

ANN BERNARD, ET AL. * NO. 2010-C-1495

VERSUS * COURT OF APPEAL

ANTOINETTE ELLIS, ET AL. * FOURTH CIRCUIT

* STATE OF LOUISIANA

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TOBIAS, J., DISSENTS AND ASSIGNS REASONS.

I respectfully dissent. I am constrained to follow the Louisiana Supreme Court’s mandates in *Magnon v. Collins*, 98-2822, pp. 5-6 (La. 7/7/99), 739 So.2d 191, 196;¹ *Howell v. Balboa Ins. Co.*, 564 So.2d 298, 301-02 (La. 1990);² and *Taylor v. Roswell*, 98-2865, p. 6 (La. 5/12/99), 736 So.2d 812, 817,³ all of which

¹ The Court said:

Although Louisiana's public policy strongly favors UM coverage and a liberal construction of the UM statute, it is well-settled that a person who does not qualify as a liability insured under a policy of insurance is not entitled to UM coverage under the policy.... [A]ny determination of whether a plaintiff is entitled to UM benefits must follow a determination that the plaintiff is an insured for purposes of auto liability insurance coverage.

² The Court stated:

...UM coverage attaches to the person of the insured, not the vehicle, and that provision of UM coverage purporting to limit insured status to instances involving a relationship to an insured vehicle contravenes LSA-R.S. 22:1406(D). In other words, any person *who enjoys the status of the insured* under a Louisiana motor vehicle liability policy which includes uninsured/ underinsured motorist coverage enjoys coverage protection simply be reason of having sustained injuries by an uninsured/underinsured motorist. [Emphasis in original.]

³ The Court said:

We now turn to the question of whether this UM coverage applies only to insureds or whether it extends to guest passengers in the rented vehicle. La. Rev. Stat. Ann. 22:1406(D)(1)(a) mandates UM coverage for the “protection of persons insured” under automobile liability policies in this state. We have previously held that La. Rev. Stat. Ann. 22:1406 requires that insurance policies provide uninsured motorist coverage only for persons insured under the policy. *Seaton v. Kelly*, 339 So.2d 731, 736. In *Howell v. Balboa Insurance Co.*, 564 So.2d 298 (La. 1990), we held that “any person who enjoys the status of insured under a Louisiana motor vehicle liability policy which includes uninsured/underinsured motorist coverage enjoys coverage protection simply by reason of having sustained injury by an uninsured/underinsured motorist.” Although our decision in *Howell* addressed the issue of whether UM coverage for an insured is limited to instances involving a relationship to an insured vehicle, the holding is nonetheless

by clear analogy are applicable to the case now before us. The First Circuit's majority decision in *Batiste v. Dunn*, 10-1812 (La. App. 1 Cir. 6/10/11), ___ So.3d ___, 2011 WL 2975637, embraces *Magnon* and *Howell* and implicitly recognizes *Taylor*, albeit Louisiana's strong public policy favoring uninsured/underinsured motorist ("UN/UIM") coverage. If an insured may reject UM/UIM coverage, it follows that an insurer can define who is and who is not covered under that UM/UIM coverage, provided that any such restriction on coverage does not conflict with positive state law.

applicable to the instant situation. From both a statutory and jurisprudential standpoint, an insurer is only required to extend UM coverage to those persons who are insured under the liability policy. The Courts of Appeal have adhered to this line of jurisprudence requiring a person seeking to recover under UM coverage to be an insured under the policy.