

2004

# Glorya Eaquina, Gloria Eaquina v. Allstate Insurance Company : Reply Brief

Utah Court of Appeals

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Jan P. Malmberg, Todd A. Turnblom; Perry, Malmberg and Perry; attorney for appellee.

Richard M. Hutchins; attorney for appellant.

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# UTAH SUPREME COURT

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GLORYA EAQUINTA aka  
GLORIA EAQUINTA,

Plaintiff and Appellant,

v.

ALLSTATE INSURANCE COMPANY,

Defendant and Appellee.

Case No. 20040582 - SC

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## REPLY BRIEF OF THE APPELLANT

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APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH  
THE HONORABLE JAMES L. SHUMATE  
CIVIL CASE NUMBER 030500689

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ATTORNEY FOR APPELLEE / DEFENDANT

JAN P. MALMBERG  
TODD A. TURNBLOM  
PERRY, MALMBERG & PERRY  
99 NORTH MAIN STREET  
P.O. BOX 364  
LOGAN, UTAH 84321  
(435) 753-5331

UTAH

*Supreme Court*

**BRIEF**

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DOCKET NO. 20040582-SC

ATTORNEY FOR APPELLANT / PLAINTIFF

RICHARD M. HUTCHINS (Bar. No. 5573)  
192 EAST 200 NORTH, SUITE 102  
ST. GEORGE, UTAH 84770  
(435) 674-9000

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UTAH APPELLATE COURTS

APR 22 2005

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## **SUMMARY REVIEW OF APPELLANT'S CLAIM**

This case involves the interpretation of Utah Code Section 31A-22-305 – the Utah statute providing underinsured motorist coverage.

Appellant's son died as a result of injuries sustained in an automobile accident. Appellant has made a claim for the underinsured benefits available on Appellant's automobile insurance policy with Allstate Insurance Company.

Appellant asserts that, based upon the plain language of the statute, Appellant is entitled to the underinsured benefits available under Appellant's own automobile insurance policy with Appellee as compensation to Appellant for the damages Appellant sustained as a result of the death of Appellant's son.

## **SUMMARY REVIEW OF APPELLEE'S RESPONSE**

Appellee replies that 31A-22-305 does not require Appellee to provide underinsured benefits to Appellant as a result of the death of Appellant's son because, at the time of the accident, Appellant's son was an adult, non-resident relative, who was not driving or otherwise using a vehicle owned by Appellant.

Appellee asserts that Section 31A-22-305(10)(a), as it existed at the time, precludes Appellant from electing to receive underinsured benefits from Appellant's own automobile insurance policy with Allstate Insurance Company on which Appellant is the named insured (Appellant's automobile insurance policy with Appellee) because Appellant has, already, received underinsured coverage benefits on a policy from another insurance company which covered the vehicle Appellant's son was operating/using at the time of the accident.

Appellee, also, asserts that Utah Code Section 31A-22-305(1)(d) "limits wrongful death coverage to persons entitled to recover damages ' . . . because of bodily injury or death of persons under Subsections (1)(a), (b), or (c).'"

Appellee, also, asserts that the Ohio and Maine cases cited by Appellant in Appellant's Brief are inapplicable to Utah law. Appellee states that "these cases construe underinsured motorist statutes which are very different from Utah's statutes." Appellant maintains that the cases examine statutes identical or materially identical to Utah's statute and fully support Appellant's claim.

## **APPELLANT’S REPLY TO APPELLEE’S ARGUMENTS**

### **Supposed Restriction of Section 31A-22-305(10)(a) Precluding Recovery**

Appellee asserts that Utah Code Section 31A-22-305(10)(a) includes “a clear prohibition against the type of claim Appellant is making.”<sup>1</sup> Appellee asserts that the second sentence of Section 31A-22-305(10)(a) precludes Appellant from obtaining underinsured benefits from Appellant’s own policy because Appellant was entitled to receive underinsured benefits from the policy covering the vehicle Appellant’s son was occupying at the time of the accident.

Utah Code Section 31A-22-305(10)(a) [2003] states:

Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy.

Except as provided in this Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.<sup>2</sup>

Appellee’s assertion relies on a totally unsubstantiated proclamation that:

“[A]ny ‘injury’ that [Appellant] can be considered to have received[,], occurred

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<sup>1</sup> See Appellee’s Brief: Pg. 10

<sup>2</sup> Utah Code Section 31A-22-305(10)(a); Emphasis added

while [Appellant's son] was using the vehicle described in the Progressive policy.”<sup>3</sup> Appellant attempts to attribute the fact that Appellant's son was using a vehicle at the time of the accident which had underinsured coverage, to conclude that Appellant's own injury was, thus, incurred while “‘in a vehicle’ described in policy that included underinsured benefits.” Appellee provides no legal argument or cited authority to support Appellee's assertion that, simply, because Appellant's son was “‘in a vehicle’”<sup>4</sup> at the time of the accident, Appellant's injury is considered to have occurred while in that vehicle. Thus, Appellant cannot respond to Appellee's legal basis for Appellee's assertion.

Appellant, however, recognizes that the purpose for Appellee's efforts is to suggest that Appellant was injured “in a vehicle” in an attempt to apply the *limited* application of the applicable provision of Section 31A-22-305(10)(a) – which indicates that its limitation only applies to “a covered person ***injured in a vehicle*** described in a policy that includes underinsured motorist benefits.”<sup>5</sup>

Any effort to extend the application of Section 31A-22-305(10)(a) to *all* covered persons would be extending a limitation not prescribed by the statute.

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<sup>3</sup> See Appellee's Brief: Pg. 11

<sup>4</sup> Technically, Appellant's son was not even “in a vehicle” at the time he was injured – Appellant's son had exited the vehicle and was struck by another vehicle while walking back to the trunk of the vehicle he had just exited; though, as used in this context, “in” probably connotes “use” of a vehicle.

<sup>5</sup> Utah Code Section 31A-22-305(10)(a); Emphasis added



More importantly, it should be noted that Section 31A-22-305(10)(a) is not intended to preclude an individual from recovering *their own underinsured benefits* from their own automobile insurance policy – such a conclusion would void the very purpose insureds have in securing underinsured coverage!

Subsection (10) clearly provides that a covered person can recover their own underinsured benefits from their own insurance policy as long as they were not using one of their own vehicles which is not covered under their policy.<sup>6</sup>

In recognition of this exception, Subsection (10)(a) provides:

Except as provided in this Subsection (10), . . .

Later in Subsection (10) is Subsection (10)(d)(i) – which states:

Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

- (A) a covered person injured as a pedestrian by an underinsured motor vehicle; or
- (B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's *resident* relative.<sup>7</sup>

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<sup>6</sup> The purpose of this provision is to preclude motorists from paying for underinsured benefits *on only one of their vehicles* (and not on any other vehicles owned by them or available for their regular use); and, then, when involved in an accident *while occupying or using one of their non-covered vehicles*, claiming the underinsured benefits from their one covered vehicle!

<sup>7</sup> Utah Code Section 31A-22-305(10)(d)(i); Emphasis added

Thus, even if it were conceded for the sake of argument, that Appellant was “injured in a vehicle” which was “described in a policy that includes underinsured motorist benefits,” Appellant would, still, be entitled to recover Appellant’s own underinsured coverage benefits from Appellant’s own policy under Subsection (10)(d)(i)(B) because Appellant would have been considered injured while “occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person [Appellant], the covered person's resident spouse, or the covered person's resident relative.”<sup>8</sup>

#### **Application of Utah Code Section 31A-22-305(1)(d)**

Appellee’s assumes that Utah Code Section 31A-22-305(1)(d) “limits wrongful death coverage to persons entitled to recover damages ‘. . . because of bodily injury or death of persons under Subsections (1)(a), (b), or (c).’”<sup>9</sup>

Appellee, therefore, asserts that:

[F]or wrongful death claims, the heirs are only ‘covered persons’ entitled to recover damages from the underinsured motorist policy if the decedent meets one of the first three requirements [found in Subsections (1)(a), (1)(b), or (1)(c)]. The decedent must be [1] the named insured, [2] a person related by blood, marriage, adoption or guardianship who was a resident of the names insured’s household, or [3] a person occupying a motor vehicle referred to in the policy.”<sup>10</sup>

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<sup>8</sup> See Subsection (10)(d)(i)(B); Emphasis added

<sup>9</sup> See Appellee’s Brief: Pg. 12; quoting a portion of Section 31A-22-305(1)(d)

<sup>10</sup> See Appellee’s Brief: Pg. 12; Emphasis added

Utah Code Section 31A-22-305(1) states:

As used in this section, "covered persons" includes:

- (a) the named insured;
- (b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;
- (c) any person occupying or using a motor vehicle:
  - (i) referred to in the policy; or
  - (ii) owned by a self-insured; and
- (d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

It is correct that if a claimant claims that he or she is a "covered person" under the provisions of paragraph (d) for the purposes of bringing a claim for underinsured benefits under someone else's policy as a result of the death of another, the decedent must satisfy the criteria of paragraphs (a), (b), or (c).

As Appellee pointed out, Appellant was defined as "a covered person" pursuant to the provisions of paragraph (d) under the Progressive policy,<sup>11</sup> and was, thus, entitled to the underinsured benefits under the Progressive policy.

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<sup>11</sup> Appellant's son was using a vehicle covered under the Progressive policy.

Appellee stated:

[Appellant's son] did meet these requirements with respect to the Progressive policy, which is why [Appellant] was a 'covered person' under the Progressive policy.<sup>12</sup>

What Appellee failed to recognize, however, is that Appellant is not making a claim that Appellant is considered a "covered person" under the provisions of paragraph (d) for the purposes of bringing an underinsured claim under Appellant's own policy; Appellant is defined as a "covered person" on Appellant's own policy pursuant to the provisions of paragraph (a) – indicating that "covered persons" under the policy includes "the named insured."<sup>13</sup>

Since Appellant is defined as a "covered person" under paragraph (a), Appellant does not need to, also, meet the criteria of paragraphs (b), (c), or (d).

Thus, whether Appellant is, also, considered a covered person under the Progressive policy under the provisions of paragraph (d) is totally immaterial.

### **Significance of Premium Payments**

Appellee mentions "premium payments" and "public purpose" – suggesting that "no insurer should be forced to assume a risk for which it was not paid."<sup>14</sup> It should, also, be noted that every insurer must provide the

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<sup>12</sup> Appellant's Brief: Pg. 12 – Although Appellant was entitled to the benefits from that policy, Appellant elected not recover any benefits from that policy.

<sup>13</sup> Appellant is the "named insured" on Appellant's own policy!

<sup>14</sup> See Appellee's Brief: Pg. 15

coverage and benefits prescribed by law; if an insurer has failed to assess the risks of the benefits it is required to provide, it is only the fault of the insurer – the *insured* should not be the one to forfeit the benefits mandated by the law!

Furthermore, the public purpose of insurance coverage is to provide benefits to those who have suffered a loss. Clearly, Appellant has suffered a tragic loss as a result of the untimely and unexpected death of Appellant's son!

### **Application of Defenses Available to a Tortfeasor/Defendant in a Wrongful-death Claim**

Appellee, also, notes that a defendant in a wrongful-death claim may use defenses against the heirs that the defendant would have been able to use against the deceased had the deceased survived and prosecuted the suit. For example, such a defendant may claim comparative negligence on the part of the deceased as a defense against a wrongful-death claim brought by the heirs.

Appellee cites several cases in this regard – even though the rationale of the cited cases do not apply to this case, it should be noted that the cases cited by Appellee address claims made against the negligent tortfeasor. The issues in this case involve an insured's claim under the insured's insurance policy.

Appellee, however, erroneously applies this concept and suggests that: "In this case, no recovery from Allstate's underinsured policy could have been made if [Appellant's son] had lived. Therefore, wrongful death law is consistent with recognizing no coverage exists where the defendant was a

complete stranger to the policy . . . .”<sup>15</sup> Appellant does not understand how the fact that a tortfeasor/defendant in a wrongful-death claim may use defenses against the heirs that the tortfeasor/defendant would have been able to use against the deceased had the deceased survived and prosecuted the suit applies to this case where Appellant is making a claim for the underinsured benefits available under Appellant’s own insurance policy. Apparently, Appellee is asserting that because Appellant’s son could not have made a claim under Appellant’s policy had Appellant’s son lived, Appellant should be precluded from making a claim under her own policy! Appellant acknowledges that Appellant’s son is not considered a “covered person” under Appellant’s policy (and, therefore, would not have been entitled to make claim under Appellant’s policy); however, Appellant is, most definitely, defined as a “covered person” under Appellant’s own policy, and Appellant is clearly entitled to make a claim for the benefits under Appellant’s own policy! Thus, whether Appellant’s son would have been able to make a claim under Appellant’s policy is immaterial.

Appellant’s claim is not for injuries Appellant’s son sustained (for which Appellant’s son would not have been entitled to bring a claim under Appellant’s policy); Appellant’s claim is for the injuries Appellant sustained!

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<sup>15</sup> See Appellee’s Brief: Pg. 16

Although some states may preclude Appellant from pursuing such a claim according to the unique provisions of their wrongful-death statutes and case law, Utah recognizes that Appellant is legally entitled to recover damages because, pursuant to the provisions of Utah's wrongful-death statute, Appellant has a viable claim that is able to be reduced to judgment in a court of law.

### **Underinsured Statutes of Other States**

Appellee asserts that the Ohio and Maine cases cited by Appellant in Appellant's Brief are inapplicable to Utah law.<sup>16</sup> Although these cases are directly on point and fully support Appellant's position, Appellee asserts that "these cases construe underinsured motorist statutes which are very different from Utah's statutes."<sup>17</sup> Appellee, however, fails to provide any analysis of Ohio's or Maine's underinsured motorist statutes in support of this assertion!<sup>18</sup>

Appellant counters that a reading of those cases will clearly reveal that those statutes were identical or nearly identical to Utah's underinsured statute!

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<sup>16</sup> Appellee mistakenly states that Hedges v. Nationwide is "unpublished" – Hedges v. Nationwide was, in fact, published by the Ohio Supreme Court; it, simply, had not yet been given a cite at the time Appellant's Brief was submitted because it had only been published several days prior to the time Appellant's Brief was submitted. The cite is: 2004-Ohio-6723.

<sup>17</sup> See Appellee's Brief: Pg. 17

<sup>18</sup> Appellee does not quote the statutes from any other states referenced in the cited cases in order to provide any comparison. Appellee does quote a new statute the Ohio Legislature passed subsequent to the cited cases in order to address the issue – acknowledging the very fact that it up to the Legislature to change the statutes and that it is not within the prerogative of the Court.

Appellee refers to the case of Hedges v. Nationwide Mutual Insurance Company<sup>19</sup> – which provides a very good history of the development of Ohio’s underinsured motorists statutes based upon the decisions of Ohio’s Appellate Courts – which have been consistent with Appellant’s position in this case – namely, that it is up to the legislature to change the language of the statute if the clear wording of the statute does not reflect the legislature’s intent.

Appellee notes that the Ohio Legislature amended the Ohio underinsured motorists statute to limit its underinsured motorists coverage; Appellee, then, apparently, suggests that because the Ohio Legislature has amended its statute – as a result of which, it no longer corresponds to Utah’s underinsured statute, the Utah legislature would, likely, correspondingly amend Utah’s statute; thus, the Utah Supreme Court should deny coverage to the Appellant in this case!

It is interesting to note that the Ohio Appellate Courts had concluded that, based upon the wording of their underinsured motorist statute at the time (which corresponded to Utah’s current statute), the Ohio Appellate Courts were obligated to rule that the claimant was entitled to their underinsured motorists benefits; the Ohio Appellate Courts left it to the Ohio Legislature to change the statute if it so desired. In this case, Appellee is suggesting that, because the Ohio Legislature subsequently amended its statute, the Utah

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<sup>19</sup> Hedges v. Nationwide Mutual Ins. Co., 2004 Ohio 6723 (Ohio App. 2004)



Appellate Courts should ignore the sound reasoning of the decisions of the Ohio Appellate Courts and bypass the necessity of actually requiring the Utah Legislature to amend Utah's statute, and presume that the Utah Legislature would want to amend its statute to conform to Ohio's current amended statute.

**“Gap” or “Decreasing Layer” Systems Contrasted with  
“Floating layer” or “Excess Type” Systems**

Appellee provides a somewhat educational description of “gap” or “decreasing layer” systems as contrasted with “floating layer” or “excess type” systems as used in underinsured motorists statutes. Appellee states that Maine's and Ohio's underinsured statutes are based upon a “gap” system while Utah's underinsured motorists statute is based upon a “floating layer” system.

Appellee, then, apparently suggests that these differing systems may, or should, be the basis for giving the insurance companies some protection from unknowable risk – “as it at least puts a ceiling on what an insurer must pay.”<sup>20</sup> Again, Appellee fails to provide any rationale for its assertion. Apparently, Appellee is making a some sort of a public policy claim to limit the exposure of insurance companies to “unknowable risk” – again, if such is the case, then it is up to the Utah Legislature to assess that assertion and act accordingly.

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<sup>20</sup> See Appellee's Brief: Pg. 19

Appellee, without support, states that: “In Utah and other ‘floating layer’ states, underinsured coverage is an additional amount that is only available if other conditions are met.”<sup>21</sup> What “other conditions” is Appellee referring to? Isn’t underinsured coverage an additional amount that is only available if other conditions are met in “gap” or “decreasing layer” states??? Underinsured coverage, obviously, has a condition that the liability coverage of the tortfeasor be exhausted – is this one of the “other conditions” Appellee is referring to??? Appellee proposes that: “The limitations Utah’s Legislature incorporated in Subsection 10(a) are entirely consistent with this theory.”<sup>22</sup> What theory??? Is it the apparent “unknowable risk” theory referred to above??? If so, how are the limitations of Subsection 10(a) “entirely consistent” with such a theory???

Obviously, if Appellant is to be able to respond to Appellee’s argument, Appellee must provide some comprehensible explanation for Appellee’s position. Appellee has failed to explain its rationale (if there is one) and has, thus, precluded Appellant from being able to understand Appellee’s argument and to, then, be able to provide a counter-argument to Appellee’s argument.

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<sup>21</sup> See Appellee’s Brief: Pg. 19

<sup>22</sup> See Appellee’s Brief: Pg. 19

It should not be up to the Appellant to conjure up what Appellee might have been intending – to, then, be able to make a counter-argument thereto.<sup>23</sup>

Appellee has failed to show how such an assumption should affect the decision of this Court in interpreting the actual wording of Utah’s statute – which, as is noted, clearly mandates coverage for the Appellant in this case.

### **Issues Actually Conceded Before the District Court**

Appellee states that “Appellant should not be allowed to raise issues conceded before the District Court.”<sup>24</sup>

Appellee, incorrectly, asserts that Appellant conceded:<sup>25</sup>

[1] that the Allstate policy did not provide coverage to [the Appellant] for the death of [Appellant’s son], and

[2] that the insurance code did not require coverage to be extended to non-resident adults who were not using the vehicle covered by the policy.<sup>26</sup>

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<sup>23</sup> Appellant, frankly, has no idea what Appellee is attempting to propose! Appellee cited several cases which, supposedly, address Appellee’s claims; however, Appellee makes no argument using the opinions of these citations – presumably, leaving it up to the Appellant and the Court to read all of the cited cases in their entirety and to glean therefrom support for Appellee’s argument (which, in itself, is not even clear). It is not the responsibility of the Appellant or the Court to analyze cases to support Appellee’s position.

<sup>24</sup> See Appellee’s Brief: Sub-heading on Pg. 21

<sup>25</sup> Unfortunately, Appellee does not provide any citation to the record to assist in assessing what was conceded and what was not.

<sup>26</sup> See Appellee’s Brief: Pg. 21

Appellee suggests that “to the extent that [Appellant’s] brief discusses policy language, those issues were conceded and may not be raised herein.”<sup>27</sup>

Addressing Appellee assertions of what Appellant conceded –

Contrary to Appellee’s assertion, Appellant did not concede that the Allstate policy did not provide coverage to the Appellant for the death of Appellant’s son – obviously, Appellant’s entire claim is that the policy actually does provide coverage to Appellant for the death of Appellant’s son (because Appellant had underinsured coverage and is, therefore, entitled to the coverage as mandated by Utah law). What Appellant did concede is that the Allstate policy LANGUAGE does not provide coverage to the Appellant for the death of Appellant’s son – which, as Appellant has clearly maintained, is contrary to the coverage provisions required by Utah’s underinsured motorists statute.

Allstate’s policy language seeks to reduce the underinsured coverage proscribed by Utah Code Section 31A-22-305(9) by adding restrictive language to its policy limiting benefits to insureds who have sustained “bodily” injury; this restrictive limiting language is not permitted by the law and inappropriately curtails the actual coverage mandated by Utah Code Section 31A-22-305(9)(a).

In addition, contrary to Appellee’s statement that “to the extent that [Appellant’s] brief discusses policy language, those issues were conceded and

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<sup>27</sup> See Appellee’s Brief: Pg. 21-22

may not be raised herein. Therefore, the Appellee will not address them in his brief.”<sup>28</sup> Appellee actually addresses the policy language issue and states:

A number of other states have held that policy language may limit underinsured and uninsured motorist coverage to provide coverage only when an insured is injured.<sup>29</sup>

Appellee, then, simply cites a number of cases without any analysis whatsoever of those cases – again, presumably, leaving it up to the Appellant and the Court to read and analyze all of the cited cases in their entirety in order to glean from them arguments which might support Appellee’s position. There is not even any mention that the cited cases have any application to Utah law.

Appellee did, correctly, indicate that Appellant has conceded that the Utah Insurance Code does not mandate that Appellant’s son be covered under the policy. (At the time of the accident, Appellant’s son was a non-resident, non-minor adult relative who was not using a vehicle covered under the policy.)

To clarify any potential misunderstanding, however, it should be noted that Appellant did not concede that Appellant is not covered under Appellant’s own insurance policy and/or that Appellant is not entitled to the full benefits of the underinsured coverage as mandated by the Utah’s underinsured statute.

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<sup>28</sup> See Appellee’s Brief: Pg. 21-22

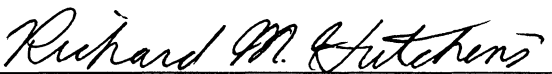
<sup>29</sup> See Appellee’s Brief: Pg. 20

## CONCLUSION

Appellant has clearly sustained a legally recognizable injury as a result of the death of Appellant's son; and Appellant, as a legally recognized heir, is entitled to recover damages therefor; thus, Appellant is entitled to recover on Appellant's claim for the underinsured benefits afforded to Appellant by Appellant's own automobile insurance policy with Allstate Insurance Company pursuant to the provisions mandated by Utah Code Section 31A-22-305(9)(a).<sup>30</sup>

Appellee's arguments to the contrary are not persuasive.

SIGNED AND DATED this 22<sup>nd</sup> day of April, 2005.

  
RICHARD M. HUTCHINS  
Attorney for Appellant

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<sup>30</sup> It is interesting to note that Appellee did not dispute Appellant's claim that the provisions of Section 31A-22-305(9)(a) mandate coverage be afforded to Appellant; furthermore, it is interesting to note that Appellee did not dispute Appellant's proffer of the interpretation of the plain language of the statute.

**PROOF OF SERVICE**

I certify that on this date I caused to be mailed two copies of this brief

(with attachments) to:

COUNSEL FOR APPELLEE:

JAN P. MALMBERG

PERRY, MALMBERG & PERRY

P.O. Box 364

Logan, Utah 84321

SIGNED AND DATED this 22<sup>nd</sup> day of April, 2005.



RICHARD M. HUTCHINS

Attorney for Appellant

## **ADDENDUM**



**UTAH CODE SECTION 31A-22-305(10)**

February 14, 2003

(10)

(a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in this Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

(b)

(i) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)(d)(i)(B).

(iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(c) Underinsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole.

(d)

(i) Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

(B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

**UTAH CODE SECTION 31a-22-305**  
2004

(10)

(a)

- (i) Except as provided in this Subsection (10), a covered person injured in a motor vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy.
- (ii) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.
- (iii) Subsection (10)(a)(ii) applies to all persons except a covered person described under Subsections (10)(b)(i) and (ii).

(b)

- (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's spouse, or the covered person's resident parent or resident sibling, may also recover benefits under any one other policy under which they are a covered person.

(ii)

- (A) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:

- (I) a dependent minor of parents who reside in separate households; and

- (II) injured while occupying or using a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's resident parent, or the covered person's resident sibling.

- (B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the percentage of the damages that the limit of liability of each parent's policy of underinsured motorist coverage bears to the total of both parents' underinsured coverage applicable to the accident.

- (iii) A covered person's recovery under any available policies may not exceed the full amount of damages.
- (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

- (v) The primary and the secondary coverage may not be set off against the other.
- (vi) A covered person as described under Subsection (10)(b)(i) is entitled to the highest limits of underinsured motorist coverage under only one additional policy per household applicable to that covered person as a named insured, spouse, or relative.
- (vii) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

(viii)

- (A) As used in this section, "interpolicy stacking" means recovering benefits for a single incident of loss under more than one insurance policy.
- (B) Except to the extent permitted by this Subsection (10), interpolicy stacking is prohibited for underinsured motorist coverage.

(c) Underinsured motorist coverage:

- (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;
- (ii) may not be subrogated by the workers' compensation insurance carrier;
- (iii) may not be reduced by any benefits provided by workers' compensation insurance;
- (iv) may be reduced by health insurance subrogation only after the covered person has been made whole;
- (v) may not be collected for bodily injury or death sustained by a person:
  - (A) while committing a violation of Section 41-1a-1314;
  - (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or
  - (C) while committing a felony; and
- (vi) notwithstanding Subsection (10)(c)(v), may be recovered:
  - (A) for a person under 18 years of age who is injured within the scope of Subsection (10)(c)(v) but limited to medical and funeral expenses; or
  - (B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.