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The North Carolina Motor Vehicle Safety and Financial Responsibility Act Allows an Insured Party to Aggregate Separate Underinsured Motorist Insurance Coverages

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cause SunOlin had taken business away from South Jersey, a regulated utility, and not because of the character and extent of SunOlin's sales. The court found sufficient evidence in the record from which to conclude that SunOlin's actions warranted regulation. The court noted that in making this determination, the BPU was obligated to consider SunOlin's sales potential and marketing efforts in determining the "character and effect" of SunOlin's business. SunOlin had a supply of MRF equivalent to two-thirds of South Jersey's industrial volume. In addition, SunOlin could interconnect its pipelines to pose a substantial threat to South Jersey's industrial service area. In fact, SunOlin had solicited business from numerous South Jersey industrial users. The court held that the BPU properly concluded that SunOlin posed a substantial threat to South Jersey's industrial market and therefore SunOlin was a public utility within the BPU's jurisdiction.

Suzi Guemmer

The North Carolina Motor Vehicle Safety and Financial Responsibility Act Allows an Insured Party to Aggregate Separate Underinsured Motorist Insurance Coverages

In a case of first impression, the North Carolina Supreme Court held that by statute, a motorist who purchases underinsured motorist coverage for more than one vehicle, whether in one policy or in several policies, may combine all the coverages when making a claim on any one of the vehicles. ***Sutton v Aetna Cas. & Surety Co.,*** 325 N.C. 259, 382 S.E.2d 759 (1989). The court held that insured parties could do so even if their insurance policies specifically prohibit aggregating coverages because such prohibitions conflict with North Carolina statutory law.

Background

Over the past several years, underinsured motorist ("UIM") coverage has become a common type of insurance protection. UIM coverage compensates the insured party for expenses in excess of the tortfeasor's insurance coverage. In this way, UIM coverage protects the innocent victims of financially irresponsible motorists.

In 1985, North Carolina amended section 20-279.21(b)(4) of its Motor Vehicle Safety and Financial Responsibility Act, N.C. Gen. Stat. §§ 20-279.1 to .39 (1988) ("the Act"), to address situations where owners purchase more than one UIM coverage, whether within a single policy or in several different policies. The amendment provided that in these multiple-coverage situations, the maximum protection would be "the total limits of the owner's underinsured motorist coverages provided in the owner's policies of insurance." N.C. Gen. Stat. § 20-279.21 (b)(4). The legislature stated that it added this section to give the owner of UIM coverage the benefits of each coverage he or she purchased.

Facts

Sherry S. Sutton ("Sutton") purchased two auto insurance policies from Aetna Casualty & Insurance Company ("Aetna"). The first policy contained two separate coverages, one for a Buick and the other for a Chevrolet. Each coverage included $50,000 basic bodily injury coverage as well as $50,000 per person UIM coverage. The second policy covered two additional autos, a Plymouth and a Chevrolet pickup truck. The second policy differed from the first policy in that both its basic bodily injury coverages and its UIM coverages had a $100,000 per person maximum for each auto. Aetna charged separate premiums for the UIM coverage on each of Sutton's four vehicles. Both policies contained the following provision:

> The limit of bodily injury liability . . . for "each person", for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident . . . This is the most we will pay for bodily injury and property damage regardless of the number of . . . [v]ehicles or premiums shown in the [policy] . . . .

On May 31, 1986, Sutton was driving one of her insured autos when a vehicle driven by Anthony A. Genesio ("Genesio") crashed into her car. Genesio died in the accident and Sutton was injured. Sutton sued Genesio's estate for the injuries she suffered in the accident.

Genesio carried liability insurance of $50,000, the entirety of which his insurance company deposited with the court for Sutton's benefit. However, Sutton claimed in excess $70,000 in medical expenses plus a substantial loss of future income due to her inability to return to work. Consequently, she notified Aetna that she expected her UIM coverages to provide the difference between Genesio's $50,000 insurance coverage and the amount of her eventual judgment. Citing the policy provisions, Aetna informed Sutton that it would only provide $50,000 in UIM coverage, which was the amount she purchased for the car that was hit. Sutton sued Aetna in the North Carolina Superior Court of Hanover County seeking a declaration that she was entitled to aggregate all four of her UIM coverages in her two policies.

Superior Court of Hanover County

Aetna maintained that the terms of the policy controlled the dispute. The policy explicitly stated that Aetna's liability was limited to the amount of the single coverage for the auto which Sutton was driving when she was hit. Thus, Aetna argued that Sutton could only claim UIM coverage in the amount of $50,000.

Sutton argued that the Act overrode the terms of the policies. She argued that the Act allowed her to aggregate her coverages in both policies and thereby claim a total UIM coverage of $300,000: $50,000 each for the two autos in her first policy and $100,000 each for the two autos in her second policy.

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The trial court entered judgment for Aetna. The court stated that the terms of the insurance policy governed the amount Sutton could recover. The court rejected Sutton's argument that the Act overrode the terms of the insurance policies. Sutton appealed and the North Carolina Supreme Court agreed to hear her case.

The North Carolina Supreme Court

The North Carolina Supreme Court first considered whether the Act obligated an insurer to aggregate separate UIM coverages contained within a single car insurance policy, despite policy language to the contrary.

The court concluded that the Act required aggregating UIM coverages. Although Sutton's policies explicitly forbade aggregating UIM coverage, the court cited the established North Carolina principle that "if the terms of the policy conflict with the statute, the provisions of the statute will prevail." *Sutton,* 382 S.E.2d at 762.

Turning to the more difficult issue of whether the Act permitted aggregating coverages in separate policies for separate vehicles, the court noted that this was an issue of first impression in North Carolina. In interpreting the Act, the court looked to the legislature's intent, as ascertained from the statute's purpose, language, and the consequences of various interpretations.

The court stated that the purpose of the Act was to compensate innocent victims of tortfeasor's with insufficient insurance. The court stated that it would construe the remedial statute liberally to ensure that insured parties receive the benefits intended by the legislature.

The court next examined the Act's language. Specifically, the court looked to see whether the Act permitted either *intra*policy or *inter*policy aggregating. *Intra*policy aggregating combines different UIM coverages within a single policy. *Inter*policy aggregating combines UIM coverages in different policies.

The Act states that insured parties may claim UIM coverage in the amount of all UIM "*coverages* provided in [the insured's] *policies* of insurance." N.C. Gen. Stat. § 20-279.21(b)(4)(emphasis added). Because "coverages" was written in the plural, the court concluded that the Act allowed *intra*policy aggregating. Similarly, because "policies" was written in the plural, the court found that the Act permitted *inter*policy stacking.

Aetna argued that another phrase in the Act prohibited aggregating intrapolicy coverages. The Act provided that it would operate "in instances where more than one *policy* may apply." *Id.* (emphasis added). Although this phrase seemed to permit only interpolicy aggregating, the court reasoned otherwise.

The court noted that according to the last phrase of the Act, aggregation only applied to "nonfleet vehicle insurance." This indicated that the legislature intended the Act to allow intrapolicy as well as interpolicy aggregation. "Fleet" vehicle insurance is a single insurance policy designed to cover the numerous and changing vehicles of a large business. By excluding owners of fleet insurance policies from the benefits of intrapolicy stacking, the Act prevented those owners from reaping huge unbargained-for coverage from the purchase of a single policy. That the legislature felt required to prohibit that sort of intrapolicy aggregating (that is, intrapolicy aggregating within a single fleet policy) indicated that the legislature intended to permit other types of intrapolicy aggregating.

The court noted that its interpretation of the Act was consistent with the Act's purpose. The interpretation enhanced the victim's ability to recover for all of his or her injuries. The interpretation also reflected the separate premiums the insured paid for each UIM coverage within a policy. Furthermore, the interpretation was consistent with prior North Carolina court holdings which allowed intrapolicy stacking of medical coverage and uninsured motorist coverage.

Aetna argued that even if section 20-279.21(g) of the Act permitted intrapolicy and interpolicy aggregating, the section only applied to the extent necessary to meet the statutorily required minimum coverage. To the extent that aggregating Sutton's UIM coverage exceeded statutory minimum, the coverage was governed by the policy. The court rejected this argument.

The Act established minimum limits of liability coverage. Section 20-279.21(b)(4) of the Act provided that liability policies which exceed the statutory minimum must include UIM coverage equal to the amount of liability coverage. The court reasoned that because the UIM coverage must always exceed the statutory minimum for liability coverage, there could never be "excess" UIM coverage. Therefore, the Act governed regardless of the amount of UIM coverage.

Finally, Aetna claimed that because the Act technically did not required that Sutton accept UIM coverage, such coverage cannot be governed by the Act. The court rejected this contention, noting that if Aetna's argument were accepted, section 20-279.21(b)(4) of the Act would be rendered useless and redundant. No consumer had to accept UIM coverage. If the Act did not apply where the consumer did not have to accept UIM coverage, all UIM coverage would be governed by the insurance policies and none by the Act.

The court reversed the trial court's decision and remanded the case to the trial court with instructions to allow Sutton to aggregate her four coverages, giving her $300,000 in available UIM insurance coverage.

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