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DISTRICT II/I

September 27, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2239 Artisan and Truckers Casualty Company v. Kenneth C. Boedecker (L.C. #2011CV1443)

Before Curley, P.J., Kessler and Brennan, JJ.

Artisan and Truckers Casualty Company appeals the circuit court's judgment in favor of Kenneth C. Boedecker. The issue is whether Boedecker is entitled to underinsured motorist benefits (UIM) under Artisan's automobile insurance policy. Based on our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. We affirm.

The facts are undisputed. On October 1, 2010, Boedecker was driving his motorcycle when he was hit by a car negligently operated by Joan Schaefer. State Farm Mutual Automobile

Insurance Company insured Schaefer with liability limits of $100,000. State Farm offered to pay its $100,000 liability limit in exchange for a release of it and Schaefer. Boedecker's motorcycle was insured by Progressive Classic Insurance Company with UIM benefits of $100,000. Progressive paid its UIM policy limits to Boedecker and elected to substitute its funds for those of State Farm in order to preserve subrogation rights against Schaefer.

Artisan insured two other cars Boedecker owned that were not involved in the accident. Artisan provided UIM coverage for each car with a limit of $100,000. Artisan filed this action seeking a declaration that its policy did not provide UIM coverage to Boedecker for the motorcycle accident. The circuit court denied Artisan's motion for summary judgment, ruling that there was UIM coverage for Boedecker under the policy because the "drive other car exclusion" contained in the Artisan policy was invalidated by WIS. STAT. § 632.32(6)(d) (2009-10),[1] which prohibits "anti-stacking" language in insurance policies. The parties then entered a stipulation that Boedecker's claims exceeded $400,000, and the circuit court entered judgment against Artisan for $201,004, its stacked UIM policy limits, plus taxable costs. Artisan appeals.

Artisan contends that its policy does not allow Boedecker to stack UIM coverage for this motorcycle accident, despite the enactment of a law that prohibits anti-stacking provisions, *see*

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted. These statutory provisions apply to this case given the date of the accident.

WIS. STAT. § 632.32(6)(d), because the "drive other car" exclusion in its policy comports with a different statutory provision that permits anti-stacking exclusions in insurance policies, *see* WIS. STAT. § 632.32(5)(j).

We rejected this argument in ***Belding v. DeMoulin***, 2013 WI App 26, 346 Wis. 2d 160, 828 N.W.2d 890. In ***Belding***, we held that auto insurance policies issued during the two-year period when both WIS STAT. § 632.32(5)(j) (authorizing certain anti-stacking "drive other car" exclusions) and WIS. STAT. § 632.32(6)(d) (prohibiting anti-stacking provisions in uninsured motorist (UM) coverage) were in force could not prohibit stacking uninsured motorist coverage limits for up to three vehicles owned by the same insured. ***Belding***, 346 Wis. 2d 160, ¶1. We reasoned as follows: (1) WIS. STAT. § 632.32(5)(e) provides that "[a] policy may provide for exclusions not prohibited by sub. (6) or other applicable law"; (2) "if a prohibition enumerated under § 632.32(6) applies, then the exclusion is barred"; (3) "if no enumerated prohibition applies, we consider whether any other law bars the exclusion"; and (4) "[i]f neither § 632.32(6) nor 'other applicable law' bars the exclusion, it is permissible." ***Belding***, 346 Wis. 2d 160, ¶15 (first set of brackets in ***Belding***). Applying this rationale, we concluded that the "'drive other car' policy exclusion otherwise permitted under § 632.32(5)(j) [wa]s barred" because § 632.32(6)(d) prohibits anti-stacking clauses and, if a prohibition under sub. (6) applies, the exclusion is barred. ***Belding***, 346 Wis. 2d 160, ¶16. Based on our rationale in ***Belding***, Boedecker is covered by the Artisan policy despite its anti-stacking provisions.

Artisan contends that this case is distinguishable from ***Belding*** because it involves UIM benefits, while ***Belding*** involved UM benefits. This factual distinction makes no difference. WISCONSIN STAT. § 632.32(6)(d) applies equally to both types of insurance. We see no logical reason why our ruling in ***Belding*** should not apply equally to UIM coverage.

Artisan also contends that this case is distinguishable from ***Belding*** because the insurance policies issued in ***Belding*** were all from the same insurance company, while Boedecker purchased insurance from two separate companies. WISCONSIN STAT. § 632.32(6)(d) explicitly states that anti-stacking provisions are prohibited "regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid." As we recently explained in ***Saladin v. Progressive Northern Ins. Co.***, No. 2012AP1649, unpublished slip op. at 8 (WI App June 4, 2013), "[n]either the plain language of the statutory provisions or the logic under the decision in ***Belding*** depend in any respect on what insurance company wrote a particular policy. The insurance company that wrote the policy is of absolutely no consequence to our analysis." We reject the argument that ***Belding*** is distinguishable because Boedecker purchased insurance from two different companies.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals