Insurer's Successful Declaratory Judgment Action Provides a Refresher on Insurable Interest

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It is a basic rule of law - one **cannot** insure, *for his own benefit*, the property of another.

Recovery under an insurance policy requires proof of an insurable interest in the subject property at the time the policy is issued and at the time of loss. If such an interest does not exist at the time the policy is made, it is void from its inception. These basic principles were revisited in *USAA General Indemnity Company v. Jarok McCullough*, et al 2018 WL 1036211 (February 23, 2018).

Briefly, in *McCullough*, Defendant Chandler had an existing auto policy with USAA. He added a vehicle to the policy misrepresenting he was the record owner of the car and that it was principally garaged at his residence. Rather, Defendant McCullough, the emancipated son of Chandler, who was the only driver of the car and who lived at a separate address where the car was kept, owned the subject vehicle. Shortly after the car was added to the policy, McCullough was involved in a single vehicle accident, with Defendant Green as a passenger. Green brought an action for negligence in state court pursuing recovery for injuries allegedly sustained in the accident. USAA filed this action for declaratory judgment in the United States District Court, naming McCullough, Chandler and Green as defendants. Only Green responded. The matter was before the court on cross motions for summary judgment by USAA and Green.

USAA argued it was entitled to a finding that its policy, which purportedly covered the car at issue, was void because Chandler did not have an insurable interest in the car either at the inception of the policy or at the time of the accident. The court agreed, addressing four potential theories of liability. First, it was undisputed that Chandler had no ownership interest in the vehicle. Thus, the policy was void. Next,

Chandler could not be responsible under a negligent entrustment argument; South Carolina law requires ownership or control tantamount thereto as an essential element of negligent entrustment. Additionally, a parent of an emancipated adult child is not responsible for that child's negligence while driving a vehicle not owned by the parent. Third, the facts in *McCullough* did not support a permissible user argument because McCullough did not reside with Chandler. Lastly, the wavier/estoppel argument asserted by Green in her answer could not be used to invoke coverage. South Carolina's Supreme Court has previously found the doctrine of wavier or estoppel cannot be invoked to give validity to a policy otherwise invalid for lack of an insurable interest.

The court also addressed Green's motion as to USAA, which alleged she was entitled to summary judgment because USAA attempted to negotiate a settlement with her in the underlying state court action without first reserving its rights as to coverage. This motion was succinctly denied; it is well established that an attempt to resolve a matter cannot be offered against the party by whom such offer was made.

While *McCullough* does not include any questions of first impression, it does provide practitioners and insurers alike with useful reminders of what is necessary to establish the validity, or invalidity, of an insurance policy.

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