Case Notes

AUTOMOBILE INSURANCE—OTHER INSURANCE CLAUSES WHICH DO NOT PURPORT TO REDUCE UNINSURED MOTORIST COVERAGE BELOW THE STATUTORY MINIMUM ARE VALID, AND PROCEEDS FROM SUCH COVERAGE ARE PAYABLE TO WIDOW AS ADMINISTRATOR OF ESTATE WITHOUT A REDUCTION FOR THE WORKMEN'S COMPENSATION BENEFITS RECEIVED BY THE WIDOW AS A DEPENDENT BENEFICIARY.—*McClure v. Employers Mutual Casualty Co.* (Iowa 1976).

McClure was killed in an automobile accident involving the vehicle in which he was riding and a vehicle driven by a negligent uninsured motorist. As the result of the death of her husband, McClure's dependent widow received $10,094.17 in workmen's compensation benefits. In her capacity as administrator of the estate of the deceased, the widow brought an action against the uninsured motorist and obtained a judgment of $30,000. She then brought an action against Employers Mutual Casualty Company, the insurer of the vehicle in which McClure was riding, and Motor Club of Iowa Insurance Company, the insurer of McClure's personal autombile, in an effort to recover under the uninsured motorist provisions of both policies. Each of the two policies provided uninsured motorist coverage in the amount of $10,000 per person and $20,000 per accident. Recovery was therefore sought from each insurer in the amount of $10,000, for a total of $20,000. Both policies also contained "other insurance" clauses[1] which in essence attempted to limit the insured's recovery

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1. Employers Mutual's other insurance clause provided:

Other Insurance. With respect to bodily injury to an insured while occupying an automobile not owned by the named insured, the insurance under Part IV shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this Coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

Motor Club's other insurance clause provided:

Other Insurance. With respect to bodily injury to an insured while occupying an automobile not owned by the named insured the insurance hereunder shall apply only as excess insurance over any other similar insurance available to such occupant, and this insurance shall then apply only in the amount by which the applicable limit of liability of this Part exceeds the sum of the applicable limits of liability of all such other insurance.

With respect to bodily injury to an insured while occupying or through being struck by an uninsured automobile, if such insured is a named insured under other

to the amount of the highest limits of any individual uninsured motorist coverage he has even though injuries and damages sustained in an accident with an uninsured motorist might exceed the amount of that highest coverage. The trial court entered judgment in favor of the insurers and the administrator appealed. *Held*, affirmed in part, reversed in part. Other insurance clauses which do not purport to reduce uninsured motorist coverage below the statutory minimum are valid, and proceeds from such coverage are payable to the widow as administrator of the decedent's estate even though the dependent widow had been paid a larger amount as workmen's compensation. *McClure v. Employers Mutual Casualty Co.*, 238 N.W.2d 321 (Iowa 1976).

The Iowa supreme court dealt with two main questions in the appeal: "(1) Is the administrator entitled to recover at most $10,000 or $20,000 of uninsured motorist insurance? and (2) Is the workmen's compensation of $10,094.17 to be deducted from such $10,000 or $20,000?"[2] In order to answer the first of these questions, the *McClure* court found it necessary to examine the Iowa uninsured motorist statute[3] and its legislative intent in order to determine whether the "other insurance" clauses in the insurance policies were valid.

The court first noted that Iowa, like most states, has an uninsured motorist statute requiring uninsured motorist coverage to be included in a motor vehicle policy unless specifically rejected by the insured.[4] Iowa's statute differs, however, from those of other states—with the notable exception of Tennessee[5]—by providing additionally in section 516A.2 of the *Code* that:

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similar insurance available to him, then the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable under this Part for a greater proportion of the applicable limit of liability of this Part than such limit bears to the sum of the applicable limits of liability of this insurance and such other insurance.

Subject to the foregoing paragraphs, if the insured has other similar insurance available to him against a loss covered by this Part, the company shall not be liable under this Part for a greater proportion of such loss than the applicable limit of liability hereunder bears to the total applicable limits of liability of all valid and collectible insurance against such loss.

McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 323-24 (Iowa 1976).

2. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 324 (Iowa 1976).

3. IOWA CODE § 516A (1975).

4. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 324 (Iowa 1976). IOWA CODE § 516A.1 (1975) provides that:

No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom. . . . Such coverage shall include limits for bodily injury or death at least equal to those stated in . . . section 321A.1 of the Code.

However, the named insured shall have the right to reject such coverage by written rejection signed by the named insured.

5. The Tennessee uninsured motorist statute provides:

Minimum Policy Limits Not Increased.—Nothing contained in Section 56-1148—

> Nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 10 of section 321A.1 of the Code. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.[6]

The court in *McClure* viewed the first sentence of this additional provision as being at the heart of the issue of whether the other insurance clauses were valid.[7]

The court recognized the rule invoked by the majority of courts in interpreting statutes similar to *Iowa Code* section 516A.1 to be that other insurance clauses which attempt to limit recovery to the highest limit of uninsured motorist coverage even though the actual damage incurred exceeds that limit are invalid. Conversely, the minority of courts uphold clauses attempting to disallow stacking[8] of uninsured motorist coverages, as long as the injured person receives at least the statutory minimum. The Iowa supreme court, in the instant case, determined that under a statute similar to *Iowa Code* section 516A.1, *standing alone*, the majority rule would more likely reflect legislative intent.[9] However, the *McClure* court noted that neither the majority nor minority lines of decisions dealt with additional provisions like Iowa's section 516A.2.[10]

It was apparent to the *McClure* court that the Iowa legislature must have had a purpose in including section 516A.2, and that the purpose of the first

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> 56-1153 shall be construed as requiring the forms of coverage provided pursuant to Section 56-1148—56-1153, whether alone or in combination with similar coverage afforded under other automobile liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits described in Section 59-1206. Such forms of coverage may include such terms, exclusions, limitations, conditions, and offsets, which are designed to avoid duplication of insurance and other benefits.

TENN. CODE ANN. § 56-1152 (1968), *as amended*, TENN. CODE ANN. § 56-1152 (Supp. 1975).

6. IOWA CODE § 516A.2 (1975).

7. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 325 (Iowa 1976).

8. Stacking has been defined as indemnification from two or more insurers with the total amount received exceeding the highest of any individual policy limit. Alliance Mut. Cas. Co. v. Duerson, 32 Colo. App. 157, 158, 510 P.2d 458, 459 (1973).

9. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976); *see* 28 A.L.R.3d 551 (1969) for annotation of decisions. The Iowa court stated as representative of the majority of courts' reasoning in invalidating other insurance clauses to be that "since a statute such as Section 516A.1 requires *every* policy to contain uninsured motorist coverage, the legislature must have intended that such coverage cannot be cut down or eliminated in *any* policy by a clause requiring reduction on account of *other* policies." McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976) (court's emphasis).

10. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976).

sentence of that section must be "to allow the uninsured motorist policy, *in combination with similar policies*, to provide the minimum limits of section 321A.1(10), or $10,000-$20,000."[11] In view of the fact that the Iowa uninsured motorist statute differs from those found in most jurisdictions, the court in *McClure* determined that Iowa could not join with the majority of states that invalidate other insurance clauses or with the prevailing minority view that gives effect to such clauses. Rather, the court thought that section 516A.2 should be interpreted in accord with a third line of decisions which interpret statutes similar to the Iowa uninsured motorist provision and which uphold anti-stacking clauses and clauses designed to prevent overlapping benefits.[12]

The court stated that had the uninsured motorist been insured in the amount minimally required by statute,[13] $10,000 per person and $20,000 per accident, the administrator could have brought an action under the Iowa direct action statute[14] and collected $10,000 from the insurer of the negligent motorist. The court then concluded that in adopting section 516A.2 the legislature intended that the insured should be no better off under an uninsured motorist clause than if the uninsured motorist had been insured to the statutory minimum.[15]

Two cases interpreting the similar provision of the Tennessee uninsured motorist law were quoted by the Iowa court in support of its interpretation of section 516A.2, *Keeble v. Allstate Insurance Co.*[16] and *Shoffner v. State Farm Mutual Automobile Insurance Co.*[17] In those cases it was likewise decided that the legislative intent, as expressed in the Tennessee statute[18] corresponding to *Iowa Code* section 516A.2, was to place the injured party in as good a position as if the uninsured motorist had carried liability insurance in the minimum amount, but in no better position.[19]

Based on its belief that the Iowa legislature had a purpose in passing section 516A.2 and with the support from court interpretations of the similar Tennessee provision, the *McClure* court held that "other insurance clauses which do not purport to reduce the statutory minimum of $10,000 for each person and $20,000 for each accident" are valid under section 516A.2.[20]

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11. *Id.* (court's emphasis).
12. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976).
13. IOWA CODE § 321A.1(10) (1975).
14. IOWA CODE § 516 (1975).
15. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976).
16. 342 F. Supp. 963 (E.D. Tenn. 1971).
17. 494 S.W.2d 756 (Tenn. 1972).
18. TENN. CODE ANN. § 56-1152 (1968). Statute reproduced note 5 *supra*.
19. "The statutory language clearly reflects the fundamental legislative design that the insured be placed in as good a position as, but no better position than he would occupy if he had been injured by an individual who complied with the financial responsibility law." Shoffner v. State Farm Mut. Ins. Co., 494 S.W.2d 756, 759 (Tenn. 1972). "The effect of Section 56-1152 is to permit an insurer to limit uninsured motorist coverage to the minimum coverage required by Section 59-1206 T.C.A." Keeble v. Allstate Ins. Co., 342 F. Supp. 963, 967 (E.D. Tenn. 1971).
20. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 327 (Iowa 1976).

The Iowa court in *McClure* came squarely to grips with the intent of section 516A.2 and gave it a strict interpretation. Previously, the case of *Benzer v. Iowa Mutual Tornado Insurance Association*[21] had also presented the Iowa court with a chance to interpret that section. In *Benzer*, the plaintiffs, members of one family, were injured while passengers in an automobile which collided with a vehicle driven by a negligent uninsured motorist. The insurer of the car in which plaintiffs were riding paid uninsured motorist coverage to the policy limit, but since other occupants were injured or killed as a result of the accident, payments to the latter absorbed most of that amount. The plaintiffs brought a declaratory judgment action against the insurer of their personal automobile, claiming that they were entitled to recover under the uninsured motorist coverage of their policy. Although the court in *Benzer* thought that the case before it could be resolved without determining whether section 516A.2 prevented Iowa from joining the majority of jurisdictions that refuse to enforce other insurance clauses,[22] the court did comment on that section: "Section 516A.2 specifies the legislation shall not be construed as *requiring* coverage which exceeds the minimum amount: it does not set a limit on the maximum protection. . . . Section 516A.2, by equating 'insurance' with 'benefits' arguably could be construed as expressing only a legislative intent to prohibit pyramiding of separate coverages to recover *more* than the actual damages."[23] That dicta was inferred by at least one author to portend that the Iowa court would give a broad reading to the Iowa statute and permit stacking of coverages up to actual damages.[24]

Furthermore, a liberal construction of the language contained in chapter 516A can also be found in *Rodman v. State Farm Mutual Automobile Insurance Co.*,[25] another Iowa case which was seemingly ignored by the court in *McClure*. *Rodman* involved an insured attempting to recover under the uninsured motorist coverage of his policy for damages incurred as a passenger in his own automobile while it was being driven by a permissive user. There, the Iowa court stated, "[t]he statute [*Iowa Code* chapter 516A] is written to protect the insurance consumer, not the policy vendor. . . . Under the uninsured motorist statute we believe an automobile or motor vehicle liability policy must protect the insured in any case to the same extent as if the tortfeasor had carried liability insurance covering his liability to the insured in the amounts required to establish financial responsibility."[26]

Thus, it can be advanced that *Rodman*, although expressing no opinion on the stacking question, does represent a liberal interpretation of section 516A.2 in favor of the insurance consumer rather than the insurance vendor. In that

21. 216 N.W.2d 385 (Iowa 1974).
22. Benzer v. Iowa Mut. Tornado Ins. Ass'n, 216 N.W.2d 385, 387 (Iowa 1974).
23. *Id.* (emphasis on word "more" added).
24. Neighbor, *Pyramiding Uninsured Motorist Coverage—Has Iowa Joined the Majority?*, 23 DRAKE L. REV. 746 (1974).
25. 208 N.W.2d 903 (Iowa 1973).
26. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, 909 (Iowa 1973).

regard, it may be support for the allowance of stacking. At any rate, *Rodman* is at least authority for the court's holding that other insurance clauses cannot operate so as to lower the insured's uninsured motorist coverage below the statutory minimum. Additionally, as noted earlier, *Benzer* was arguably a judicial forecast of a court determination allowing stacking of uninsured motorist coverages under the proper factual situation.[27] Neither of these lines of authority from Iowa case law was even commented upon by the court in *McClure*.

The second noteworthy issue confronting the court was whether the workmen's compensation benefit received by the widow was deductible from the uninsured motorist coverage award. Employers Mutual's policy contained a clause which reduced its liability by any amounts recovered by an insured through workmen's compensation.[28] The court recognized that a majority of courts would find such a clause invalid. The *McClure* court stated it would agree with the majority rule unless the legislature manifested an intent that such benefits could be deducted from uninsured motorist coverage.[29]

Examining the second sentence of section 516A.2—"Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits"[30]—the court found it necessary to determine if workmen's compensation is "insurance or other benefits" within the meaning of the statute, and whether workmen's compensation recovery is "duplication" of uninsured motorist coverage.[31]

In reaching the decision that workmen's compensation does in fact constitute such "insurance or other benefits," the Iowa court relied exclusively on a Tennessee case, *Terry v. Aetna Casualty and Surety Co.*[32] In *Terry*, a widow brought an action against the insurer of the vehicle which her husband was driving when he was killed as the result of a collision with a negligent uninsured motorist. The widow had already received workmen's compensation benefits in the amount of $10,080.26. The insurance policy in question had a clause, as did Employers Mutual's policy in the case at bar, reducing its liability for any workmen's compensation benefits recovered. In that case, the Tennessee court held that workmen's compensation was deductible from uninsured motorist coverage. The result was based on the court's reasoning that by inclusion in the Tennessee law of the section corresponding to *Iowa Code* section 516A.2,

27. The thought that the Iowa court would allow stacking of uninsured motorist coverage purchased for each vehicle in a multi-vehicle policy was previously laid to rest in *Holland v. Hawkeye Security Insurance Co.*, 230 N.W.2d 517 (Iowa 1975).

28. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 324 (Iowa 1976). "Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by . . . the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law." *Id.*

29. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 328 (Iowa 1976); *see* 24 A.L.R.3d 1369 (1969) for case annotation.

30. IOWA CODE § 516A.2 (1975).

31. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 328 (Iowa 1976).

32. 510 S.W.2d 509 (Tenn. 1974).

the legislature intended that the majority rule, providing broad coverage, should be limited. Accepting *Terry* as persuasive authority, and without any independent analysis of its own, the Iowa court stated: "Following *Terry*, we hold the words 'insurance or other benefits' in the second sentence of section 516A.2 encompass workmen's compensation."[33] However, accepting the interpretation of section 516A.2 given by the court in that portion of the opinion dealing with the validity of other insurance clauses, it is suggested that rather than relying solely on *Terry v. Aetna Casualty and Surety Co.*,[34] the Iowa court should have applied its earlier analysis in its opinion when it stated the purpose of the first sentence of section 516A.2 to be "to allow the uninsured motorist policy, *in combination with similar policies*, to provide the minimum limits of section 321A.1(10), or $10,000-$20,000."[35] Since the court emphasized "*similar policies*" in determining the legislative purpose of the first sentence of section 516A.2, it seems perhaps illogical to ignore that emphasis when interpreting the immediately following sentence. If similarity of policies is relevant to the purpose of section 516A.2, as the court emphasized it was in the first sentence of the section, it would logically follow that the same relevance of similarity of policies would carry over into the second sentence of the paragraph absent a clear statement to the contrary, which does not appear in this section. Since workmen's compensation is related to employment, whereas uninsured motorist coverage is related to motor vehicle accidents, they are dissimilar in scope and purpose. That being the case, it is suggested that workmen's compensation, being dissimilar to an uninsured motorist policy, should not be considered within the meaning of the phrase "insurance or other benefits" contained in the second sentence of section 516A.2.

The Iowa court did, however, differ from the result in *Terry* on the issue of whether the workmen's compensation benefits to the widow constituted "duplication" of coverage within the meaning of section 516A.2. In Tennessee, workmen's compensation benefits and uninsured motorist coverage proceeds are payable to the same person.[36] The Iowa court distinguished the Tennessee law from that of Iowa in noting that in the instant case, under *Iowa Code* section 85.13, the dependent widow was the recipient of the workmen's compensation benefits, whereas the administrator of the deceased's estate was entitled to the uninsured motorist coverage recovery under the Iowa survival statute.[37] Although in *McClure* the recipient of the workmen's compensation benefits and the administrator of the estate happened to be the same individual, the court determined that they were different legal entities,[38] and therefore, duplication within the meaning of section 516A.2 did not exist. The Iowa

33. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 329 (Iowa 1976).
34. 510 S.W.2d 509 (Tenn. 1974).
35. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 326 (Iowa 1976) (court's emphasis).
36. *Id.* at 329.
37. IOWA CODE § 611.20 (1975).
38. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 329 (Iowa 1976).

court held that "since the two amounts are payable to two distinct entities, Employers Mutual's workmen's compensation clause cannot be applied and uninsured motorist insurance of $10,000 remains payable to the administrator."[39] The distinction is narrow, but with the facts at hand, it inured to the benefit of the widow. However, had Mr. McClure survived, even if seriously injured, presumably no proceeds would have been attainable from the uninsured motorist coverage because the same legal entity—Mr. McClure, the individual—would be the recipient of the workmen's compensation benefits and the insurance proceeds.

It is suggested that rather than relying solely on decisions of courts sitting in Tennessee, the court in *McClure* should have at least considered the Iowa cases which have discussed the legislative intent of Chapter 516A. From a review of those cases, it could be argued that the Iowa legislature intended only to prevent an insured from recovering more than his actual damages by pyramiding coverages. However, under the *McClure* decision, it is now settled that with a properly drafted other insurance clause, an insurer can limit its uninsured motorist coverage to the statutory minimum and need not fear that an insured will be able to stack coverages to obtain a recovery that exceeds the statutory minimum even though the insured's damages may exceed that amount. In addition, the phrase in section 516A.2, "insurance or other benefits," was construed by the court in such a way that any workmen's compensation benefits received as a result of a mishap with an uninsured motorist will reduce the award of uninsured motorist recovery if they are in fact payable to the same legal entity. Implicit in this holding is the conclusion that *any benefits* which accrue to the injured insured due to a mishap with an uninsured motorist, if payments from such source are received by the same legal entity, can likewise reduce the uninsured motorist coverage recovery. The insurance vendor, not the insurance consumer, has been protected by this decision.

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39. *Id.* at 330.