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WEEKLY

Injured motorcyclist can collect on four policies



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The Missouri Supreme Court has reversed a St. Charles County Circuit Court judge's summary judgment in favor of insurers who refused to pay \$400,000 in underinsured motorist claims. The plaintiff, who was injured in a motorcycle accident, now will collect \$100,000 from each of four separate insurance policies.

The high court's decision, written by Judge Laura Denvir Stith, also reverses an opinion handed down by the Missouri Court of Appeals Eastern District.

According to court filings, the plaintiff, Nathaniel Manner, was driving a Yamaha motorcycle in September 2004 when he was struck by a vehicle driven by Nicholas Schiermeier. Schiermeier's insurance had a liability limit of

\$100,000 per person. Manner had insurance on the Yamaha and at the time of the accident was in the process of getting the title of the motorcycle switched to his name.

Also, when the accident occurred Manner owned a Ford Ranger and a Ford F150. His father owned a Suzuki motorcycle. Manner had American Standard Insurance coverage on his Yamaha and Ranger, and American Family coverage on the F150, while his father had American Standard coverage on the Suzuki.

Manner filed a lawsuit to recover \$1.5 million in damages, naming Schiermeier, his employer Con-Tech Foundations; Helmet City, the maker of his motorcycle helmet; and Jafrum International, which sold the helmet, as defendants. The plaintiff subsequently settled with Schiermeier and the helmet manufacturer and seller, and he dismissed his claims against all defendants.

Schiermeier's insurer paid out \$100,000, leaving Manner with \$1.4 million in unpaid damages. But both American Standard and American Family denied coverage under the four policies bought by Manner and his father. The four policies each contained \$100,000 in underinsured motorist coverage, according to a court filing.

Manner sued the insurers, alleging that he was entitled to recover under the underin-

sured motorist endorsements of all four policies and that their limits could be stacked to pay him \$400,000.

St. Charles County Circuit Judge Nancy Schneider granted a summary judgment to the insurers. Manner appealed, alleging that the trial court erred in holding that the policies' owned-vehicle exclusions unambiguously applied to the Yamaha motorcycle that he had at the time of the accident.

However, the appeals court affirmed the summary judgment.

"The Eastern District's opinion was very, very much in favor of the insurance companies," said Gretchen Garrison, Manner's attorney. She said the appellate court ruled that if someone has an insurable interest in a vehicle, that proves ownership.

"I said, 'That can't be right.'"

In its ruling, the Supreme Court said Manner still was paying his uncle for the motorcycle and that the uncle retained the title. The court also said the insurers "cite no authority for their proposition that an insurable interest is equivalent to ownership, and this Court has found none."

The Supreme Court also said Manner was an underinsured motorist because even by collecting \$400,000 from the insurers, the amount he collected was still below the \$1.5 million he listed in damages.

The court also said the insur-

ers failed to meet the burden of showing that the owned-vehicle exclusion applied in this case. The court said that in considering the policies in whole, stacking is allowed thus entitling Manner to receive the \$400,000.

The insurance companies also argued that the full amount of any insurance Manner recovered by settling his suit against both the helmet's manufacturer and retailer should be deducted from the \$1.5 million in damages.

However, a footnote in the high court's opinion says the insurers "cite no authority that underinsured motorist coverage should be offset by products liability insurance that is not related to vehicles at all, and this Court rejects the suggestion that insureds basically must show that they had no opportunity to sue for tort damages unrelated to underinsured motorist coverage in order to recover on their underinsured motorist coverage."

Garrison said that prior to this ruling, caselaw was "very divided" on whether insurance companies could deduct awards from other parties.

Robert Wulff, the lead attorney for the insurance companies, reiterated what Stith wrote, but he would not say whether he agreed or disagreed with all or parts of the decision. "That's not a road I want to go down," he said. **MO**