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INSURANCE

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UNINSURED MOTORIST COVERAGE—STACKING

Act 623 of 1977 amended Louisiana Revised Statutes 22:1406(D)(1)(c) (Supp. 1977)[1] to prohibit stacking of multiple uninsured motorist (UM) coverages available to the same insured except under limited circumstances. When the insured is injured "while occupying an automobile not owned by said injured party," the statutory exception permits the injured party to recover under the uninsured motorist (UM) coverage on the vehicle in which he is riding (primary coverage) and also under *one* other UM policy available to him (excess coverage). The decisions of the third circuit[2] and the supreme court[3] in *Courville v. State Farm Mutual Automobile Insurance Co.* present an interesting dichotomy between application of the obvious intent of the exception and the imprecise language in which it was written.

Courville, Sr., owned two vehicles—a 1964 pickup and a 1968 Olds—each insured under separate State Farm policies. His son,

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1. LA. R.S. 22:1406(D)(1)(c) (Supp. 1977) provides:

> If the insured has any limits of uninsured motorist coverage in a policy of automobile liability insurance, in accordance with the terms of Subsection D(1), then such limits of liability shall not be increased because of multiple motor vehicles covered under said policy of insurance and such limits of uninsured motorist coverage shall not be increased when the insured has insurance available to him under more than one uninsured motorist coverage provision or policy; provided, however, that with respect to other insurance available, the policy of insurance or endorsement shall provide the following:
>
> With respect to bodily injury to an injured party while occupying an automobile not owned by said injured party, the following priorities of recovery under uninsured motorist coverage shall apply:
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> (i) The uninsured motorist coverage on the vehicle in which the injured party was an occupant is primary;
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> (ii) Should that primary uninsured motorist coverage be exhausted due to the extent of damages, then the injured occupant may recover as excess from other uninsured motorist coverage available to him. In no instance shall more than one coverage from more than one uninsured motorist policy be available as excess over and above the primary coverage available to the injured occupant.

2. Courville v. State Farm Mut. Auto. Ins. Co., 386 So. 2d 176 (La. App. 3d Cir. 1980).

3. Courville v. State Farm Mut. Auto. Ins. Co., 393 So. 2d 703 (La. 1981).

Courville, Jr., while driving the 1964 pickup, was seriously injured by the negligence of an uninsured motorist. Courville, Jr., sought to stack the UM coverages under both State Farm policies. He was clearly entitled to the full limits of the policy on the 1964 pickup which he was driving at the time of the accident. He could recover under the policy on the 1968 Olds only if he was within the exception to the anti-stacking provision of Act 623 of 1977.[4] Technically, since the truck was owned by his father, Courville, Jr., was within the statutory exception of one injured "while occupying an automobile not owned by said injured party."[5]

The third circuit refused to apply the exception literally, finding that the exception must be read *in pari materia* with the entire anti-stacking Act. The purpose of Act 623 of 1977 was to override legislatively the jurisprudence which permitted stacking of multiple coverages, whether under the same policy or multiple policies, available to the same insured. The main theme of the Act is that a person can recover under only one UM policy. Generally, the policy on the vehicle involved in the accident will afford the only applicable coverage. However, if an injured person were always relegated to that coverage alone, then he would be at the mercy of the foresight of everyone with whom he rode. Therefore, the obvious intent of the exception contained in Act 623 was to afford an insured, when riding with others, the protection of his own UM coverage, in addition to whatever coverage was available on the vehicle in which he was riding.

If Courville, Sr., had been the injured party, then clearly under Act 623 of 1977 he could recover only under one policy because as owner he would not be within the statutory exception. The third circuit concluded that it would be a "legal absurdity" to permit another person to stack the two policies when the insured owner could not. Instead, it construed the exception to Act 623 to be inapplicable to

4. Uninsured motorist policies generally provide coverage for the named insured and any relative as defined in policy (whether or not they are occupying the insured automobile). However, UM policies also generally exclude coverage for persons occupying any other automobile owned by the named insured. Such exclusion has been declared invalid. See discussion of *Branch v. O'Brien*, in the text at note 9, *infra*.

5. Both courts considered whether Act 623 of 1977 was applicable to the policies in question. The policies were issued initially prior to the effective date of the Act. However, the six-month terms of both policies were renewed after its effective date. Both the court of appeal and the supreme court agreed that each renewal was a separate contract even though no new policy was issued. Renewal after the effective date subjects the policy to the provisions of the Act. Another panel for the third circuit has held that Act 623 of 1977 is applicable to pre-Act policies because the amendment does not impair contractual rights. Thibodeaux v. Olivier, 394 So. 2d 684 (La. App. 3d Cir.), *writ refused*, 397 So. 2d 1360 (La. 1981).

any other coverage provided by the owner of the occupied vehicle. Thus, the non-owner occupants could not stack coverage purchased for other vehicles by the owner of the occupied automobile. This interpretation would place the owner and the occupant in the same position with respect to such other coverage.

The supreme court reversed, finding that the journey into legislative intent was unnecessary. Not deterred by the possibility of a legal absurdity, the court held that the language of the exception contained in Act 623 was clear and unambiguous and that, under Civil Code article 13,[6] the courts were not free to disregard the letter of the law in pursuit of its spirit. Therefore, Courville, Jr., was permitted to recover the full limits of both State Farm policies. The supreme court suggested legislation was necessary if the Act did not express its true spirit.[7]

It is difficult to find fault with either the decision of the third circuit or of the supreme court, since any criticism must be based on the extremely close and perhaps purely subjective determination of whether Act 623 was ambiguous. The legal absurdity that remains is not so much the result of statutory interpretation in the *Courville* case as it is of the prior jurisprudence which stretched the provisions of Louisiana Revised Statutes 22:1406(D) to mandate the availability of multiple coverage despite policy language to the contrary.[8]

Apparently, as illustrated by *Branch v. O'Brien*,[9] the prior jurisprudence will not be reexamined in light of Act 623. In *Branch*, the plaintiff owned four vehicles, each insured under separate State Farm policies. Three of the policies, including the one on the vehicle in which the plaintiff was riding when she was injured by an uninsured motorist, had UM limits of $10,000. One vehicle, however, had UM limits of $100,000. Each of these policies expressly excluded coverage for injury to the insured while occupying any other vehicle owned by the insured.[10]

The court applied Act 623 of 1977 to limit the insured—as owner

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6. LA. CIV. CODE art. 13: "When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit."

7. An attempt in the 1981 legislative session to overrule *Courville* failed. *See* La. H.B. 990, 7th Reg. Sess. (1981).

8. The court was referring to *Deane v. McGee*, 261 La. 686, 260 So. 2d 669 (1972) and *Graham v. American Cas. Co.*, 261 La. 85, 259 So. 2d 22 (1972) and their progeny.

9. 396 So. 2d 1372 (La. App. 2d Cir.), *writ denied*, 400 So. 2d 905 (La. 1981).

10. " 'This policy does not apply . . . (a) to bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by the named insured . . . .' " *Id.* at 1374.

of the automobile in which she was injured—to recovery under one policy. However, the court further held that she was not restricted to the policy on the vehicle in which she was riding. Citing the jurisprudence prior to Act 623,[11] the court found that the exclusion of coverage while occupying other owned automobiles was contrary to the mandatory requirement of UM coverage under section 1406(D) and the public policy expressed therein. The court observed that nothing in the 1977 anti-stacking amendment affected the mandatory coverage requirement. Therefore, although the plaintiff was limited to one policy, she was free to choose the policy most advantageous to her. The supreme court denied writs.[12]

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11. Barbin v. United States Fidelity & Guar. Co., 315 So. 2d 754 (La. 1975); Deane v. McGee, 261 La. 686, 260 So. 2d 669 (1972); Graham v. American Cas. Co. of Reading, Pennsylvania, 261 La. 85, 259 So. 2d 22 (1972); Booth v. Fireman's Fund Ins. Co., 253 La. 521, 218 So. 2d 580 (1968); Griffin v. Armond, 358 So. 2d 647 (La. App. 1st Cir. 1978); Guillot v. Travelers Indem. Co., 338 So. 2d 334 (La. App. 3d Cir. 1976), *writ refused*, 341 So. 2d 408 (La. 1977); Thomas v. Nelson, 295 So. 2d 847 (La. App. 1st Cir.), *writ refused*, 299 So. 2d 791 (La. 1974); Elledge v. Warren, 263 So. 2d 912 (La. App. 3d Cir.), *writ refused*, 262 La. 1096, 266 So. 2d 223 (1972).

Only the *Elledge*, *Thomas*, *Guillot* and *Griffin* cases dealt specifically with the invalidity of the exclusion under consideration. However, in other recent cases, the second and fourth circuits have reached the same conclusion. Earl v. Commercial Union Ins. Co., 391 So. 2d 934 (La. App. 2d Cir. 1980); Bourgeois v. United States Fidelity & Guar. Co., 385 So. 2d 584 (La. App. 4th Cir. 1980). Although the result in *Courville v. State Farm Mut. Auto. Ins. Co.*, *supra*, is consistent with this jurisprudence, the supreme court did not expressly consider the issue of the validity of the exclusion. The decisions of neither the court of appeal nor the supreme court reveal whether the issue was raised.

12. 400 So. 2d 905 (La. 1981).