Loyola Consumer Law Review

Volume 8 | Issue 3 Article 5

1996

Household Exclusion in Homeowner's Insurance Policy Inapplicable When Policy Is Also for Vehicle Insurance

Wendy K. Davis

and (2) more appropriate statistics than the farebox ratio are available.

The Second Circuit concluded that it was inappropriate for the lower court to rule that there would be a disparate impact on minorities based upon the farebox recovery ratio. The appellate court reasoned that the ratio fails to sufficiently represent the distinct costs related to each system, resulting in a skewed representation of the subsidies allotted to the transit agencies. The Second Circuit, therefore, held that the Urban League failed to make a prima facie showing of disparate impact.

In the event that the plaintiffs' prima facie case had demonstrated a disparate impact, the circuit court noted that the MTA could have countered plaintiffs' contentions by establishing that the alleged discriminatory practice was justifiable. The Second Circuit concluded that the district court erred when it found that the defendants had not shown a substantial legitimate justification for the challenged conduct. The MTA contended that due to the subsidization of the commuter lines: suburban riders would be encouraged not to drive to the City, automobile pollution and congestion in the City would decrease, businesses would find (re)locating in the City more attractive, and an increase by the additional pool of fare-paying passengers to ride the NYCTA system. The MTA and the State argued commuter rails bring numerous material benefits to the riders of the NYCTA, thus showing that the commuter lines' higher degree of subsidization is justifiable.

Injunction inappropriate remedy for alleged violation

The Second Circuit also concluded that the district court erred in granting a preliminary injunction to bar the fare increase. The Second Circuit noted that the plaintiffs' claim was based on differing rates of subsidization between the city and suburban systems. Since no direct relationship between the level of subsidization and the fare rate necessarily exists, an injunction blocking the fare increase was an inappropriate remedy. Therefore, the Second Circuit reversed the district court's order granting a preliminary injunction and remanded the case for further proceedings consistent with its opinion.

Household exclusion in homeowner's insurance policy inapplicable when policy is also for vehicle insurance

by Wendy K. Davis

In ***Allstate Insurance Co. v. Brettman*, 657 N.E.2d 70 (Ill. App. Ct. 1995)**, the Illinois Appellate Court held that an Illinois statute preempted the application of "household exclusions" in homeowners' insurance policies when such exclusions appear in "vehicle insurance" policies and where the policy would ordinarily have provided coverage for the injury.

On October 2, 1991, Nancy Brettman ("Brettman") was walking her bicycle across an intersection in Chicago when David Rozychi ("Rozychi"), driving his car, collided with the bicycle. Brettman and her children, who were being pulled in a carrier behind the bicycle, were injured. Brettman filed a complaint against Rozychi on behalf of herself and the children, seeking damages for the injuries they sustained in the accident. In response, Rozychi filed a counterclaim against Brettman seeking contribution based on her alleged negligence in causing the injuries to the children.

At the time of the accident, Brettman was insured under "Allstate Deluxe Plus Homeowner's Policy." Based on the terms of her policy, Brettman turned to Allstate to defend and indemnify her against Rozychi's counterclaim, and the company began her defense under a reservation of rights.

However, Allstate subsequently ceased providing Brettman's defense and indemnification and sought a declaratory judgment action against Brettman and her children. Allstate contends that the homeowner's insurance policy it issued to Brettman imposed no duty on it to defend or indemnify her with respect to the counterclaim by Rozychi due to the household exclusion. Brettman then filed her own motion for summary judgment against Allstate. She contended that § 143.01(a) of the Illinois Insurance Code preempts the household exclusion "where a third party sues for contribution against a member of the injured person's family." The trial court denied Allstate's motion, granted Brettman's, and Allstate appealed.

Brettman argues for coverage of counterclaim

The Allstate policy ordinarily indemnified Brettman for liability arising from an accident covered by the policy, providing that "Allstate will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damage arising from an accident and covered by this part of the policy."

Allstate, however, contended that the policy contained a "household exclusion" which excluded coverage for "bodily injury to an insured person or property damage to property owned by an insured person whenever any benefit of this coverage would accrue directly or indirectly to an insured person." According to Allstate, the exclusion effectively precluded protection against Rozychi's contribution counterclaim because an "insured person" includes any relative of the named insured who is a member of the named insured's household.

In response, Brettman argued that because Rozychi sought contribution against her with respect to her use of a bicycle-both parties agreed it was a non-motorized vehicle, § 143.01(a) of the Illinois Insurance Code ("the Code") barred application of the household exclusion in the policy. Section 143.01(a) preempts application of household exclusions to vehicle insurance policies and provides that "[a] provision in a policy of vehicle insurance described in Section 4 excluding coverage for bodily injury to members of the family of the insured shall not be applicable when a third party acquires a right of contribution against a member of the injured person's family."

Brettman argued that her homeowner's insurance policy was actually a policy of "vehicle insurance" under § 4 of the Code. Section 4 defines "vehicle insurance" as "Insurance against any loss or liability resulting from or incident to the ownership, maintenance or use of any vehicle (motor or otherwise), draft animal or aircraft."

It was undisputed that the coverage sought for the counterclaim "was a claim for bodily injury which would benefit the children who are insured persons under the household exclusion" and that liability for the counterclaim would be covered under the policy if it did not contain the household exclusion. The issue before the court was whether the Allstate homeowner's policy issued to Brettman was a policy of vehicle insurance and, therefore, subject to § 143.01(a) of the Code.

Brettman argued that the Allstate policy contained vehicle liability coverage under certain circumstances by way of the general motor vehicle exclusion and, therefore, the policy was a policy of vehicle insurance. As a result, she contended that § 143.01(a) barred application of the household exclusion clause. In response, Allstate asserted that § 143.01(a) applies to automobile insurance policies, offers limited coverage for motorized vehicles, but does not apply to policies that cover non-motorized vehicles. Allstate contended that because the "vehicle" here was a bicycle and the policy was not an automobile insurance policy, this homeowner's insurance policy was not "a policy of vehicle insurance under section 143.01(a)."

In support of its position, Allstate cited, but the court was unpersuaded by, the reasoning of *State Farm Fire & Casualty Co. v. Holeczy*, 504 N.E.2d 971 (Ill. App. Ct. 1987). There, the court concluded that § 143.01(a) did not bar application of a household exclusion in a homeowner's policy when that policy completely excludes any liability coverage for injured arising "from any type of vehicle accident." In declining to apply the analysis of *Holeczy*, the court found that the *Holeczy* policy, unlike Brettman's Allstate policy, "completely excluded any liability coverage for physical injury arising from any type of vehicle accident" and limited protection to damage to the vehicle itself.

Court finds homeowner's policy is a policy of vehicle insurance

Brettman countered that the court should follow the reasoning of the court in *Allstate Insurance Co. v. Eggermont.*, 535 N.E.2d 1047 (Ill. App. Ct. 1989), where the court held a household exclusion inapplicable under § 143.01(a). Examining a policy and a household exclusion almost identical to Brettman's, the *Eggermont* court held that the policy was indeed one of vehicle insurance because it contained a large number of exceptions to its vehicle exclusion, and thereby provided limited liability vehicle coverage. In addition, the court found that the lawnmower which caused the injury was a vehicle under § 4. Therefore, despite the fact that the policy was entitled a "homeowner's policy," the lawnmower was a vehicle, the policy was one of "vehicle insurance," and the court applied § 143.01(a).

Brettman's homeowner's policy included a vehicle exclusion and exceptions to the exclusion identical to those in *Eggermont*. Additionally, in both Eggermont's and Brettman's policies, the Family Liability Protection coverage section included a definition of an insured person intended for use in connection with coverage of vehicles. The court in the present case agreed with the court in *Eggermont* that the provisions included in Brettman's policy suggested that the policy contemplated coverage of vehicular liability, at least in some circumstances.

The court held that the Allstate homeowner's insurance policy issued to Brettman was a policy of vehicle insurance and applied § 143.01(a), nullifying the household exclusion. Consequently, household exclusions barring insurance coverage for physical or property damages, when the benefits of the coverage "would accrue directly or indirectly to an insured person," are inapplicable under Illinois law, when the policy is also one for vehicle insurance.

Associate attorney susceptible to suit by law firm partner

by Michael Foster

In ***Kramer v. Nowak*, 1995 WL 753857 (D. Pa.)**, the district court for the Eastern District of Pennsylvania recognized a cause of action for negligence in representing clients, brought by supervising attorneys against subordinate attorneys. Additionally, the court held that dismissal of a contribution claim for attorney malpractice is not required, under the principle of *respondeat superior*, based on determination that the attorney against whom contribution is sought was in fact an employee and not an independent contractor.

Client unhappy with award

While in his final semester at Rutgers University Law School, Jeffrey Nowak ("Nowark") was hired by attorney Steven Kramer ("Kramer") to work on a large antitrust case, *Lightning Lube, Inc. v. Witco Corp.*, 802 F. Supp. 1180 (D.N.J. 1992), then pending in federal court. Upon admission to the New Jersey bar, Nowak's name was listed as an associate on the Kramer firm's letterhead. For approximately five years, Nowak worked out of Lightning Lube's office in New Jersey, all the while under the direction of Kramer, from either his New York or Philadelphia office. Nowak prepared and submitted numerous documents on behalf of Kramer for Lightning Lube. Of particular significance was a motion for prejudgment interest in the amount of four million dollars.

Lightning Lube eventually prevailed in its litigation with Witco Corporation but was dissatisfied with the 11.5 million dollar judgement recovered. Lightning Lube filed a malpractice suit against Kramer alleging that his negligent representation resulted in Lightning Lube receiving a significantly smaller judgment than merited by its