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ARBITRATION PROVISION WITHIN TENNESSEE'S UNINSURED MOTORIST STATUTE HELD NOT APPLICABLE TO INSURANCE POLICIES ISSUED AND DELIVERED OUTSIDE TENNESSEE

by John E. Anderson, Sr., who is a member in Dickinson Wright's Nashville office, and can be reached at 615.620.1735 or janderson@dickinsonwright.com

The Tennessee Court of Appeals addressed the issue of whether the arbitration provisions contained within Tennessee's Uninsured Motorist ("UM") statute apply to policies issued and delivered outside of Tennessee. In the case of *Nelson v. Nelson*, 409 S.W.3d 629 (Tenn. Ct. App. 2013), the plaintiff was injured in a motor vehicle accident which occurred in Tennessee. The plaintiff was a resident of Texas and the defendant was a resident of Georgia. The plaintiff was insured through a personal automotive insurance policy of Government Employees Insurance Company ("GEICO") issued and delivered to him in Texas. At the time of the accident, the plaintiff was on a business trip and his employer was insured under a business automotive policy, issued and delivered in Texas by Republic Underwriters Insurance Agency ("Republic").

The plaintiff filed a motion seeking to compel GEICO and Republic to submit to arbitration in accordance with the arbitration provisions contained within Tennessee's UM statute, Tenn. Code Ann. § 56-7-1206, because the liability carrier of the defendant had tendered the limits of its policy to the plaintiff. In response, GEICO and Republic argued that the arbitration provision did not apply, as the subject UM coverages were contained in policies that were issued and delivered in Texas, and that the plain language of the UM statute applied to policies issued in Tennessee. The trial court ordered a separate hearing on this issue and held that the arbitration provisions were applicable to the UM policies of both GEICO and Republic.

On appeal, the Tennessee Court of Appeals held that automobile insurance policies which are not issued nor delivered in Tennessee were not Tennessee contracts and, thus, were not controlled by Tennessee law. Rather, the court explained that Tennessee follows the *lex loci contractus* doctrine in insurance coverage disputes, such that the substantive law of the state where the insurance policy is issued and delivered will control.

In this case, the plaintiff was a resident of Texas, and the insurance policies in question were issued and delivered in Texas. "Based on both the plain wording of the statute, and the case law set forth above, it is clear to the Court that the arbitration provisions of the Tennessee UM statutes do not apply in this case."

The plaintiff argued on appeal that Tennessee law should apply because the underlying actions sounded in tort. The plaintiff further argued that Tennessee's UM statute at issue is procedural rather than substantive and, therefore, should be applied as the law of the forum state. The appellate court found both arguments to be without merit. Accordingly, the Tennessee Court of Appeals reversed the decision of the trial court. The plaintiff's request for permission to appeal to the Tennessee Supreme Court was denied.

TENNESSEE COURT OF APPEALS INTERPRETS EXCLUSIONARY CLAUSE IN AUTOMOBILE CASUALTY INSURANCE POLICY

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Recently, the Tennessee Court of Appeals issued an opinion involving the interpretation of an exclusionary clause in an automobile casualty insurance company. In the case of *Weed v. First Acceptance Insurance Company of Tennessee, Inc.*, No. E2013-00150-COA-R3-CV, 2013 Tenn. App. LEXIS 572 (Tenn. Ct. App. Aug. 29, 2013), the issue before the Court was an interpretation of the "regular or frequent operator" exclusion. This exclusion precludes coverage for a loss or accident arising from an accident which occurs while the automobile is being driven in any manner by an unlisted driver who is a regular or frequent operator of any vehicle insured under the policy.

In *Weed*, Caleb Jenkins, who was not listed on the policy as a "driver," was involved in an accident while driving the vehicle owned by Kelly Weed ("insured"). The insurer, Federal Acceptance Insurance Company of Tennessee, Inc. ("insurer") moved for summary judgment, relying upon the "regular or frequent operator" exclusion. In support of its Motion, the insurer filed an affidavit of its claims processor who testified that she received a call from the insured reporting her claim and took a recorded statement. In the statement, the insured advised that the driver was a fairly regular driver who drove the vehicle once or twice a week for some six months. The insured did not deny or dispute making this statement nor did she deny its accuracy.

The trial court held that the driver was not a "regular" operator of the vehicle but was a "frequent" operator of the vehicle. It granted the insurer's Motion for Summary Judgment, finding the policy exclusion was not ambiguous when attributing the ordinary meaning of the words in the exclusion.

The issue on appeal was whether the trial court erred in holding that driving a vehicle once or twice a week for six months constitutes regular or frequent use and falls within the exclusionary clause. The Tennessee Court of Appeals reviewed prior case law and dictionary definitions of the terms "regular" and "frequent." It noted that the insured described the driver, at the time of the accident, as a "fairly regular" driver of her car who had driven it once or twice a week for the six months prior to the accident. "By this admission, insured established that Jenkins had routinely been driving the vehicle at fairly short intervals, for a total of between 26 and 52 times in the six-month period. Under the circumstances, we hold that Jenkins' use of insured's

vehicle was 'regular or frequent' and therefore there was no coverage for loss resulting from the accident under the unambiguous terms of the exclusionary clause."

TENNESSEE SUPREME COURT HOLDS THAT INSURER IS ENTITLED TO RELY UPON FACIALLY VALID ORDER OF FINANCIAL GUARDIANSHIP DESPITE DEFICIENCIES

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In *Hood v. Jenkins, et al.*, No. E2011-02749-SC-R11-CV, 2013 Tenn. LEXIS 1009 (Tenn. Dec. 19, 2013), a minor beneficiary of a \$100,000 life insurance policy, filed suit against his financial guardian and the insurance company after the guardian misappropriated the insurance proceeds. The trial court entered judgments in favor of the minor against both the guardian and the insurance company. The Tennessee Court of Appeals affirmed, holding that the insurance company breached its contractual duties by entrusting the proceeds to the guardian. The insurance company appealed to the Tennessee Supreme Court, arguing that it could not be held liable to the minor because it had relied upon a juvenile court order of guardianship. The Tennessee Supreme Court agreed, holding that the insurer acted in good faith when it relied upon a facially valid court order establishing a financial guardianship to pay out the life insurance proceeds. Therefore, the insurer could not be liable for breach of contract.

In *Hood*, Erik Hood ("Erik") was 16 years old when his father died. Hood's father had named Erik as the sole beneficiary of a \$100,000 life insurance policy previously issued by The Old Line Life Insurance Company of America ("Old Line"). In the following month, Old Line received a "Proof of Death Claimant's Statement" signed by Erik, notifying Old Line of the father's death and requesting a lump sum payment of the life insurance proceeds. Pursuant to the terms of the policy, the claims examiner who processed the claim requested a death certificate and a copy of the insurance policy. Upon learning the beneficiary was a minor, the claims examiner also requested financial guardianship papers for the minor beneficiary. Thereafter, the claims examiner received a court order appointing Erik's half-sister, Casey Jenkins ("Casey"), as "Guardian of the Person of Erik Hood's Financial Responsibility" with the consent of Erik and his mother.

Because the word "Financial" was handwritten, the claims examiner faxed the documents to the juvenile court clerk for Grainger County and requested documentation that the financial guardianship was valid. In response, the claims examiner received a certified copy of the document, signed by the clerk and the juvenile court judge stating that the order was a true and perfect copy of the original order. As a result, the claims examiner issued a check in the amount of \$100,854.88, which included interest from the date of death, made payable to the guardian for the benefit of the minor beneficiary. The insurance proceeds were deposited into a joint bank account in the names of Casey and Erik. Within eight months, the entire account was depleted.

Erik filed suit against Casey for misappropriating the insurance proceeds. He also filed suit against the insurer for breaching its duty to Erik, a third party beneficiary of the policy, by releasing the insurance proceeds to Casey “without confirming that she was properly appointed and duly authorized to act as the guardian over his finances,” and by failing to investigate whether Casey had met “all statutory requirements of the guardianship laws in Tennessee.

Casey did not respond to the complaint and the trial court entered a default judgment against her. In its Answer, Old Line asserted several affirmative defenses, including that it was entitled to rely upon the order of the juvenile court in disbursing the insurance proceeds to the guardian and that it acted in good faith when it disbursed the proceeds.

The evidence showed that Old Line met the terms of the policy which required that Old Line obtain a completed claim form signed by Erik as beneficiary, and a completed copy of the death certificate. Although the policy did not contain a provision relating to minor beneficiaries, the instructions in the “Proof of Death Claimant’s Statement,” which was to be completed by the beneficiary, provided that in the case of a minor beneficiary, “the Statement had to be completed by the legally appointed guardian of the Estate of the minor, and an official certificate of the guardian’s appointment had to be furnished.”

Erik did not dispute that Old Line had received documentation of Casey’s appointment as financial guardian. However, Erik argued that Casey had failed to meet certain statutory requirements for the creation of a proper financial guardianship. Because the juvenile court failed to comply with the statutory requirements for awarding financial guardianship, Erik argued that Casey was not a properly appointed guardian. Erik further argued that Old Line breached its contract because it had the obligation to independently confirm that the requirements of guardianship law had been met.

The trial court found in Erik’s favor and awarded him a judgment against Old Line for \$86,842.37, which represented \$100,854.88 less funds expended at the behest of Erik. The trial court also awarded Old Line a judgment in the same amount for its cross-claim against Casey. Lastly, the court awarded a default judgment to Erik against Casey for \$100,000.

The court of appeals affirmed the judgment, holding that the order of guardianship was “woefully deficient” in that it failed to comply with the relevant guardianship statutes. Therefore, Casey was not a properly appointed guardian. As a result, the court of appeals held that Old Line had breached its contractual duty to Eric as the beneficiary of the insurance policy. Because a “reasonably prudent investigation would have revealed that the order was ineffective for purposes of establishing Casey as Erik’s legally appointed financial guardian,” the appellate court further held that Old Line failed to act in good faith when it distributed the proceeds to Casey.

The Tennessee Supreme Court reversed the judgment against Old Line, holding that while the juvenile court order was “woefully deficient” and the juvenile court judge failed to assure compliance with several of the

statutory requirements, it could not agree that the order was not an effective order of guardianship, or that Old Line breached its contract by relying upon the order authorizing disbursement of the insurance proceeds. Instead, the Supreme Court held that “Old Line was not only entitled to rely upon the facially valid order of financial guardianship, but that the evidence also established that, prior to payment, Old Line acted in good faith by conducting an investigation into the adequacy of the documentation in the juvenile court judgment.”

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