N.C. Farm Bureau v. Dana: Bringing Common Sense Back to Underinsured Motorist Law

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North Carolina – On 12/17/21, the NC Supreme Court issued its opinion in *North Carolina Farm Bureau Mut. Ins. Co., Inc. v. Dana*[1], which clarifies the maximum underinsured motorist (UIM) coverage available to claimants regardless of whether the liability coverage was exhausted based on the per-person or per-accident policy limits.

The Dana decision is a win for common sense interpretation of the policy and N.C. Gen. Stat. §20-279.21(b)(4) and a marked change in course following the Supreme Court's 2018 decision in *Hairston v. Harward*[2], which declared for the first time that UIM coverage is a collateral source and profoundly increased a defendant's exposure to an excess verdict.

In Dana, the tortfeasor was intoxicated when his vehicle crossed the center line and collided with the Danas and a third vehicle, causing the death of Pamela Dana and serious injury to William Dana.

The tortfeasor's vehicle was insured by Integon National Insurance Company with liability limits of $50,000 per-person, $100,000 per-accident. Integon tendered the per-accident limits in a global settlement, including offers of $43,750 to the Estate and $32,000 to William.

The Dana vehicle carried a Farm Bureau UIM policy with limits of $100,000 per-person, $300,000 per-accident. Farm Bureau offered $56,250 in "new money" to the Estate of Pamela and $68,000 in "new money" to William for a total UIM payout of $124,250. When combined with the liability recovery, Farm Bureau's offers brought the Estate and William's total recovery to $100,000 per claimant.

The Estate and Mr. Dana refused the offer, arguing that under *N.C. Farm Bureau v. Gurley*[3], the total UIM coverage available to the Danas was $200,000, not $124,250. The Danas arrived at $200,000 by reducing the $300,000 per-accident UIM limits by the $100,000 per-accident liability limits. Assuming an even split of the UIM coverage, this would have resulted in the Estate of Pamela Dana and Mr. Dana recovering $143,750 and $132,000, respectively.

Farm Bureau sought a declaratory judgment. On cross motions for summary judgment, the trial court found for the Danas. Farm Bureau appealed and the Court of Appeals unanimously affirmed. The Supreme Court granted discretionary review and reversed.

The Supreme Court opinion authored by Justice Ervin gives a detailed analysis of Gurley and N.C. Gen. Stat. § 20-279.21(b)(4). In Gurley, the Court of Appeals laid out two exclusive scenarios to determine available UIM coverage: (1) a liability settlement tendering the per-person limits and (2) a liability settlement tendering the per-accident limits to multiple claimants. In scenario #1, the liability settlement is subtracted from the UIM per-person limits to find the maximum UIM coverage.

In scenario #2, the per-accident liability limits are subtracted from the per-accident UIM limits, but an individual's recovery is not bounded by the per-person limit[4].

The statutory language at issue provided that "the limit of underinsured motorist coverage applicable is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident." In Gurley, the Court of Appeals implied that by using the singular "limit" and not the plural "limits," the Legislature intended for only the per-person or per-accident limit to apply as a cap to coverage, but not both[5]. As applied to the Danas, the Gurley Rule would have resulted in a windfall recovery of $75,750 above the per-person UIM limits.

In a clear rebuke, Justice Ervin wrote that the Gurley Court's reliance on the use of the singular "limit" was a "slender reed upon which to base a conclusion that the per-person and per-accident limits of liability may not both be applicable."[6] Relying instead on "the traditional use" of the per-person and per-accident liability limits "that insurers, policyholders, and policy makers are all familiar with,"[7] Justice Ervin continued, "[w]e are unable to discern any reason why the General Assembly would have intended to preclude the use of both per-person and per-accident liability limitations in determining the maximum amount of underinsured motorist coverage."[8]

The opinion went on to hold that in calculating the amount to be paid, Courts should treat "the per-accident amount of [UIM] coverage as the total sum that is available to all of the claimants . . . subject to the caveat that the amount of [UIM] coverage that is available to any individual claimant is limited to the per-person amount."[9] As a result, the Danas would receive a total recovery of $100,000 per claimant, which is the maximum per-person coverage bargained for when the policy was purchased.

In her concurrence, Justice Earls argued that the majority rightfully supplanted Gurley, but should have overruled Gurley explicitly, rather than preserving Gurley's analysis to avoid a "one size fits all" rule.

A second concurrence, authored by Justice Berger and joined by Chief Justice Newby and Justice Barringer, argued that because the statute does not expressly provide whether the per-accident limit is subject to the per-person limit, the Court should have looked to the policy. Specifically, the Dana policy clearly states that "[s]ubject to [the] limit for each person, the limit of bodily injury liability shown in the Declarations for each accident for [UIM] Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident."[10]

For two decades, the personal automobile policy language has been in conflict with the Gurley Rule. Fortunately, the Supreme Court has taken a step in the right direction with Dana's common-sense re-alignment of the uniform policy and the statute and by providing insurers and policy holders with a solid foundation to evaluate future UIM claims.[11]

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1. N. Carolina Farm Bureau Mut. Ins. Co., Inc. v. William Thomas Dana, Jr., et al., 2021-NCSC-161, 866 S.E.2d 710 (2021).

2. Hairston v. Harward, 371 N.C. 647, 821 S.E.2d 384 (2018).
3. N. Carolina Farm Bureau Mut. Ins. Co. v. Gurley, 139 N.C. App. 178, 532 S.E.2d 846 (2000).
4. Id. at 183, 532 S.E.2d at 849
5. Id.
6. Dana, 2021-NCSC-161 at ¶ 19, 866 S.E.2d at 717.
7. Id. at ¶ 18, 866 S.E.2d at 717.
8. Id. at ¶ 19, 866 S.E.2d at 717.
9. Id. at ¶ 23, 866 S.E.2d at 719.
10. Id. at ¶47-48, 866 S.E.2d at 724 (Berger, J. Concurring) (emphasis added).
11. The positive outcome in Dana is owed in part to the NCADA's Amicus Committee and the efforts of J.T. Crook, Phillip A. Collins, and David S. Coats of Bailey & Dixon, L.L.P., who authored the NCADA's amicus curiae brief.

