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The Wisconsin Supreme Court Finds Ambiguity Regarding "Self-Insurer" In The Context Of UIM Coverage

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Bethke v. Auto-Owners Ins. Co., 2013 WI 16 (Wis., Feb. 1, 2013).

In ***Bethke v. Auto Owners Ins. Co.***, the Wisconsin Supreme Court held that the term "self-insurer" is ambiguous in the context of a UIM policy. In that case, Kathryn Bethke was killed and her son Andrew Bethke was seriously injured in an auto accident caused by Frederick Goddard. Goddard, who did not have any auto insurance, was driving an Avis rental car at the time of the accident. Pursuant to Wis. Stat. § 344.51(1m), Avis paid its statutory liability as the owner of the car in the amount of $25,000 each to Kathryn's estate and Andrew. Plaintiffs then sought UIM coverage under Kathryn's policy with Auto-Owners; the policy provided UIM limits in the amount of $500,000. Auto-Owners denied the claim based on policy language that excluded any auto "owned or operated by a self-insurer under any automobile law" in the definition of "underinsured automobile." In the ensuing declaratory judgment action, the trial court granted judgment in favor of Auto-Owners on the basis that Avis was a "self-insurer" and the court of appeals affirmed. The supreme court, however, reversed.

The court agreed with plaintiffs that the term "self-insurer" was ambiguous when applied to the facts in their case. As the court noted, UIM coverage is intended to provide an insured with the same amount of coverage as if the underinsured driver had liability coverage in the amount of UIM limits. Plaintiffs recovered just $50,000 from Avis, leaving a gap of $450,000. The court stated that Wis. Stat. § 344.51(1m) limiting Avis's exposure to $50,000 "collided" with Wis. Stat. § 344.16(2), under which Avis qualified as a self-insurer. The purpose of being qualified as a "self-insurer" implied that the self-insured has sufficient financial means to satisfy any judgment against it. The court opined that a "self-insured car rental car cannot at the same time enjoy limited liability and be expected to fully satisfy judgments."

Accordingly, the court held that "self-insurer" was ambiguous as applied to the facts of the case. Alternatively, even if "self-insurer" appears to be unambiguous, it must be applied in favor of the insureds to avoid an absurd result.

Chief Justice Abrahamson dissented. Rather than impose statutory minimum liability as the majority stated, she observed that § 344.51(1m) supplants common law and makes a car owner, such as Avis, liable even with a showing of negligence. Thus, there is no collision with the self-insurer statute,

and the Auto-Owners' policy should be applied as written.

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