

Court of Appeals Holds That Insureds are Entitled to Recover UIM Benefits Regardless of Whether The Insureds Themselves Sustain Bodily Injury

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Elliot Brey and Estate of Ryan B. Johnson v. State Farm Mut. Aut. Ins. Co., et al., 2019 WL 6449010 (Ct. App., June 25, 2020)

Elliot arose from a single-vehicle accident resulting in the death of Ryan Johnson, a passenger. Johnson's son, Plaintiff-appellant, Elliot Brey ("Brey"), a minor, brought an action in Monroe County Circuit Court seeking recovery from the vehicle driver/owner and his insurer for negligence. Brey also named State Farm in the action seeking to recover, under the State Farm policy's UIM provision, damages Brey sustained as a result of Johnson's wrongful death, pursuant to Wis. Stat. § 895.04. Brey alleged a loss of monetary support from Johnson as a result of Johnson's death and that the State Farm policy provides UIM coverage for Brey's underinsured losses.

At the time of the accident Brey resided with his mother - the named insured under the State Farm policy which included UIM coverage – and Johnson resided elsewhere, thereby disqualifying him from coverage under the policy. The UIM insuring clause of the State Farm Policy provided that it "will pay compensatory damages for 'bodily injury' an 'insured' is legally entitled to recover from the owner or driver of an 'underinsured motor vehicle.'" The parties agreed that the provision required that an "insured" suffer "bodily injury" for there to be UIM coverage, and they also agreed that, while Johnson suffered "bodily injury", Brey did not. While the parties also agreed that the terms of the policy as-written precluded UIM coverage for Brey, Brey argued that the policy's provision conditioning coverage on an "insured" sustaining "bodily injury" was void and unenforceable pursuant to Wis. Stat. § 632.32(1) and (2)(d) (the "Omnibus Statute"). The circuit court granted summary judgment to State Farm enforcing the policy terms and barring UIM coverage for Brey.

A three-judge panel for the Fourth District Court of Appeals reversed, holding that the UIM provision requiring that an "insured" suffer "bodily injury" in order to qualify for UIM coverage was void and unenforceable pursuant to the Omnibus Statute. The court noted that an auto insurance policy must provide at least as much protection as is required by the subparts of the Omnibus Statute, and that the statute allows auto policies to provide more expansive but not lesser coverage than that prescribed thereunder. Elliot, 2020 WL 3455880 (slip opinion), ¶ 18. Subpart (2)(d) of the Omnibus

statute defines UIM coverage as “coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury, death, sickness, or disease from owners or operators of underinsured motor vehicles.” The court of appeals found that the prescription of subpart (2)(d) is an unambiguous statement establishing UIM coverage for any person who meets three requirements: (1) the person who makes the UIM claim is an insured under the UIM coverage of the policy; (2) that person is legally entitled to recover damages for bodily injury or death; and (3) that person is legally entitled to recover from an owner or operator of an underinsured motor vehicle. *Id.*, at ¶ 22. The court of appeals held that because Brey met these three statutory requirements he was entitled to UIM coverage under the State Farm policy.

The court of appeals rejected the circuit court’s conclusion that Wis. Stat. § 632.32(2)(d) is ambiguous and could be read in two ways: to require UIM coverage in all situations where an insured is legally entitled to recover damages, or only in situations where an insured sustains “bodily injury, sickness, disease or death” as defined by the policy. The court also rejected State Farm’s interpretation of the statute whereby “bodily injury [or] death” in § 632.32(2)(d) modifies the subject of the immediately preceding phrase, “persons insured under that coverage”. *Id.*, ¶ 23.

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