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NATIONWIDE INSURANCE COMPANY V. ELCHEHIMI, ET AL.

Does your uninsured/underinsured motorist coverage protect you from injuries sustained when a piece of the unidentified motorist's vehicle breaks off and collides with your vehicle? Apparently, the answer to this question in Texas is "No." The Texas Supreme Court recently ruled on this issue in *Nationwide Ins. Co. v. Elchehimi*, 2008 Tex. LEXIS 229 (Tex. 2008). They held that such facts alone were not enough to survive summary judgment.

THE FACTS OF THE CASE

On January 4, 2002, Mohamad Elchehimi's station wagon collided with a drive axle and attached tandem wheels that had separated from an eighteen-wheel semi-trailer truck. The unidentified truck, which was being driven in the opposite direction on a divided highway, did not stop. Momentum carried the axle-wheel assembly across the dividing median where it struck Elchehimi's vehicle, injuring the occupants and damaging the car.

Elchehimi had purchased a standard Texas personal automobile insurance policy from Nationwide, which included the optional statutorily-defined UM motorist coverage. Nationwide denied Elchehimi's claim for uninsured motorist benefits because the impact between Elchehimi's vehicle and the axle-wheel assembly was not "actual physical contact" with an unknown "motor vehicle" as required by the terms of the policy and the Texas Insurance Code. The trial court agreed with Nationwide and found that the insured's vehicle and the truck did not come into actual physical contact, which was a requirement for uninsured motorist coverage under Tex. Ins. Code Ann. art. 5.06-1(2)(d) (Supp. 2005).

The appellate court reversed the trial court's decision because it made a distinction between cargo that had fallen from an unidentified vehicle, for which there would be no coverage, and an integral part of an unidentified vehicle that struck an insured's vehicle in an unbroken chain of events. The appellate court reviewed decisions from other states with a physical contact requirement as a prerequisite to uninsured motorist coverage. The appellate court noted that a majority of states that had addressed the issue had concluded that the requisite contact was established when an integral part of an unidentified vehicle collided with an insured's vehicle in an unbroken chain of events. The court determined that a genuine issue of material fact remained on the question of whether such contact had occurred.

Nationwide appealed and argued that the Court of Appeals erred in reversing the trial court's decision because the insured did not raise a fact issue that his vehicle's collision with the axle-wheel assembly qualified as "actual physical contact" with a "motor vehicle" or a legally recognized substitute for such contact.

THE TEXAS SUPREME COURT'S DECISION

The Texas Supreme Court reversed the appellate court and held that Elchehimi should take nothing against Nationwide. In reviewing this case, the Supreme Court examined the Texas Motor Vehicle Safety-Responsibility Act, which is chapter 601 of the Transportation Code. TEX. INS. CODE § 1952.101(a). Chapter 601 sets minimum coverage amounts for vehicle liability insurance, and those amounts explicitly apply to uninsured motorist coverage. TEX. TRANSP. CODE § 601.072. Chapter 601 defines a motor vehicle as "a self-propelled vehicle designed for use on a highway, a trailer or semi-trailer designed for use with a self-propelled vehicle, or a vehicle propelled by electric power from overhead wires and not operated on rails." TEX. TRANSP. CODE § 601.002(5).

After reviewing Chapter 601, the Supreme Court found that a drive axle with two tandem wheels attached on one side lacks an engine or other means of propulsion. It is therefore neither a self-propelled vehicle nor a vehicle propelled by electric power from overhead wires. The axle-wheel assembly is thus not a trailer or semi-trailer designed for use with a self-propelled vehicle. Therefore, the axle-wheel assembly is not a motor vehicle under Chapter 601. The Supreme Court concluded that physical contact with a detached axle and tandem wheels was not actual physical contact with a motor vehicle under the unidentified motor vehicle provision.

According to the Supreme Court, "The legislature drew a relatively bright line, and we decline to fuzz it up. Requiring contact with the motor vehicle honors the language enacted by the Legislature and enforces the legislative purposes of protecting insured motorists and preventing fraud."

However, this was not a unanimous decision. The dissenting justices agreed with the Court of Appeals that the integral parts test should be used. Under that test, there is “actual physical contact” with a “motor vehicle” for purposes of the UM statute when the insured is struck by an integral part of another vehicle and there is a temporal continuity between the part’s detachment from the unknown vehicle and collision with the insured. The dissenters believe that the "actual physical contact" requirement exists to prevent fraudulent claims, and it’s intention was never to deny coverage for plainly meritorious claims.

There are many proponents of the integral part test; however, the Supreme Court believes that the integral part test will only open the door to uncertainty and allow for a greater potential for fraudulent claims. This is because the integral part test would force courts to make judgments on whether a particular part was large or important enough to be “integral,” whether the part was a piece of the vehicle or merely cargo, or whether the part was contemporaneously separated from the vehicle or had lain in the roadway long enough to become debris. According to the Supreme Court, the Legislature did not want the courts to have to make these types of determinations.

WHAT THIS MEANS?

When evaluating a UM claim, make sure that you determine what part of the vehicle actually collided with the insured’s vehicle. Chapter 601 of the Texas Transportation Code defines what a “vehicle” actually is. If the collision occurred between your insured and a piece of debris from another vehicle, a piece of cargo from another vehicle, or any part of a vehicle that has become separated from the vehicle, the insured’s policy may not cover this type of accident.

The recent decision in this case has many people speculating about what this will mean for the future. Some believe that this decision will not be followed by many Courts throughout the nation, and many other states will adopt the integral part test. Whatever the outcome, the Supreme Court of Texas has made it clear that in Texas contact with an actual motor vehicle, as defined by Chapter 601 of the Texas Transportation Code, will be required before one can recover from their insurance company under an unidentified motorist policy.

ATTORNEYS

The Bassett Firm

*Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219*
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **DEAN MIYAZONO**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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