IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60779
Summary Calendar

ESTATE OF THOMAS F. HEARN,

Plaintiff-Counter-
Defendant-Appellant,

VERSUS

BELLSOUTH TELECOMMUNICATIONS, INC.,

Defendant-Counter-
Claimant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(5:93 CV 116 BRN)

September 1, 1995

Before KING, SMITH, and BENAVIDES, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

The Estate of Thomas F. Hearn appeals a summary judgment in favor of BellSouth Telecommunications, Inc. ("BellSouth"). Concluding that BellSouth was entitled to judgment as a matter of law, we AFFIRM.

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

On December 22, 1992, BellSouth employee Thomas Hearn was driving a vehicle owned by BellSouth when a vehicle driven by Carole Callender struck and killed him. His estate settled with Callender's insurer for $100,000, the full amount of liability coverage Callender carried.

The estate then filed this action in state court against BellSouth as the self-insurer of its vehicle. BellSouth removed on the basis of diversity of citizenship.

The estate maintained that the Callender vehicle was underinsured and that, as a self-insurer, BellSouth was obligated to provide underinsured motorist ("UM") coverage on its vehicle. The estate asserted that the UM coverage on the BellSouth vehicle amounted to either (1) the total value of the minimum of $10,000 UM coverage on each of the twenty-five vehicles BellSouth owned or (2) the total assets of BellSouth.

The district court concluded that even if BellSouth were required to provide UM coverage on its vehicles, that coverage was limited to $10,000 per vehicle. It further decided that the estate could count only the $10,000 coverage on the accident vehicle itself, which, combined with Hearn's personal UM coverage of $20,000, came to less than the $100,000 of coverage Callender carried. Finding that Callender was not underinsured, the court granted summary judgment for BellSouth.

II.

Mississippi requires all automobile insurance policies to provide at least $10,000 UM coverage per vehicle, unless the insured party expressly rejects such coverage. MISS. CODE ANN. § 83-11-101(1) (incorporating the limits of the Motor Vehicle Safety Responsibility Law, MISS. CODE ANN. §§ 63-15-3(j), -11(4), -43(2)(b)). Mississippi allows stacking of UM coverage, so that an injured person may have available the UM coverage applicable both to the accident vehicle and to any other vehicles in the same fleet. See Wickline v. U.S. Fidelity & Guar. Co., 530 So. 2d 708, 714 (Miss. 1988) (noting that "[s]tacking is firmly imbedded in our uninsured motorist law").

Not all insured parties may stack to the same extent, however. Mississippi distinguishes between two types of insureds: Class I insureds consist of "the named insured and, while resident in the same household, the spouse of any such named insured and relatives of either," while Class II insureds include "any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies, and a guest in such motor vehicle to which the policy applies." MISS. CODE ANN. § 83-11-103(b); see Meadows v. Mississippi Farm Bureau Ins. Co., 634 So. 2d 108, 110 (Miss. 1994) (recognizing distinction); Harris v. Magee, 573 So. 2d 646, 656 (Miss. 1990) (same).

For the purpose of determining whether the tortfeasor is underinsured, a Class II insured may not consider the UM coverage on other vehicles insured under the same policy as the accident

vehicle. He may stack only his "own [personal] UM coverage with the UM coverage on the host vehicle." Thiac v. State Farm Mut. Auto. Ins. Co., 569 So. 2d 1217, 1221 (Miss. 1990); see also Meadows, 634 So. 2d at 110-11; State Farm Mut. Auto. Ins. Co. v. Davis, 613 So. 2d 1179, 1183 (Miss. 1992).

The district court determined that Hearn was not a named insured with respect to the BellSouth vehicle and treated him as a Class II insured. Thus, his estate could stack only Hearn's personal UM coverage of $20,000 with the minimum $10,000 UM coverage on the BellSouth vehicle. The estate objects to this conclusion, attempting to differentiate the issue before us from past Mississippi cases on the ground that BellSouth is a self-insurer.

The estate suggests that as a self-insurer, BellSouth must provide UM coverage to the full extent of its assets on each vehicle. The estate first contends that a self-insurer is required to "pay the insured all sums which he shall be legally entitled to recover as damages for . . . death" under MISS. CODE ANN. § 83-11-101(1). This provision fails to distinguish self-insurance from contractual insurance, however, as it plainly applies to the latter. In any event, this provision expressly limits the phrase "all sums" to those "within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law," which limits coverage for bodily injury to $10,000. Id.; MISS. CODE ANN. §§ 63-15-3(j), -11(4), -43(2)(b)).

Mississippi has decided to treat self-insureds no differently

from ordinary insureds. A self-insurer is deemed to have agreed to "pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer." MISS. CODE ANN. § 63-15-37(4). Had BellSouth's vehicles been insured by an independent insurer, that insurer would have provided only $10,000 in UM coverage on each vehicle. Cf. Davis v. U.S. Fidelity & Guar. Co., 837 F. Supp. 206, 208 (S.D. Miss. 1993) (noting that self-insured vehicle had negligence liability limit of $10,000); Harris, 573 So. 2d at 657 (limiting UM coverage written into existence by operation of law, rather than by contract, to statutory minimum of $10,000 per vehicle). Thus, BellSouth need not provide more than $10,000 UM coverage on each of its vehicles.

The estate also contends that BellSouth's self-insurance scheme somehow has abrogated the Class I/Class II distinction so that Hearn should be treated as a Class I insured. The crux of this argument appears to be that Class I insureds include both named insureds and their "spouse[s]," "household[s]," and "relatives." BellSouth obviously is incapable of having a spouse, a household, or relatives and therefore, the estate concludes, cannot be a Class I insured. The estate then reasons that Hearn, as BellSouth's agent, should thus be treated as the Class I insured.

There is no indication, however, that corporations in Mississippi are ineligible for Class I status. Moreover, in Harris, 573 So. 2d at 656, the court rejected the theory that an employee should be treated as Class I insured.

III.

Because we can affirm on the basis stated above, we do not address the separate issue, raised by BellSouth, of whether Mississippi law requires self-insurers to provide UM coverage to their employees. The summary judgment is AFFIRMED.