*Patrick Tannone v. Amica Mutual Insurance Company (SC 20020)*

The plaintiffs in this case sought damages for injuries sustained in a motor vehicle accident against the defendant, the issuer of the plaintiffs' insurance policies. The accident occurred when the defendant, who was driving a rental car supplied by Enterprise Rent-A-Car (Enterprise), collided with the plaintiffs' vehicle. The plaintiffs and the driver of the vehicle as well as the lessee of the vehicle settled for the full amount of coverage available under the lessee's insurance policy. After settling for an amount less than the cost of damages suffered, the plaintiffs brought the present action forward. The plaintiffs sought to recover underinsured motorist benefits under their policies. The defendant moved for summary judgement arguing that the vehicles owned by a self-insurer were excluded from the definition of an underinsured vehicle.

In support of their argument, the defendant cites the decision in *Orkney v. Hanover Ins.* Wherein the court held the state insurance regulation, §38a-334-6 (c)(2)(B), which permitted the exclusion of vehicles belonging to self-insured owners, was valid. The court's decision in *Orkney* relied in large part on public policy concerns. The court in that case determined that the insurance regulation did not contradict public policy concerns because, under the statute, the injured party could "seek a remedy from the self-insurer for the negligence of its lessees." Based on this precedent, the defendant filed a motion for summary judgment. In response to the defendant's motion, the plaintiffs contend that §38a-334-6 (c)(2)(B) was invalid due to federal legislation 49 U.S.C. §30106(a) which preempted the ruling in *Orkney* and provided immunity to Enterprise for liability for injuries caused by their lessees.

The trial court ruled in favor of the defendant and granted their motion for summary judgement. The plaintiffs appealed on public policy grounds, arguing that the federal legislation

would result in “an inconsistency between the public policy underlying the underinsured motorist statute, namely, providing those injured by underinsured motorists with a remedy, and §38a-334-6(c)(2)(B) of the regulations, which authorizes the coverage exclusion for vehicles owned by self-insureds, and that the exclusion left the plaintiffs without a remedy insofar as [Enterprise] could not be held vicariously liable for the plaintiffs’ injuries in light of the federal legislation.”

The issue before the Court then is whether Connecticut statute §38a-334-6(c)(2)(B) is valid as applied to rental car companies in light of federal statute 49 U.S.C. §30106(a). More specifically, the Court had to determine “whether an automobile insurance policy containing underinsured motorist coverage, as required by state law, can validly exclude benefits to the insured when the owner of the underinsured vehicle is a rental car company designated as a ‘self-insurer’ by the Insurance Commissioner (commissioner) pursuant to General Statutes §38a-371 (c).” The Court ruled that the trial court erred in granting summary judgement for the defendant on the grounds that doing so violated public policy. The Court thus held that §38a-334-6(c)(2)(B) was invalid as applied to this case.

In reaching this decision, the Court first looked to the public policy concerns underlying the state statute. Connecticut state law requires that all motor vehicle owners obtain a set minimum amount of motor vehicle liability coverage and every automobile insurance policy must provide a minimum amount of uninsured/underinsured motorist coverage to protect insured motorists from motorists who do not comply with the states mandated insurance policies. However, there is an exclusion to these requirements when the uninsured/underinsured vehicle belongs to a self-insured party. This exception set forth in §38a-334-6(c)(2)(B) is not contrary to public policy because the self-insured party must prove it is financially capable of providing recovery for damages for which they are liable. Under such a circumstance, the injured party has

available recourse for injuries incurred. Enterprise has been validly designated as a self-insured party, however, following the passage of 49 U.S.C. §30106(a), they cannot, as rental car owners, be held vicariously liable for the negligence of their lessees. Thus, the Court found that §38a-334-6(c)(2)(B) was invalid under these circumstances as it contradicted public policy.

The Court next looked to the precedent decision in *Orkney* wherein the Court upheld the validity of §38a-334-6(c)(2)(B). However, in the years following this decision, the federal government implemented 49 U.S.C. §30106(a) which made rental car companies immune from legal liability for damages caused by underinsured lessees. This statute effectively leaves the plaintiffs in the present case without a legal remedy. The fundamental rationale behind the *Orkney* decision was that injured parties were not precluded from seeking damages from self-insured rental car companies. The Court therefore found that permitting this exclusion under §38a-334-6(c)(2)(B) in light of the federal statute "defeats the legislative purpose of requiring underinsured motorist coverage in the first place—to protect against harm caused by financially irresponsible motorists." The Court ruled that *Orkney* could no longer bind courts' interpretation of §38a-334-6 in circumstances such as those in the present case.

The Court next looked to a Tennessee court's interpretation of the federal statute wherein they concluded that a "rental car company was not a self- insurer as to the negligence of its lessees because 'one cannot insure against a [nonexistent] risk'. . . and there is 'no legitimate reason to require proof of financial security for potential liabilities that are, in fact, [nonexistent].'" The Court in the present case similarly found that because Enterprise is statutorily immune from liability for risks under the present circumstances, they cannot, as a matter of law, be considered a self-insurer in relation to those risks. Therefore, under the present circumstances, the state and federal statutes cannot coexist.

Lastly, the Court found the defendant's argument that the legislature had intended not to interfere with the self-insurer exclusion based on the legislature's failure to take action to address the self-insurer exclusion to be unpersuasive. Ultimately, the Court held that rental car companies may not be designated as self-insurers in regard to the negligent actions of their lessees. The trial court improperly granted summary judgment and the case was remanded for further proceedings.