co., 56 Mass. App. Ct. 576, 583, 778 N.E.2d 1031 (2002)*. **[***3]** We granted Commerce's application for further appellate review and affirm the judgment of the Superior Court.

2. *Discussion*. a. *The Commerce policy*. We first consider whether the plaintiff is entitled to recover from Commerce under the terms of its policy. [HN1] The interpretation of an insurance policy is a question of law, which we review de novo. See *Ruggerio Ambulance Serv., Inc. v. National Grange Mut. Ins. Co., 430 Mass. 794, 797, 724 N.E.2d 295 (2000)*; *Cody v. Connecticut Gen. Life Ins. Co., 387 Mass. 142, 146, 439 N.E.2d 234 (1982)*. [HN2] Because the language of the standard Massachusetts automobile policy is set by the Commissioner of Insurance (commissioner), it is exempt from the rule of construction requiring ambiguities to be resolved against **[*446]** the insurer. *Goodman v. American Cas. Co., 419 Mass. 138, 140, 643 N.E.2d 432 (1994)*. Rather, the language should be construed in its usual and ordinary sense. *Hakim v. Massachusetts Insurers' Insolvency Fund, 424 Mass. 275, 280, 675 N.E.2d 1161 (1997)*, and cases cited.

In relevant part, the policy provides payment for damages to or for "any household member, **[***4]** while occupying [the policyholder's] auto, while occupying an auto not owned by [the policyholder] or if injured as a pedestrian." [2] The relevant definition of the policyholder's "auto" is, in turn, "the vehicle or vehicles described on the Coverage Selections Page." The plaintiff and CNA concede that only the GMC truck -- not the Pontiac sedan involved in the accident -- is listed on the coverage selections page of the Commerce policy.

2 The policy also covers damages to or for "anyone else for damages he or she is entitled to recover because of injury to a person covered under this Part." None of the parties contends that this provision applies.

Although the plaintiff qualified as a household member under its policy, Commerce contends that, because she was not occupying either the policyholder's "auto" as described in the policy (the GMC truck) or an automobile not owned by the policyholder, she was not covered as an "insured" in the circumstances of the accident. We agree. The plaintiff was occupying **[***5]** the Pontiac sedan at the time of the accident, a vehicle owned by the policyholder, insured by CNA, and not otherwise covered under the Commerce policy. If the Pontiac sedan had been owned by someone other than the Commerce policyholder, or if the plaintiff had been injured as a pedestrian, [3] the plaintiff would have been an insured under the Commerce policy. But on the facts presented here, we conclude that she plainly is not. [4]

3 "Pedestrian" is defined in the policy to include "a person who is walking or who is operating a non-motorized bicycle, tricycle or similar vehicle, or a person on horseback or in a vehicle drawn by an animal." It is undisputed that the plaintiff was not injured as a pedestrian.

4 The plaintiff is, of course, an insured under the

CNA policy that includes the same standard language, as she was occupying the vehicle listed on the coverage selection page of the CNA policy.

[111]** b. *The uninsured motorist provision of the Automobile Insurance Reform Act.* The plaintiff **[***6]** and CNA contend that if the language of the policy is construed to preclude the plaintiff's recovery as an insured under the Commerce policy, then the **[*447]** policy language is inconsistent with *G. L. c. 175, § 113L (5)*, and the statutory language must prevail. *General Laws c. 175, § 113L*, sets forth various statutory requirements regarding the provision of uninsured motorist insurance coverage in Massachusetts. *Section 113L (5)* was added in 1988 as part of the *Automobile Insurance Reform Act, St. 1988, c. 273*, the goals of which were "to stabilize automobile insurance rates, to eliminate some of the waste and fraud which had contributed to past rate increases, and to expand and simplify consumers' coverage choices." 1988 House Doc. No. 5074, at 1. It provides:

> [HN3] "(5) Uninsured motorists coverage shall provide that regardless of the number of vehicles involved, whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, 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 **[***7]** coverage available to injured persons. An *insured* who is not a named insured on any policy providing uninsured motorist coverage *may recover* only from the policy of a resident relative providing the highest limits of such coverage whether or not such vehicle was involved in the accident; provided, however, if there are two or more such policies which provide such coverage at the same limits a pro rata contribution will be made" (emphasis added).

The enactment of *§ 113L (5)* was a specific response to a series of decisions by this court that permitted "stacking" of insurance policies in certain circumstances. [5] *Skinner v. Royal Ins. Co., 36 Mass. App. Ct. 532, 534, 633 N.E.2d 432 (1994)* ("the primary purpose of [*§ 113L (5)*] was to preclude 'stacking'"). [HN4] "Stacking" was the practice of combining the uninsured (or underinsured) **[*448]** motorist limits of separate policies to create a larger pool of coverage for a single accident. See *id*.

> 5 See *LeCuyer v. Metropolitan Prop. & Liab. Ins. Co., 401 Mass. 709, 711, 519 N.E.2d 263 (1988)* (prohibiting stacking of coverage for three vehicles listed on same policy, while reaffirming that coverage under separate policies may be stacked); *Johnson v. Hanover Ins. Co., 400 Mass. 259, 266, 508 N.E.2d 845 (1987)* (prohibiting stacking of coverage beyond coverage mandated by statute); *Lumbermens Mut. Cas. Co. v. DeCenzo, 396 Mass. 692, 694, 488 N.E.2d 405 (1986)* (limiting stacking permissible to policies entered into after 1980 amendment to *§ 113L*); *Cardin v. Royal Ins. Co. of Am., 394 Mass. 450, 456, 476 N.E.2d 200 (1985)* (concluding that "strict command of [*§ 113L*] precludes the insurer's attempt to avoid stacking").

[*8]** In this context the structure and operation of the statutory provision is readily apparent. The first sentence definitively eliminates the stacking of multiple policies that, by their terms, might otherwise apply to an accident involving an uninsured motorist. The second sentence sets out the rules to be used if two or more policies provide uninsured motorist coverage to someone other than the named insured on the policies. In the circumstances of this case, for example, if the plaintiff had been injured as a pedestrian by an uninsured driver, she would plainly be covered as an "insured" under both policies, and, because the Commerce policy provides the higher uninsured motorist coverage, *§ 113L (5)* would mandate that it be the policy (and the only policy) under which she could recover.

[112]** The statutory provision does not create additional coverage or coverage for additional persons beyond that provided by the purchased policies. By its terms, the second sentence of *§ 113L (5)* applies only to someone who is an "insured." [HN5] That term, while not defined in the statute, refers, in its ordinary sense, to a person covered by an applicable insurance policy. See, e.g., Black's Law **[***9]** Dictionary 811 (7th ed. 1999) (defining "insured" as "person who is covered or protected by an insurance policy"); 7 Oxford English Dictionary 1060 (2d ed. 1989) (defining "insured" as "person [or persons] to whom an insurance upon property

is to be paid on the occurrence of loss or damage"). Read in this fashion, the statute's language applies only to persons who are "insureds" under the terms of policies owned by their resident relatives, or, stated otherwise, the terms of the particular policies in effect dictate whether a person is an "insured," to whom *§ 113L (5)* applies. The language of the Commerce policy does not conflict with the language or intent of the statute.

Our holding in *Vaiarella v. Hanover Ins. Co., 409 Mass. 523, 567 N.E.2d 916 (1991)*, is not contrary to this result. There, relying on *Johnson v. Hanover Ins. Co., 400 Mass. 259, 508 N.E.2d 845 (1987)*, we remarked that "the Legislature intended to include members of the insured party's household under [uninsured motorist] coverage when it passed *G. L. c. 175, § 113L*." *Id. at 526*. This statement did not relate **[*449]** to *§ 113L (5)*, whose enactment **[***10]** postdated the claim at issue in the *Vaiarella* case, and merely reflected our conclusion that, when the Legislature mandated uninsured motorist coverage it did not intend that such coverage be limited to *named insureds* under a policy, to the exclusion of other household members. [HN6] The *Vaiarella* case does not, however, stand for the proposition that *§ 113L* mandates that uninsured motorist insurance cover *all* household members, on *all* policies, in *all* circumstances. See *Johnson v. Hanover Ins. Co., supra at 263* ("Legislature intended to include household members within the protection of *§ 113L* at the time of its enactment. In our view the term 'persons insured thereunder' as used in *§ 113L [(1)]* refers to those persons *who are designated within the applicable policy provision [of the Massachusetts automobile insurance policy, second edition] as being insured* for the purpose of uninsured motorist coverage" [emphasis added]). [6]

6 In *Johnson v. Hanover Ins. Co., supra*, although we did not decide the issue, we "expressed our reservation" as to whether *§ 113L* would permit a policy to exclude a household member injured while operating an auto *not* owned by the policyholder. *Id. at 263 n.6*. In this case, we affirm that there is no conflict between *§ 113L* and the standard Massachusetts automobile insurance policy, sixth edition, which excludes a household member injured while operating an auto owned by the policyholder but not listed on the policy's coverage selections page. By approving standard policy language that excludes household members from uninsured coverage if they are driving an auto owned by the named insured but not described on the coverage selections page, the commissioner has implicitly reached the same conclusion. *Colby v. Metropolitan Prop. & Cas. Ins. Co., 420 Mass. 799, 806, 652 N.E.2d 128 (1995)* ("commissioner's interpretation of the relevant statutes, although not controlling, is entitled to deference"). We are not called on here to decide whether *§ 113L* would permit an exclusion of household members broader than the exclusion provided by the policy.

[*11]** 3. *Conclusion*. A person is "an insured" for purposes of *G. L. c. 175, § 113L (5)*, only if that person is covered by the terms of the policy from which coverage is sought. Here, the Commerce policy does not provide the plaintiff with coverage; hence, *G. L. c. 175, § 113L (5)*, does not authorize the plaintiff to recover from it. **[**113]** The judgment and order of the Superior Court are affirmed.

So ordered.