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RECENT FLORIDA APPELLATE CASES THAT SIGNIFICANTLY IMPACT ISSUES OF INSURANCE COVERAGE IN AUTOMOBILE POLICIES

By Susan Lerner, Esq.

In this month's newsletter, we highlight two very recent Florida appellate cases that significantly impact issues of insurance coverage in automobile policies.

The first case is from the Supreme Court of Florida and influences the handling of cases involving what the court affectionately referred to as our "winter residents" or "snow birds." The second case, authored by the Third District Court of Appeal, creates uncertainty over a family member liability exclusion that has long been a staple in most automobile policies issued in the State of Florida.

Snow Birds Beware

Florida has long been the winter destination for northerners fleeing from the cold. Their cars and the ensuing traffic congestion arrive, along with their automobile insurance policies typically purchased in their home state. This past December, our Florida Supreme Court concluded in what it deemed a question of great public importance that our winter visitors should not receive the benefit of Florida's public policy to excuse them from unfavorable provisions in their out-of-state insurance policies.

In *State Farm Mutual Insurance Company v. Roach, So.2d (Fla. 2006)*, the Hodges permanently resided in Indiana where they purchased their State Farm insurance policies but visited Florida for five months during the year, staying in their second home in Lakeland. While in Florida, they were involved in a car crash. Their State Farm policy prohibited stacking of uninsured motorist benefits and under Indiana law, the stacking exclusion was enforceable. Under Florida law, it was not. The Supreme Court refused to apply Florida law

because the policy owners were not permanent Florida residents, deciding they were not entitled to the benefit of Florida's public policies.

The Court explained that "in determining which state's law applies to contracts, we have long adhered to the rule of *lex loci contractus*. That rule, as applied to insurance contracts, provides that the law of the jurisdiction where the contract was executed governs the rights and liabilities of the parties in determining an issue of insurance coverage." While Florida courts "have carved out a narrow public policy exception to the *lex loci contractus* rule," secondary residences do not trigger the same public policy concerns and are not entitled to the same protection as permanent Florida residences."

The Court apologetically concluded: "Although Florida welcomes its many visitors, whether for short or extended stays, we cannot re-write their out-of-state contracts."

Is Your Family Member Exclusion Enforceable?

Another recent appellate court decision on insurance coverage of note is: *Bethel v. Security National Insurance Company, Fla.L.WeeklyD (Fla. 3rd DCA December 20, 2006)*. There, the Third District Court of Appeal concluded a family member exclusion to liability coverage was ambiguous and refused to enforce it against a family member who was residing in the insureds' household. Security National's policy defined the term "family member" to exclude those members of the household who own their own private passenger automobiles. After the insured got into a car crash that injured another residing family member who owned

her own car that was not insured under Security's policy, Security National denied coverage based upon its family member exclusion that read:

We do not provide Liability Coverage:

11. For bodily injury, property damage or death sustained by any insured or any member of the family of an insured residing in the same household as the insured.

Because the injured family member owned her own private passenger automobile when the accident occurred, the court said that she was not a "family member" under Security National's definition. The court then reasoned, "It does not take a great deal of proficiency in English to learn that a "member of the family" and a "family member" are interchangeable terms to an ordinary speaker. Thus, the court concluded that because the exclusion applies only to members of the family, the exclusion did not apply to the injured resident relative who did not fit the definition of "family member" written by Security National.

As of the publication of this newsletter, a motion for rehearing and rehearing en banc of the court's opinion were still pending before the Third District. Nonetheless, this opinion is an important one to keep in mind when reviewing policy language and considering the enforceability of what heretofore had been a typical exclusion in most auto policies.

Susan Lerner, Esq. is board certified by the Florida Bar as a specialist in Appellate Practice. You may contact Susan Lerner, Esq. via email at ssl@josephsjack.com