

Jim's Perspective...

Auto Insurance Policy Definition of Insured

As I have said in the past, the provisions of an insurance contract can be difficult for the average insurance consumer to fully understand. Most folks do not sit at home over the weekend and read their insurance contracts. However, the complexity of insurance contracts is not limited to the policy language. Insurance contracts can also involve complex coverage questions based upon the lifestyle and living arrangements of the insureds. This type of coverage question was before the Nebraska Supreme Court in the case of Moller v. State Farm Mut. Auto. Ins. Co., 566 N.W.2d 382, 252 Neb. 722 (1997).

Sharon and Gary Moller's daughter, Rhiannon, was a passenger in a motor vehicle involved in an accident in which the negligent driver of the car was the sole proximate cause of the accident. There were two other passengers in this vehicle. All three passengers sustained significant injuries. Rhiannon's special damages (this includes medical bills) were about \$144,000. The three passengers each recovered one-third of the driver's liability insurance of \$50,000. Nine years prior to this accident, Sharon and Gary had divorced. However, they reconciled eight months after this divorce and lived together as a family for eight years. During this time, Gary purchased auto insurance with State Farm. Subsequent to their eight years together, Gary and Sharon divorced again and this divorce continued up to the date of the auto accident. Sharon and the children (including Rhiannon) moved into a residence about a mile away from Gary. Gary remained in their previous home and when the children visited Gary for an overnight stay, they slept in the rooms they had when the entire family lived there. Gary's job as a railroad engineer prevented him from following the exact terms of the divorce decree, but he continued visitation with Rhiannon on a regular basis. Rhiannon kept some clothes and toiletries at Gary's house. Gary provided Rhiannon with spending money, and maintained health insurance for her.

After the auto accident, Sharon was appointed conservator for Rhiannon to handle her liability claim against the driver of the automobile, and she sought underinsured motorist coverage under her State Farm auto policy (\$25,000), and she also sought underinsured motorist coverage under Gary's State Farm auto policy (\$100,000). State Farm paid the underinsured motorist coverage under Sharon's policy, but declined to pay this coverage under Gary's policy. Sharon sued State Farm for the underinsured motorist coverage of Gary's policy. The trial court concluded that Rhiannon did not "live with" Gary. The State Farm underinsured motorist coverage defined who is an insured under this coverage as:

1. the first person named in the declarations;
2. his or her spouse;
3. their relatives . . .

According to the definitions section of the policy, "relative" means a person related to you or your spouse by blood, marriage or adoption who **lives with** (emphasis added) you. The trial court found that Rhiannon did not "live with" Gary and therefore there was no underinsured motorist coverage available. Sharon appealed this decision to the Nebraska Supreme Court.

In its opinion, the Court noted that other jurisdictions were split on how the term “lives with” is interpreted. Below is language from the Court’s opinion to justify reversal of the trial court decision.

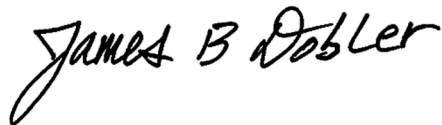
Where the policy provision under examination relates to the inclusion of persons other than the named insured within the protection afforded, a broad and liberal view is taken of the coverage extended.

The phrase “lives with you” should reflect the contemporary realities of family living and should not be narrow and strait-jacketed to apply only to idealized notions of a pristine family unit, harmonious and integrated.

Given the contemporary realities of family living noted by the court in (another case is cited, Tokley v. State Farm – a South Dakota case), we determine that the average, reasonable person would broadly construe the phrase “lives with” to include an unemancipated child’s relationship with both parents where that child reasonably feels that he or she “belongs” at either home.

At the time of the accident, Rhiannon was unmarried and unemancipated, and she was related to Gary as his daughter. We find as a matter of law that at this time, Rhiannon “lived with” Gary.

And so we see that insurance can be complicated not only because of the contractual language, but it can also be complicated because of the way of life of the insurance consumer. I think the Court’s opinion is correct. The Moller opinion has been cited with approval in 21 state and federal courts. Finally, as you may know, since State Farm lost this coverage case, it will be required to pay the attorney’s fee of Sharon’s attorney. Given the coverage issue in this case and knowing that across the country the courts were split on how to interpret “lives with”, I think I would have settled Sharon’s claim and not taken it to court. What would you have done? I also wrote about this case to alert you to the fact that children of divorced parents potentially could be insureds under both the mother’s and the father’s automobile policies. Of course most automobile insurers will already be aware of the Moller case, but with so many insurance claims being handled remotely anywhere in the United States, there may be liability claims adjusters that aren’t familiar with Moller. Also, there may be auto insurers who have amended the “lives with” language to avoid the outcome in Moller.



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