

Determination of Residency and Underinsured Coverage – Is the Legislature Watching?

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The relationship between children and parents continues to change; it takes but a brief, informal look to see glaring examples. For instance, the average age for Americans to marry has risen by four years since 1990. These days, 32% of Americans between the ages of 18-34 live in their parents' home, and children may now remain insured by their parents' health insurance until 26 years of age. The United States District Court for South Carolina recently brought to light that perhaps legislation lags behind social change. *LM General Insurance Company v. Aylmer* 2018 WL 4962221 (October 15, 2018).

Aylmer's parents were residents of South Carolina in late 2010, at which time Aylmer was a college freshman in Michigan. She completed her education out of state, after which she moved back to her parents' home until she moved to Washington, D. C. in November 2014, where she secured full-time employment, signed leases and had electric service in her name. After her D.C. move, Aylmer visited her parents' home, mostly for long weekends. In April 2015, Aylmer was struck by a car while walking in Clemson, South Carolina and sustained injuries requiring medical treatment. She was treated near the scene on the date of the accident; otherwise, her medical treatment occurred in the Washington, D.C. area.

After settling with the at-fault driver, she made a claim against LM General Insurance Company (LM General), seeking underinsured (UIM) benefits under an auto policy issued to her parents as the only named insureds. LM General filed a declaratory judgment action seeking an order finding Aylmer was not an insured under her parents' policy and therefore not entitled to UIM recovery. The matter came before the court upon LM General's motion for summary judgment. It was undisputed Aylmer suffered bodily injury resulting from an auto accident in which the at-fault driver was operating an underinsured vehicle. The UIM policy at issue includes standard definitions including that of an "insured" as: you or any "family member." The policy defines "family member" as a person related by blood, marriage or adoption who is a resident of the household. The parties agreed the only relevant issue was whether Aylmer was a resident of her parents' household at the time of the accident.

In determining whether Aylmer was a resident or member of her parents' household, for purposes of coverage, the court employed the test articulated by the Supreme Court of South Carolina to determine residency: 1) living under the same roof; 2) in a close intimate and informal relationship, and 3) the intended duration of the relationship is likely to be substantial, and such that it is reasonable to conclude the parties would consider the relationship in contracting on matters such as insurance.

Despite Aylmer's attestation that she considered her time in Washington, D.C. as temporary and intends to return to South Carolina, application of the test articulated above required the court to conclude Aylmer was not a resident of her parents' household and, therefore, not an insured for purposes of UIM coverage under the subject policy. In reaching its conclusion, however, the court noted the changing nature of relationships between children and parents and suggested it may be time to expand the definitions at issue. The court likewise noted such an expansion is more appropriately within the province of the legislature. Is legislation keeping up with social changes?

Review of the test set forth by the South Carolina Supreme Court also prompted this author to consider whether that test, made some twenty-two years ago, is also due for a make-over in consideration of changing times.

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