

NO. A06-0759

STATE OF MINNESOTA  
IN COURT OF APPEALS

**Illinois Farmers Insurance Company,**

**Appellant,**

**vs.**

**William Stewart,**

**Respondent.**

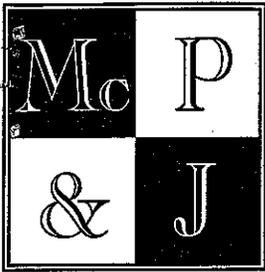
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**RESPONDENT'S SHORT LETTER ARGUMENT,  
APPENDIX AND ADDENDUM**

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June 6, 2006

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St. Paul, MN 55155-6102

Re: Illinois Farmers Insurance Company, Appellant  
v.  
William Stewart, Respondent  
Court File: A06-0759

Your Honors:

This letter brief is being submitted by Respondent pursuant to the election made in the Statement of the Case to rely upon memoranda submitted to the trial court, and Minnesota Rule of Civil Appellate Procedure 128.01, Subdivision 2. The memorandum submitted to the trial court is attached, as are the letter briefs provided in response to Defendant/Respondent's Motion to Reconsider. These documents are also contained within the appendix that was submitted by Appellant with its formal brief. All appendix cites contained herein refer to documents provided by Respondent.

In its brief, Appellant presents a two-pronged attack on the summary judgment decision of the District Court. First, Appellant reasserts its original argument that the exclusionary language in its policy validly excludes Respondent from excess uninsured motorist coverage. The argument is premised on the 1985 amendment to the No-fault Act that modified the legal landscape with regard to family-owned vehicle exclusions. Appellant cites the case of Wintz v. Colonial Ins. Co. of California, 542 N.W.2d 625 (Minn. 1996) to support its contention that Respondent is ineligible for excess uninsured motorist benefits based upon the amended statutory language that reads:

"The uninsured and underinsured motorist coverages required by this subdivision do not apply to bodily injury of the insured while occupying a motor vehicle owned by the insured, *unless the occupied vehicle is an insured motor vehicle.*"

Minn. Stat. 65B.49, subd. 3a(5).

The Plaintiff in Wintz was denied uninsured motorist coverage when she was involved in an accident while a passenger on a motorcycle owned by a family member that was available for the regular use of the operator, her husband. This motorcycle was not insured. The Appellate Court found the family-owned exclusion void by stating that “it is well-established that first party coverages for which an insured pays a premium follow the person, not the vehicle.” Wintz v. Colonial Ins. Co. of California, 526 N.W.2d 375, 377 (Minn.Ct.App. 1995). The Court also stated that “it is also well-established that vehicle owners should not purchase first party coverage and expect it to function as liability protection since allowing recovery in that situation “inevitably compensates the owner who failed to adequately insure one of his vehicles”. Id.

The Minnesota Supreme Court reversed the lower court ruling, not by disagreeing with the established principles outlined in the ruling, but by finding that the exclusionary clause was valid since the vehicle involved was “owned by or furnished or available for the regular use” of the holder of the policy from which uninsured benefits were being sought. In reaching its decision, the Supreme Court found that the Plaintiff was attempting to convert first party coverage to third party coverage for an uninsured motor vehicle. Wintz, 525 N.W.2d 625, 627. The Court cited its decision in Petrich v. Hartford Fire Ins. Co., 427 N.W.2d 244 (Minn. 1988), which relied upon the decision in Myers v. State Farm Mut. Auto. Ins. Co., 336 N.W.2d 288 (Minn. 1983), both of which rested upon the principle that vehicle owners may not purchase first party coverage and expect it to function as liability protection for another family-owned vehicle. Wintz at 626.

The Wintz case is instructive in analyzing the validity of family-owned exclusions post-1985. There are two distinct scenarios in which a family-owned exclusion will be upheld: (1) instances when a policyholder attempts to secure uninsured benefits under his/her own policy of insurance when injured in an accident involving another family-owned vehicle that is *uninsured*; and (2) instances when a policyholder in a non-insured family-owned vehicle attempts to convert first-party coverage to third-party liability coverage.

Neither is the case in the matter before this Court. The vehicle that Respondent owned and that he was occupying at the time of the accident was **insured**. Appellant argues that the vehicle should not be considered insured because Respondent did not pay the premiums, a consideration that is, and should be, irrelevant. The focus of the No-fault Act is to ensure that vehicles are properly insured. There is no statutory regard given to the source of the premium payments. Liability for the accident that resulted in Respondent’s injuries rested solely with the driver of the other involved motor vehicle that was uninsured. Respondent is seeking excess first-party benefits through the

policy on his spouse's vehicle, not third-party benefits. There is no attempt at coverage conversion in this case.

Appellant also cites the case of Turner v. Mutual Service Casualty Ins. Co., 675 N.W.2d 622 (Minn. 2004), wherein the Minnesota Supreme Court recognized the intention of the legislature when it amended the No-fault statute to narrow the UM/UIM statute "to stem rising insurance costs, which it traced in part to prior law requiring expansive interpretation of vehicle insurance coverage". Id. at 626. In Turner, the Appellants were seriously injured while operating a rental vehicle. They sought coverage through the commercial umbrella policy of Mr. Turner's employer for which he was traveling at the time. The commercial insurer, Liberty Mutual, relied upon statutory language that set out the coverage required in commercial policies for rental vehicles (Minn. Stat. §65B.49, subd. 5a) in arguing that there was no UM/UIM coverage requirement and the umbrella policy was therefore not applicable. The Turners' personal auto insurer, MSI, argued that it was not primary in that situation. The District Court decided that coverage must be provided by Liberty Mutual. The Appeals Court reversed. Id. at 624.

In support of its decision to affirm, the Supreme Court determined that the district court's interpretation of the statute was overly broad and contrary to the legislature's attempt to stem rising insurance coverage. The Court indicated that with the enactment of the 1985 amendment, UM/UIM coverage moved away from coverage that followed an individual policyholder and became tied with the vehicle involved in the accident. Id. at 626. The vehicle in this accident, being a rental vehicle, was not required to carry UM/UIM coverage. Therefore, the Turners had to look to their own policy through MSI to obtain compensation. The Court did not totally abandon the notion that first-party coverage be accessible to an individual policyholder, it simply noted that the amended statute set out a priority scheme requiring that one first look to the coverage on the occupied vehicle.

In the present case, Respondent looked first to the coverage on the vehicle that he occupied and he recovered the applicable UM coverage. With this action, he seeks only to recover excess first-party coverage provided by his personal policy for damages that exceed the underlying UM coverage.

The second prong of Appellant's attack on the summary judgment decision of the District Court is premised on the argument that Respondent is an insured in the context of Minn. Stat. 65B.49, subd. 3a(5). Interestingly, Appellant relies upon the case of Becker v. State Farm Mutual Aut. Ins. Co., 611 N.W.2d 7 (Minn. 2000), to assert that Respondent is an 'insured' and thereby not entitled to excess uninsured motorist coverage. The Minnesota Supreme Court in Becker made it very clear that the term 'insured' as used in Minn. Stat. 65B.49, subd. 3a(5) is limited to those persons specifically listed in the statute: the named insured, spouse, minor or resident relative of the named insured, in

the policy of the occupied vehicle. Id. at 13. Appellant herein argues that an 'insured' as defined in Minn. Stat. 65B.43, subd. 5 should be controlling. The Becker Court discussed the difficulty of reconciling the language of 65B.43, subd. 5 with 65B.49, subd. 3a(5). For direction, it cited the work of Professor Michael Steenson regarding the language in Minn. Stat. 65B.49, subd. 3a(5), who wrote as follows:

“Occupants of vehicles are entitled to recover under the coverage on those vehicles, irrespective of whether they are insured under the coverage. \* \* \* Therefore, the second sentence of the statute must mean that the person who may seek excess coverage is “insured” other than by reason of occupancy, that is, as a resident relative. Otherwise, excess insurance coverage would never be available under the statute because the person seeking coverage under the policy covering the car in which he is riding would always be an *insured* by reason of occupancy.”

Id. at 12.

The Supreme Court concluded that “the correct interpretation of “insured” as used in Minn. Stat. §65B.49, subd. 3a(5), is limited to those persons specifically listed in Minn. Stat. §65B.43, subd. 5”. Id. at 13.

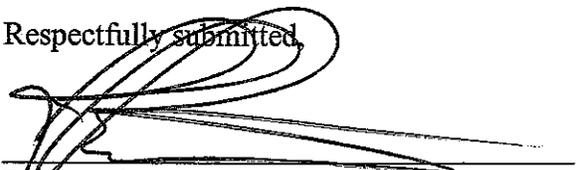
In our case, Respondent is not the named insured on the underlying policy of UM/UIM coverage. The insured is clearly named as Quicksilver Express Courier of MN (A-38). Respondent's vehicle is identified as a covered auto and the owner is identified for purposes of Endorsement No.: CA-06 so that the owner is not excluded from liability coverage under form CA 00 01 (A-52). This endorsement does not apply to UM/UIM coverage under form CA 21 24 (A-56), nor does it change Respondent's status to a 'named insured'.

Respondent would simply conclude by arguing that the insurance coverage scheme that Appellant advocates is totally antithetical to the policy underlying the No-fault Act. Appellant posits that Respondent should only be eligible for uninsured motorist coverage through the Illinois Farmers policy on his spouse's vehicle if his vehicle is insured under that same policy. But, were his vehicle in fact covered by the Illinois Farmers policy, exclusion number 3 on page 7 (A-17), which is a standard exclusion in personal automobile policies, would exclude him from any uninsured motorist coverage whatsoever in the event he is injured while in the course and scope of his employment. By virtue of the fact that Respondent's occupation is reliant upon the commercial use of his self-owned vehicle, it is only possible for him to secure uninsured coverage at a level he deems acceptable by choosing and paying for the excess uninsured benefits available through coverage on his spouse's vehicle. It is by allowing his employer to provide underlying coverage on his vehicle while

making excess coverage available to himself that is he able to satisfy the policy initiatives set out in Minn. Stat. §65B.42.

Based upon the arguments and authority presented in his Memorandum in Opposition to Defendant's Motion for Summary Judgment, as well as those submitted herein, Respondent respectfully requests that this Court affirm the District Court's summary judgment decision and deny Appellant's request to vacate the Judgment and Order that has been filed in this matter.

Respectfully submitted,



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).