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**STATE OF VERMONT  
WASHINGTON COUNTY**

<b>Brian Parker,</b>	)	
<b>Plaintiff,</b>	)	<b>Washington Superior Court</b>
	)	<b>Docket No. 180-3-06 Wncv</b>
<b>v.</b>	)	
	)	
<b>Maine Mutual Group Ins. Co.,</b>	)	
<b>Defendant.</b>	)	

**DECISION  
Defendant's Motion for Summary Judgment**

Plaintiff Brian Parker was injured in a two-vehicle accident while riding his motorcycle. Claiming damages in excess of the limit of the tortfeasor's liability policy, which was paid, he sought underinsured motorist coverage under a commercial auto liability policy issued by Defendant Maine Mutual Group. There are two possible bases on which he might be eligible for underinsured motorist coverage under the policy. First, if the policy provides Mr. Parker liability coverage, then he will have access to underinsured motorist coverage by operation of statute, 23 V.S.A. § 941. Separately, he may have access to underinsured motorist coverage if the terms of the UIM endorsement apply to him.

In its summary judgment motion, Maine Mutual argues that Mr. Parker does not have liability coverage under the policy, and that the UIM endorsement only applies to the named insured business organization, Parker Sales and Service. Maine Mutual argues that therefore, there is no applicable coverage and it is entitled to summary judgment.<sup>1</sup> Mr. Parker argues that,

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<sup>1</sup> Maine Mutual's summary judgment motion addresses the two issues mentioned as matters of policy language interpretation. Plaintiff's opposing arguments include some facts that are not obviously material to the interpretation of the policy language, particularly those facts implying that the insurance agent through whom this policy was placed knew or should have known that a business auto policy was inappropriate for the family members' individual insurance needs. Plaintiff has not sued the insurance agent, at least in this case. The complaint as well as Plaintiff's argumentation are unclear as to whether Plaintiff contemplates claiming that the agent's actions should estop the insurer from denying coverage, but he has not explicitly made that argument at this time and the court will not

at a minimum, the policy is ambiguous because vehicles that he owns, or owned (though not the motorcycle he was riding at the time of the accident) were covered vehicles under the auto coverage form. The policy, he argues, should be interpreted as extending liability coverage to him and, on that basis, he should have underinsured motorist coverage by operation of statute. He also argues that the underinsured motorist endorsement applies to him because he is an insured or is a family member of an insured.

### Liability

The policy extends liability coverage to an insured. Policy § II.A. An insured is “you” or, with exceptions, “[a]nyone else while using with your permission a covered ‘auto.’” *Id.* § II.A.1; see also *id.* § V.F. (defining “insured”). Mr. Parker’s motorcycle is not a covered auto, so the issue is whether he is “you.” In an introductory paragraph of page one of the business auto coverage form, the following appears: “Throughout this policy the words ‘you’ and ‘your’ refer to the Named Insured shown in the Declarations.” The named insured is “Parker Sales & Service.”

The underinsured motorist endorsement applies differently depending on whether the named insured is an individual or a “form of organization.” Endorsement § B. If the named insured is an individual, then coverage extends to family members, which may include Mr. Parker even if he is not the named insured himself. If the named insured is a form of organization, then coverage will not extend to Mr. Parker.

There is no dispute that Parker Sales & Service, the named insured, is the trade name of one of the businesses of Mr. Parker’s mother that is carried on as a sole proprietorship. Because the named insured is a trade name, and not a natural person or legal entity, a significant issue affecting both liability coverage as well as underinsured motorist coverage is the identification of the real named insured. The parties have identified this issue clearly, but neither has cited any cases directly on point. The court has found no Vermont cases directly addressing this issue. In highly persuasive out-of-state cases, however, courts addressing this issue routinely conclude that the sole proprietor, the natural person whose identity is not distinct from the sole proprietorship, should be treated as the named insured. See generally *Bushey v. Northern Assurance Co. of America*, 766 A.2d. 598, 603–07 (Md. 2001) (addressing this issue in detail); *General Casualty Co. of Wisconsin v. Outdoor Concepts*, 667 N.W.2d 441, 443–45 (Minn. Ct. App. 2003) (same). Applying the reasoning of those cases here, the court concludes that Mr. Parker’s mother is the proper named insured under this policy.

Because Mr. Parker is not the named insured and was not driving a covered auto at the time of the accident, he is not insured under the liability part of the policy. Therefore, he does not have access to underinsured motorist coverage by operation of 23 V.S.A. § 941. Generally, Mr. Parker’s ownership of vehicles covered by the liability portion of the policy is not sufficient to indicate coverage for liability or an ambiguity in that regard. See Alan I. Widiss and Jeffrey E. Thomas, *Uninsured and Underinsured Motorist Insurance* § 4.3 at 76 (3d ed. 2005).

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address it here. Such an estoppel is a different matter from the interpretation of the policy language. See *Dodge v. Aetna Casualty & Surety Co.*, 127 Vt. 409, 411 (1969).

### Underinsured motorists endorsement

Because Mrs. Parker is an individual, underinsured motorist coverage extends to her “family members” under Endorsement § B.1. Maine Mutual urges the court to consider the named insured, Parker Sales and Service, as a business organization. If the named insured is a “partnership, limited liability company, corporation *or any other form of organization*,” coverage is more limited and would not extend to Brian Parker under the circumstances of this case. *Id.* § B.2 (emphasis added). Maine Mutual argues that a sole proprietorship is a form of organization, and thus this section should apply. The court has ruled, however, that in this context, the named insured is the sole proprietor, an individual; an individual is not a form of organization. At best, Maine Mutual’s argument suggests that the policy language is ambiguous in this regard, and the court construes the ambiguity against the insurance company that drafted it.

Coverage under Endorsement § B.1 may extend to Mr. Parker if he is a “family member” of his mother. “Family member” is defined as a “person related to an individual Named Insured by blood, marriage or adoption, who is a resident of such Named Insured’s household, including a ward or foster child.” *Id.* § F.1.

No contemporary Vermont cases appear to address the precise meaning of such a definition in this context, but the subject is treated in detail in a prominent treatise. See Alan I. Widiss and Jeffrey E. Thomas, *Uninsured and Underinsured Motorist Insurance* §§ 4.6–4.13 at 76-144 (3d ed. 2005). In contemporary cases, courts have begun to address “unusual family households—such as those comprised of several generations.” *Id.* § 4.9 at 130. Among other things, living under a common roof is not necessarily a deciding factor in all such situations. See *id.* § 4.9 at 131. In this case, the facts relating to whether Mr. Parker is a family member under the terms of the Endorsement of his mother are complicated and, to the extent presented, do not obviously lead to a certain result. The matter, generally, is one of fact. *Id.* § 4.7 at 111. In the context of this motion, it plainly is a disputed fact.

### **ORDER**

For the foregoing reasons, summary judgment is granted to Maine Mutual on the issue of whether the policy provides liability coverage to Mr. Parker; otherwise, it is denied.

Dated at Montpelier, Vermont this 30<sup>th</sup> day of August 2007.

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Mary Miles Teachout  
Superior Court Judge