



Insurance Law Update

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Denial of Liability vs. Uninsured Motorist Coverage: One of These Things is Not Like the Other

On an issue of first impression, the Illinois Appellate Court First District held a tortfeasor's denial of liability is not the same as being uninsured and does not entitle an injured party to uninsured-motorist coverage. *Great West Casualty Co. v. Brambila*, 2022 IL App (1st) 210939, ¶ 1. Although the court acknowledged that the injured party was an allegedly faultless victim that would not be compensated unless the tortfeasor was found liable, like an uninsured motorist, the policies' plain and unambiguous language barred recovery of any uninsured motorist coverage. *Great West Casualty Co.*, 2022 IL App (1st) 210939, ¶ 9.

Background

John Grygorcewicz and Juan Brambila were involved in an automobile accident, causing Grygorcewicz's death and Brambila's injuries. *Id.* ¶ 3. Brambila subsequently filed an uninsured/underinsured motorist (UM/UIM) claim with Great West Casualty Company (Great West) and filed a negligence claim against Grygorcewicz's estate. *Id.* ¶¶ 3, 5.

Brambila sought coverage under two insurance policies with Great West. *Id.* ¶ 4. The policies stated that Great West would "pay all sums [Brambila] is legally entitled to recover as compensatory damages from the owner or driver of an 'uninsured motor vehicle.'" *Id.* ¶ 10. This language mirrors the language of Illinois' UM statute. *Id.* ¶ 12 (citing 215 ILCS 5/143(a)1). "[U]ninsured motor vehicle" was defined by the policies as "a land motor vehicle" "[f]or which no liability bond or policy at the time of an 'accident' provides at least the amounts required [by law]," or "[f]or which an insuring or bonding company denies coverage or becomes insolvent." *Id.* ¶ 10. Great West denied Brambila's UM and UIM claims.

First, Great West denied the UM claim because Grygorcewicz was insured by State Farm Insurance Company (State Farm) at the time of the accident. *Id.* ¶ 4. Second, Great West denied Brambila's UIM claim because the State Farm policy's limit exceed Brambila's policy's UIM limit. *Id.* The Great West policies provided that its UIM limits would be reduced by the amount of other available coverages. *Id.*

Brambila's lawsuit against the estate was met with equal resistance. Grygorcewicz's estate asserted an "act of God" defense and claimed factors outside of human control caused the accident and Grygorcewicz could not be held liable. *Id.* ¶ 5. Brambila informed Great West of this development and argued the estate's denial of liability should be treated the same as a denial of coverage because it leaves him without the ability to recover from Grygorcewicz's insurance policy. *Id.* ¶ 6. Great West disagreed and filed a declaratory judgment action. *Id.*

Great West sought summary judgment during the pendency of Brambila's lawsuit against the estate. *Id.* ¶ 5 n.1. Brambila conceded UIM coverage was unavailable but argued he was entitled to UM benefits because there was no coverage available under the State Farm policy after the estate denied liability (the assertion of the "act of God" defense) and left him "in essentially the same position as someone injured by an uninsured motorist and that Illinois UM law is

designed to provide protection to such individuals.” *Id.* ¶ 6. The circuit court rejected Brambila’s argument that the estate’s denial of liability was the same as State Farm denying coverage and found that Brambila did not satisfy the Great West policies’ definition of “uninsured motorist.” *Id.* Thus, there was no UM coverage, and summary judgment was granted in favor of Great West. *Id.*

Illinois Appellate Court First District Decision

The First District court affirmed summary judgment in favor of Great West. *Id.* ¶ 1 ¶The appellate court recognized:

While Brambila may be correct that he is in a similar position to someone who has been injured by an uninsured motorist, in that he allegedly was a faultless victim and would otherwise be unable to obtain compensation if Grygorcewicz is found not liable, his insurance policies clearly and unambiguously foreclose the availability of UM coverage in this case.

Id. ¶ 9. The appellate court determined there were two reasons why Brambila was not entitled to UM coverage under the Great West policies. *Id.* ¶ 10.

The court first rejected Brambila’s argument that a denial of liability equated a denial of coverage. “The denial of liability is not a denial of coverage; the two concepts are plainly distinct.” *Id.* ¶ 11. Therefore, because Grygorcewicz was insured at the time of the accident, and the estate’s denial of liability did not constitute a denial of coverage by State Farm, Grygorcewicz was not an uninsured motorist as defined by the Great West policies. *Id.*

Second, if Grygorcewicz estate’s “act of God” defense is successful, Brambila will have failed to prove an essential element of his negligence claim, and the estate will not be liable for Brambila’s injuries. *Id.* ¶ 13. Consequently, Brambila would not be entitled to UM coverage because he was not “legally entitled to recover any damages” from the estate as required by the plain language of Great West’s policies. *Id.*

The court declined Brambila’s invitation to find UM coverage on grounds that he should be treated as someone injured by an uninsured motorist under “the general Illinois policy of favoring a broad availability of UM coverage.” *Id.* ¶ 14 (citation omitted). The court distinguished the numerous cases relied on by Brambila for his public policy argument because, in each of those cases, the plaintiffs were not only “legally entitled to recover,” but also the drivers were “either unknown, actually uninsured, or uninsured by operation of law or contract.” *Id.* ¶ 15. Those distinguishing facts were absent from the instant case. *Id.* Grygorcewicz was insured. “[T]he only impediment to Brambila recovering from Grygorcewicz’s estate would be the lack of liability, and liability is a requirement for the availability of UM coverage.” *Id.* Accordingly, the court affirmed the summary judgment in favor of Great West. *Id.* ¶ 16.

Conclusion

Having only been issued on May 27, 2022, it is unknown whether the Illinois Supreme Court or another appellate court will be asked, and choose, to weigh in. Only time will tell; however, as it stands today, the denial of liability by a tortfeasor does not “have the effect of rendering [the tortfeasor as] an uninsured motorist for the purposes of UM coverage.” *Id.* ¶ 16.



About the Author

Stephen M. Murphy is a shareholder at *Sandberg Phoenix & von Gontard P.C.* He focuses his practice in the areas of business litigation, insurance law (primarily coverage and bad faith) and professionals (design professionals and brokers). He represents a diverse clientele, including large businesses, professionals and individuals. Mr. Murphy has handled all phases of litigation, from claim investigation, commencing litigation, discovery, motions for summary judgment, mediation and trial. He routinely authors featured articles for the firm's Insurance Coverage Team's E-Newsletter.

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