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**DISTRICT IV**

March 21, 2013

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

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2011AP2967

State Farm Fire and Casualty Company v. Nicole C. Hamm  
(L.C. # 2011CV1028)

Before Sherman, Blanchard and Kloppenburg, JJ.

In our order of January 4, 2013, we concluded that appellant Twin City Fire Insurance is not aggrieved by the order it appealed from. In accordance with our order, the circuit court has now entered a written order determining that Twin City's automobile liability policy provides coverage for the claims of the Hamms in this case. For reasons explained in our January 4 order, this new order is nonfinal. However, we construe Twin City's notice of appeal as a petition for

leave to appeal under WIS. STAT. RULE 809.50 (2011-12),<sup>1</sup> and we grant the petition. Turning to the merits of the appeal, based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Twin City appears to concede that the alleged tortfeasor who was operating the vehicle is its insured. However, Twin City argues that no coverage exists in this case because of the exclusion that bars coverage for an insured “[u]sing a vehicle without a reasonable belief that that insured is entitled to do so.” Twin City argues that its insured lacked a reasonable belief that he was entitled to use the vehicle, because he did not have a valid license, permit, or other legal authority to operate a vehicle.

We conclude that this provision is ambiguous, and therefore must be construed in favor of coverage. One possible interpretation of the provision is that the insured’s reasonable belief of entitlement is measured solely by the relationship between the insured and the owner (or other lawful possessor) of the vehicle in question. In other words, if the insured has express or implied consent of the owner, then the insured has a reasonable belief that he or she is entitled to operate it. That interpretation is a reasonable one, even if not the only one possible.

Another possible interpretation of the provision is that the insured’s reasonable belief of entitlement is measured not just by the above relationship, but also by the insured’s relationship with the State and its legal apparatus that decides who is lawfully permitted to operate vehicles. This, too, is a reasonable interpretation.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

As far as we can tell in this appeal, nothing in the policy defines or describes the measure by which it should be determined whether an insured is “entitled” to operate a particular vehicle. Twin City does not dispute familiar case law holding that conflicting reasonable interpretations make a provision ambiguous, and that an ambiguous provision should be construed in favor of coverage. Therefore, we conclude that the policy provides coverage in this case.

Twin City also argues that its insured’s belief of entitlement to use the vehicle was not reasonable due to certain other specific facts of this case that go beyond his lack of a license. However, these arguments fail for several reasons. The first fact is that the person in possession of the vehicle would not have allowed Twin City’s insured to drive if he had known the insured was unlicensed. But Twin City does not clearly explain how that lack of complete information would affect the reasonableness of the insured’s belief that he had been given consent to use the vehicle. Another argument is that the insured’s parents did not permit him to drive vehicles. Again, as with the ambiguity about whether this exclusion requires consideration of whether the State has licensed the insured to drive, it is ambiguous whether the permission of the insured’s parents should be part of the inquiry. The remaining facts relied on by Twin City also do not appear to be relevant to the inquiry.

IT IS ORDERED that the notice of appeal is construed as a petition for leave to appeal, and is granted.

IT IS FURTHER ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*