

Insurance Law

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United Automobile Insurance Co.

Insurers Properly Excluded Coverage to Unlicensed Drivers

In May 2010, the Illinois Supreme Court held an automobile insurance policy exclusion that excluded coverage to an unlicensed driver was not ambiguous, and it did not violate public policy. *Founders Insurance Co. v. Munoz*, Nos. 108605, 108612 cons. (Ill. May 20, 2010). The court also held that a person who does not have a valid license cannot have a reasonable belief that he or she is entitled to drive, even if he owns the vehicle or was permitted to use it.

Background and Lower Court Rulings

The supreme court analyzed the exclusion language in both Founders Insurance Company (“Founders”) and Safeway Insurance Company’s (“Safeway”) policies. In relevant part, the Founders policy was similar to that of Safeway. The Founders policy stated, “Persons insured” included “the named insured” and “any other person using [an owned] automobile with the permission of the named insured, provided the actual use thereof is within the scope of such permission.” The Safeway policy defined “persons insured” as “the named insured” or “any other person using the owned automobile to whom the named insured has given permission, provided the use is within the scope of such permission.” The Founders policy’s exclusion (p) stated coverage did not apply “to bodily injury or property damage arising out of the use by any person of a vehicle without a reasonable belief that the person is entitled to do so.” The Safeway policy’s exclusion (o) stated coverage did not apply to “any person operating an automobile without a reasonable belief that he or she is entitled to do so.”

During six automobile accidents, either the named insured or a permissive user of the insured vehicle drove vehicles that Founders or Safeway insured. None of the drivers had a valid license. Either the driver never obtained a license or the license was suspended. The accidents also involved vehicles insured through Allstate Insurance Company, which made payments to its insureds for damages resulting from the accidents. Allstate filed subrogation actions against the drivers of the vehicles that Founders and Safeway insured, seeking to recoup the monies it paid to its own Allstate insureds.

In response, Founders and Safeway filed declaratory judgment actions, naming as defendants their own insureds, the drivers if the driver was not the named insured, and Allstate. Founders and Safeway sought declarations that they owed no duty to defend or indemnify their named insured or the driver within the Allstate lawsuits, and Allstate was not entitled to recover any monies under the policy.

More specifically, Founders maintained that under its policy’s exclusion (p), the driver of the Founders insured vehicle could not have had a “reasonable belief” that he was “entitled” to drive the vehicle because the driver did not have a valid license at the time of the accident. Similarly, Safeway sought a declaration that, pursuant to its exclusion (o), it was not obligated to defend or indemnify the driver for the Allstate lawsuit because the driver did not have a valid license.

In each declaratory judgment case, the parties filed cross-motions for summary judgment. In the cases involving Founders, Allstate argued the exclusion violated the Illinois Vehicle Code's section 7-317(b)(2)'s public policy (part of the mandatory insurance statute), and Founders improperly attempted to penalize its insureds for conduct (driving without a valid license) that the legislature had already penalized via other statutes. Allstate also argued that the exclusion was ambiguous and must be construed in favor of coverage. In response, Founders argued the exclusion unambiguously applied to unlicensed drivers, and that an insurer may limit its risks without violating Illinois' mandatory insurance statute.

The trial court granted Founders' and Safeway's motions for summary judgment and denied Allstate's motions. The court found the drivers in Founders' and Safeway's insured vehicles, did not have a reasonable belief that they were entitled to drive the vehicles because none of them possessed a valid driver's license.

Allstate appealed all of the cases. On appeal, the Illinois Appellate Court First District consolidated the cases. *Founders Insurance Co. v. Munoz*, 389 Ill. App. 3d 744, 905 N.E.2d 902 (1st Dist. 2009).

The appellate court held the policies' exclusions were ambiguous because the word "entitled" could reasonably refer to permission, consent, or to legal authority, which in this case meant licensure. *Founders Ins. Co.*, 389 Ill. App. 3d at 755. It construed the exclusion against Founders and Safeway and in favor of coverage. *Id.* at 756. It concluded: "[A]lthough coverage is excluded for persons using the insured vehicle without a reasonable belief that he or she was a permissive driver, the exclusion does not necessarily encompass unlicensed drivers." *Id.* The appellate court reversed all of the trial court's orders granting summary judgment, except for one case. *Id.* at 757.

Illinois Supreme Court Ruling

The Illinois Supreme Court considered: (1) whether the coverage exclusion unambiguously applied to drivers without a valid license, and if so, (2) whether such an exclusion contravened public policy. *Founders Ins. Co.*, Nos. 108605, 108612 cons., at *6. The court began its analysis by stating that an insurance policy is a contract and the rules applicable to interpreting a contract interpretation govern the interpreting of an insurance policy. *Id.* The court's primary function is to ascertain and give effect to the parties' intentions, as expressed in the policy language. *Id.* Where a policy term is not defined, courts afford that term its plain, ordinary, and popular meaning, i.e., courts look to its dictionary definition. *Id.* at *9. If the language is unambiguous, parties will apply the provision as written, unless it contravenes public policy. *Id.* at *6.

The rule that courts will construe a provision limiting an insurer's liability liberally in favor of coverage only applies where the provision is ambiguous. *Id.* A provision is not ambiguous simply because the parties disagree as to its meaning. *Id.* Rather, the courts will find an ambiguity where the language is susceptible to more than one reasonable interpretation. *Id.* at *6-7. While courts do not strain to find an ambiguity, neither will courts adopt an interpretation which rests on "gossamer distinctions" that the average person, for whom the policy is written, cannot be expected to understand. *Id.* at *7. When construing the language, courts must assume that every provision was intended to serve a purpose. *Id.* A court must consider the policy as a whole and examine all provisions, rather than an isolated part, to determine whether an ambiguity exists. *Id.*

In the instant cases, the policy provision at issue precluded liability coverage when the person using the vehicle did not have a "reasonable belief" that he or she was "entitled" to do so. *Id.* The supreme court noted the dictionary definition of "entitle:" "to give a right or legal title to; qualify (one) for something: furnish with proper grounds for seeking or claiming something." *Id.* at *9.

The court reasoned the term "entitled" could not refer to entitlement based on permission or vehicle ownership because the issue of whether the person using the vehicle had a reasonable belief that he was entitled to do so only arose after the parties had previously satisfied permission or ownership issues. *Id.* at *9-10. If the court were to hold otherwise, then the exclusion would serve no real purpose because it would encompass permission and ownership issues previously considered when determining if the person qualified as a "named insured" or "person insured." *Id.* at *10.

The supreme court found an average, reasonable person would understand that the exclusion applied to unlicensed drivers. *Id.* With limited exceptions, no person shall drive a motor vehicle unless he has a “valid license.” *Id.* A person driving with a revoked or suspended license is guilty of a Class A misdemeanor. *Id.* Regardless of whether a person owns the vehicle or is a permissive user, he cannot have a reasonable belief that he is entitled to drive if he does not have a valid license. *Id.* As a matter of law, each of the drivers, who never obtained a license or whose license was suspended, could not have a reasonable belief that he was entitled to drive simply because he owned the vehicle or had permission. *Id.*

Moreover, the court further held that excluding coverage for unlicensed drivers did not necessarily amount to an usurpation of the legislature’s authority to fix penalties for criminal conduct. *Id.* at *14. Insurers are not required to cover every possible loss and may legitimately limit their risks. *Id.*

Lastly, the court determined the exclusion did not otherwise violate public policy, as set forth in sec. 7-317(b)(2), because it applied equally to the named insured and anyone using the vehicle with the insured’s permission. *Id.* at *16. Sec. 7-317(b)(2), part of the Illinois Safety and Family Financial Responsibility Law, mandates a motor vehicle liability policy shall cover the named insured and other persons using the vehicle with the insured’s permission. *Id.* at *14. The court held Founders and Safeway may limit their risk and exclude insureds and permissive users who lack a valid license. *Id.* at *16.

Thus, the Illinois Supreme Court affirmed the appellate court’s judgment in the Munoz case, affirming the trial court’s grant of summary judgment in Founders’ favor. *Id.* at *17. The court reversed the appellate court’s judgment in the other cases that had reversed the trial court’s granting of summary judgment in Founders’ and Safeway’s favor. *Id.*

Conclusion

This decision may yet provide ammunition to various insurers to deny coverage under identical or similar policy exclusions. Various insurers should be able to argue this decision and leverage it against other parties and consequently, avoid declaratory judgment actions altogether. Insurers should be prepared to expend the time, energy, and patience to explain such coverage denial positions to claimants and lawsuit plaintiffs. While helpful for insurers, we do not yet know how claimants and plaintiffs will litigate declaratory judgment actions encompassing these exclusions. We can expect persistent future appellate court litigation of such exclusions because of its prevalence among insurers’ policies, the number of unlicensed drivers on Illinois roads, and consequent coverage denials.

About the Author

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