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Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001129-MR

YELLOW CAB COMPANY OF LOUISVILLE — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 94-CI-004534

WARREN L. HOFFMAN — APPELLEE

OPINION
REVERSING
** ** ** ** **

BEFORE: HUDDLESTON, JOHNSON, AND KNOPF, JUDGES.

JOHNSON, JUDGE: Yellow Cab Company of Louisville (Yellow Cab) has appealed from the judgment of the Jefferson Circuit Court entered on April 27, 1998, which awarded Warren Hoffman (Hoffman) damages in the sum of $16,975.63 for injuries he sustained while driving one of its vehicles. We agree that Yellow Cab is not responsible for payment of the damages Hoffman sustained and, therefore, we reverse.

The facts necessary for a resolution of this appeal are not in dispute. On June 4, 1994, Hoffman, while operating a taxicab owned by Yellow Cab, was involved in a collision caused by Sharlene Williams (Sharlene). Neither Sharlene, nor Michael Williams (Michael), Sharlene’s husband and the co-owner of the

vehicle she was driving, had automobile liability insurance. Hoffman leased the cab he was driving from Yellow Cab on a weekly basis. He kept the cab twenty-four hours a day and used it for his own personal transportation as well as his source of income. Like the Williamses, Hoffman had no automobile insurance of his own. Yellow Cab had been authorized by the Transportation Cabinet to be self-insured for the first $60,000 of its responsibility, and it had rejected uninsured motorist coverage with its carrier which provided insurance coverage in excess of the self-insured amount.

The instant action was commenced in the Jefferson Circuit Court on August 31, 1994, by Yellow Cab against Sharlene and Michael Williams for the recovery of the property damage sustained to its vehicle.[1] Hoffman filed an intervening complaint against Yellow Cab in which he alleged that as a result of the motor vehicle accident he had incurred significant medical expenses and lost wages, and that his ability to labor and earn money had been impaired. He further alleged that Kentucky Revised Statutes (KRS) 304.20-020 required all motor vehicle liability policies to include coverage for uninsured motor vehicles unless such coverage was waived by the insured and that

[1]Yellow Cab was never able to effect service on Sharlene. Michael answered the complaint, however, his counsel asked to be relieved of responsibility for defending the lawsuit after Michael advised him of his intent to file for protection from his creditors in bankruptcy court.

accordingly, Yellow Cab, as a self-insurer, should be held responsible for the damages resulting from his injuries.[2]

Both Yellow Cab and Hoffman moved for summary judgment on the issue of whether Yellow Cab was required to provide uninsured motorist coverage to Hoffman. Yellow Cab insisted that as Hoffman had waived any claim for no-fault benefits by executing a form rejecting such benefits with the Department of Insurance, there was no legal basis upon which Hoffman could recover damages from it. It also argued that its rejection of uninsured motorist coverage with its excess carrier demonstrated its intent not to provide such coverage for the first $60,000 of liability coverage for which it was self-insured. Hoffman argued that although he had rejected no-fault benefits, he had not rejected uninsured motorist benefits. He further argued that as a self-insured entity, Yellow Cab was required to provide uninsured motorist coverage to those using its vehicles.

As the parties pointed out in their briefs in the trial court, the issue of whether a self-insurer is required to provide uninsured motorist coverage is one of first impression in Kentucky, and the foreign jurisdictions that have considered the issue are split. In its opinion and order entered on June 20,

[2]At trial, Hoffman testified that he paid Yellow Cab $81.00 per day, plus the cost of his gasoline, to lease the cab and in exchange, he was allowed to keep all the money generated by his fares. While we assume Hoffman and Yellow Cab had a written agreement outlining each party's contractual obligations to the other, it is not contained in the record. In any event, Hoffman has not alleged that Yellow Cab agreed to provide him with uninsured motorist coverage. Rather, his argument is that the obligation arises as a matter of law.

1996, the trial court resolved the issue in Hoffman's favor. The trial court reasoned, in part, as follows:

> Because subtitle 39 mandates UM coverage, the next issue this Court must consider is whether a self-insurer's coverage not including uninsured benefits is "substantially equivalent to that afforded by a policy of insurance" as required by KRS 304.39-080(7)(c). This Court finds that it is not. While a self-insurer is not an insurance carrier and has no insurance policy per se, it has chosen to assume a risk of liability. However, a self-insurer can not avoid its legal obligations by choosing to self-insure.
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> . . . .
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> Yellow Cab argues that a self-insurer is not responsible for uninsured coverage because there is no entity to whom it can reject the uninsured coverage as provided in KRS 304.20-020. Because KRS 304.20-020 does not apply to self-insurers, this Court does not agree. Under the present statutory scheme, by choosing self-insurance, the self-insurer forgoes the options given with an insurance policy, including the option to reject UM coverage under KRS 304.20-020.
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> In summary, the owner of a motor vehicle must insure the vehicle either through a policy of insurance or by qualifying as a self-insurer. KRS 187.600. A self-insurer must receive the department's approval and a certificate. Because the certificate is not an insurance policy, this Court agrees with the majority of other jurisdictions that find that the UM statute, KRS 304.20-020, does not require a self-insurer to provide UM coverage to its employees. However, another statutory provision, KRS 304.39-080(7), mandates a self-insurer to provide the substantial equivalent to that required by an insurance policy and to provide coverage for all obligations imposed by Subtitle 39. UM coverage is an obligation of Subtitle 39. See KRS 304.39-050; KRS 304.39-100; and <u>Dairyland [Insurance Company v. Assigned Claims Plan</u>, Ky., 666 S.W.2d 746 (1984)].

In its order entered on July 26, 1996, in response to Yellow Cab's motion to vacate its previous order, the trial court recognized that the statute pertaining to uninsured motorist coverage was not contained in subtitle 39. However, the trial court, citing Modesta v. Southeastern Pennsylvania Transport Authority, 469 A.2d 1019 (Pa. 1983), concluded that KRS 304.39-080(7), required self-insurers to provide uninsured coverage. Further, the trial court did not believe that Yellow Cab's rejection of uninsured motorist coverage in its policy which provided excess coverage was relevant to the issue of its obligations as a self-insurer, stating as follows: "[H]aving chosen to self-insure, [Yellow Cab] can not avoid its obligations by purchasing excess coverage and then claim that, by doing so, it rejected one of its underlying obligations."

In April 1998, after the trial court had determined that Yellow Cab was responsible for providing Hoffman with uninsured motorist coverage, a jury trial was conducted solely to determine the damages Hoffman was entitled to recover. At the conclusion of the trial, the trial court instructed the jury to award Hoffman the sum of $4,475.63, the total amount of his past medical expenses, none of which was disputed by Yellow Cab. The jury awarded Hoffman $0 for future medical expenses, and $12,500 for past, present and future pain and suffering. A final judgment reflecting the jury's award was entered on April 27, 1998. This appeal followed.

The sole issue for this Court's consideration is whether the trial court erred in its conclusion that a self-

insurer must provide uninsured motorist coverage to persons injured while operating a vehicle owned by the self-insurer. Courts from other jurisdictions, after analyzing their specific statutory requirements, have resolved this issue with varying results. See generally, Lee R. Russ, J.D., Annotation, Applicability of Uninsured Motorist Statutes to Self-Insurers, 27 A.L.R. 4th 1266 (1998). Thus, we shall set forth below the Kentucky statutes that relate to this issue and attempt to discern the intent of the Legislature as it relates to the application of uninsured motorist coverage to self-insurers.

First, KRS 304.20-020(1), our uninsured motorist statute, reads as follows:

> No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in KRS 304.39-110 under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided that the named insured shall have the right to reject in writing such coverage; and provided further that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(emphasis added).

It is apparent from the plain words employed in this statute that all motor vehicle liability insurance policies must provide uninsured motorist coverage for those insured thereunder unless the named insured has exercised the right to reject the coverage in writing.

> Uninsured motorist coverage is mandated to be included in every "automobile liability or motor vehicle liability policy" unless specifically rejected. KRS 304.20-020(1). This legislation was adopted to provide indemnification to persons injured by financially irresponsible persons. This purpose is accomplished by the insured paying premiums to an insurance carrier guaranteeing that, if injured by an uninsured motorist, the insured will be compensated as if injured by a motorist with the statutory minimum liability coverage.

Wine v. Globe American Casualty Company, Ky., 917 S.W.2d 558, 562 (1996). Since the statute requires the "named insured" to take affirmative action to reject uninsured motorist coverage, it is obvious that it was the Legislature's desire that owners of motor vehicles obtain such coverage. However, it is equally obvious, by allowing insureds to reject such coverage, that the Legislature has not mandated that owners of motor vehicles maintain uninsured motorist coverage.

As Yellow Cab points out, and as the trial court recognized, this statute pertains to insurance policies "delivered or issued for delivery in the state." Nowhere in this statute are self-insurers mentioned. There is no mechanism provided for self-insurers to decline such coverage, in writing or otherwise. The Legislature's failure to include self-insurers in the statute, or to specifically require that they offer

uninsured motorist coverage, we believe, is an indication of the Legislature's intent.

In construing a similar statute in Mountain States Telephone and Telegraph Company v. Aetna Casualty and Surety Company, 116 Ariz. 225, 568 P.2d 1123 (1977), the Court held as follows:

> Even a cursory reading of A.R.S. § 20-259.01 reveals that it does not require or even intimate that a self-insurer must provide uninsured motorist coverage for its employees.
>
> No "policy of insurance" is issued in a case of a corporation acting as a self-insurer; only a certificate of self-insurance. There is no contract or agreement between an insurer and an insured. . . .
>
> Clearly Mountain Bell as a self-insurer cannot be regarded under the laws of Arizona as an insurance carrier. We therefore hold that § 20-259.01 is inapplicable to the accident here.

Id. 568 P.2d at 1125. Similarly, in Jordan v. Honea, 407 So.2d 503, 504-505 (La.App. 1982), the Court stated:

> The statute, it will be noted, used the words "delivered or issued" in its requirement that there be UM coverage unless properly rejected. Obviously in using that language, the statute contemplates that there be a policy of insurance, as self-insurance can neither be "delivered" nor "issued" but rather, simply, exists apart from any issuance or delivery. Thus it was not intended by the legislature that self-insurance should entail UM coverage.
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> Were we to hold that the UM coverage requirements of LSA-R.S. 22:1406(D) are applicable to a self-insured, the UM rejection provision of the statute would become impracticable for the reason that there is no person, office, agency, or other

> legal entity provided for by statute to whom rejection could be communicated. Thus, if we were to accept plaintiff's position, UM coverage would become mandatory and thereby even broader if there were self-insurance than if there were a basic automobile liability insurance policy. Such an anomalous result could not have been intended by the legislature.

See also Grange Mutual Casualty Company v. Refiners Transport and Terminal Corporation, 21 Ohio St.3d 47, 487 N.E.2d 310 (1986). For the reasons expressed in these authorities, it is our conclusion that KRS 304.20-020 relates only to policies of insurance and has no implications for self-insurers.

That insureds may reject uninsured motorist coverage, and thereby avoid the concomitant premiums, is not insignificant to our discussion as the trial court concluded that uninsured motorist coverage was an "underlying obligation" of a self-insured. The trial court reached the conclusion that coverage, which is otherwise optional for those who purchase insurance, is mandatory for self-insurers by the application of KRS 304.39-080, a portion of the Kentucky Motor Vehicle Reparations Act (MVRA), which reads in pertinent part as follows:

> (1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."
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> . . . .
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> (5) Except for [governmental] entities described in subsections (3) and (4), every owner of a motor vehicle registered in this Commonwealth or operated in this Commonwealth by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any

> motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle ... .
>
> (6) Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this subtitle.
>
> (7) Self-insurance, subject to approval of the commissioner of insurance, is effected by filing with the commissioner in satisfactory form:
>
> (a) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this subtitle;
>
> (b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this subtitle; and
>
> (c) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance, complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

Under this section of MVRA "every owner" must provide minimum security on his motor vehicle, either in the form of insurance or by qualifying as a self-insurer, to include the payment of basic reparations benefits (BRB) and/or tort liabilities, the minimum amounts being set forth in KRS 304.39-110. Again, the language is clear that the Legislature intended for self-insurers to be no less obligated for the payment of BRB and tort liability than owners who have obtained a policy of liability insurance. Thus, though not an insurer, KRS 304.39-

080(6) and (7)(c), require a self-insurer to provide security which is "substantially equivalent" to that provided in a policy of insurance.

While we agree with the trial court that a self-insurer cannot avoid the obligations imposed by MVRA by self-insuring, it is clear that nowhere in subtitle 39 has the Legislature mandated that owners obtain uninsured motorist coverage. Even if KRS 304.20-020 were considered as a part of the MVRA, as discussed earlier herein, uninsured motorist coverage is not compulsory in Kentucky. It is only compulsory that uninsured motorist coverage be contained in an insurance policy unless rejected. That is quite a different obligation than those imposed by subtitle 39 pertaining to mandatory BRB coverage and minimum tort liabilities. Thus, by requiring Yellow Cab to provide uninsured motorist benefits to the operator of its taxicab, the trial court would impose an obligation on self-insurers that our Legislature has not seen fit to impose on insured owners. It would be, in our opinion, incongruent to construe the words "substantially equivalent" as used in KRS 304.39-080(7)(c), to require self-insurers to provide more coverage than an owner insured under a policy of insurance. "[T]he courts cannot ignore the plain meaning of a statute simply because another meaning might be considered to be a better policy." Kentucky Unemployment Insurance Commission v. Jones, Ky. App., 809 S.W.2d 715, 716-717 (1991).

The trial court was obviously impressed with the following policy considerations that were discussed in Modesta:

> Many persons cannot purchase uninsured motorist insurance simply because they do not own automobiles. It is precisely because they do not own their own means of transportation that they must rely upon public transportation providers such as S[outh] E[astern] P[ennsylvania] T[ransportation] A[uthority]. It is particularly unjust to deny these individuals uninsured motorist coverage based not upon any misbehavior on their part, but rather upon their presence in a self-insured vehicle at the time of an accident.

Id., 469 A.2d at 1023, n.5 (emphasis in original). In the instant case, the trial court likewise reasoned that there was "no reason to deny [Hoffman] coverage simply because of his presence in a self-insured vehicle." What the trial court has seemed to overlook is that, whether it was insured, or self-insured, Yellow Cab was not compelled by law to obtain uninsured motorist coverage. For this reason, the trial court's reliance on Modesta, was misplaced since, in Pennsylvania, all insurance policies are required to contain uninsured motorist coverage and there is no provision allowing an insured to reject such coverage. Id. at 1022. Thus, in that jurisdiction a self-insured entity would have to provide uninsured motorist coverage in order to comply with the statute's requirement that its coverage be "substantially equivalent to that afforded by a contract of insurance." See also Conzo v. Aetna Insurance Company, 243 Conn. 677, 705 A.2d 1020 (1998) (in state where uninsured motorist coverage is compulsory, self-insured employer required to provide underinsured motorist benefits to employee injured in course of employment as "legislature intended to create a uniform scheme of uninsured motorist insurance coverage

applicable to self-insurers as well as commercial insurance carriers”).

Our Supreme Court has consistently held that the purpose of the uninsured motorist statute is to provide the insured motorist with the “same protection that they would have if the uninsured motorist” had been insured. Preferred Risk Mutual Insurance Company v. Oliver, Ky., 551 S.W.2d 574, 577 (1977). See also Wine v. Globe American Casualty Co, supra. While most owners of motor vehicles may desire such coverage to protect their family members and friends from losses when the tortfeasor is without insurance, there is, we believe, little to motivate a corporation owning a fleet of vehicles to purchase, or if self-insured to otherwise provide uninsured motorist coverage for its employees or others using or operating its vehicles. However, if further protections are needed, it is the function of the Legislature, not this Court, to change the law as it relates to self-insurers. See Estes v. Commonwealth, Ky., 952 S.W.2d 701 (1997); see also Jordan v. Honea, 407 So.2d at 506 (“to hold that as a matter of public policy UM coverage should be afforded by a self-insured . . . would in our view be usurping a function more properly reserved to the legislature”); Grange Mutual Casualty Co., 487 N.E.2d at 314, (while “public policy may well favor mandatory uninsured motorist protection for employees of self-insured employers, such a declaration must emanate from Ohio’s General Assembly”).

Accordingly, the judgment of the Jefferson Circuit Court is reversed.

ALL CONCUR.

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