

Wisconsin Supreme Court Holds Executive Umbrella Policy Unambiguous

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In *Wadzinski v. Auto Owners Ins. Co.*, 2012 WL 2579903, the Wisconsin Supreme Court held that the Executive Umbrella policy at issue did not provide first-party UM coverage and that the policy's grant of coverage unambiguously provided only third-party liability coverage.

In 2006, Steven Wadzinski, CEO of Pecard Chemical Company, Inc., was struck and killed by an uninsured motorist. Pecard Chemical had purchased multiple insurance policies from Auto Owners: Commercial Auto, Commercial Umbrella and Executive Umbrella. The Commercial Auto policy provided third-party liability coverage, as well as \$150,000 in first-party UM and UIM coverage. The Commercial Umbrella specifically excluded UM and UIM coverage. Mr. Wadzinski was the named insured in the Executive Umbrella policy. After the accident, Auto Owners paid the Wadzinski estate \$150,000 under the Commercial Auto policy. However, the estate brought suit when Auto Owners refused to pay UM benefits under the Executive Umbrella policy.

The provision in the Executive Umbrella policy at the center of the parties' debate was an endorsement titled "Exclusion of Personal Injury to Insureds Following Form," which provided that: "We do not cover personal injury to you or a relative. We will cover such injury to the extent that insurance is provided by an underlying policy listed in Schedule A." The Commercial Auto and Commercial Umbrella policies were both listed in Schedule A.

The trial court granted summary judgment to Auto Owners ruling that the Executive Umbrella policy at issue was clear and unambiguous and that it did not afford first-party UM coverage. The court of appeals reversed concluding that the Executive Umbrella policy was contextually ambiguous. The sole issue before the Wisconsin Supreme Court was whether a reasonable insured would read the Executive Umbrella insurance policy to afford UM coverage.

The Supreme Court first looked to the Executive Umbrella policy's initial grant of coverage and found that it was for third-party coverage only. UM coverage is first-party coverage and requires a specific grant of coverage in order to add to the third-party liability coverage initially granted. The Supreme Court then analyzed the endorsement to determine whether it contained such an exception to the exclusion of first-party coverage.

In its analysis of the endorsement, the Court found that the term "we" referred to Auto Owners and that "such injury" referred back to "personal injury to you or a relative" in the first sentence. Therefore, the language and structure of the endorsement demonstrated that the endorsement reaffirmed the umbrella policy's exclusion of first-party coverage. The Court stated that the second sentence of the endorsement, an exception to the exclusion, clarified that the exclusion was not intended to interfere with any first-party coverage in other Auto Owners policies listed in Schedule A. As a result, the Supreme Court reversed the court of appeals and found the circuit court's grant of summary judgment to Auto Owners proper. Thus, the Court's holding reiterated that an insurance policy will not be deemed contextually ambiguous merely because the insured has offered a remotely possible second interpretation.

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