

White and Williams Secures Favorable Ruling for Insurer in Delaware Supreme Court

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The Delaware Supreme Court, *en banc*, affirmed a trial court's ruling in favor of the firm's client in an insurance coverage action involving Uninsured/Underinsured Motorist (UM) coverage in *Stoms v. Federated Service Insurance Company*.

A Delaware limited liability company operating a group of automotive dealerships purchased a commercial package policy (the Policy) from Federated Service Insurance Company (Federated) with the maximum allowable \$300,000 in UM coverage for directors, officers, partners or owners of the company (key personnel) and expressly rejected UM coverage for any other person qualifying as an insured. A "finance manager" employed at one of the named insured's dealerships was operating a company owned and insured vehicle when he was killed and, his minor child injured, by an uninsured motorist.

When Federated paid its full personal injury policy (PIP) limits, but denied UM coverage, plaintiff filed suit arguing that the Delaware UM Endorsement to the Policy was void as against public policy because (i) it provided less than the statutory minimum coverage and (ii) it arbitrarily discriminated against regular employees and other permissive users of company owned vehicles. In addition, plaintiff argued that the terms "director" and "officer," as used in the Delaware UM Endorsement, rendered the Policy ambiguous regarding decedent's inclusion in the class of insureds afforded maximum UM coverage.

The *Stoms* Court held that the Policy did not provide less than statutory minimum coverage levels and was not arbitrarily discriminatory. Rather, the named insured expressly rejected Federated's written offer, [under 18 Del. C. §3902], to purchase UM coverage for a broader class of insureds. Furthermore, the Policy met the minimum liability and PIP coverage limits under Delaware's Financial Responsibility Law, 21 Del. C. §2118 and once these requirements are met, a named insured is free to procure as much or as little optional UM insurance that it wants and to allocate such coverage as it chooses. In regard to the ambiguous policy language claim, the court held that in the context of the policy, "director" and "officer" clearly appear in the corporate law context and cannot be read to encompass a finance manager.

Jim Yoder is counsel for Federated Services Insurance Company.