

Online Reference: FLWSUPP 3210THOE

Insurance -- Uninsured motorist -- Coverage -- Policy exclusion for insured who sustains bodily injury while occupying vehicle owned by insured if it is not a newly acquired car excludes UM coverage for accident that occurred while insured's son was occupying motorcycle newly acquired by insured -- No merit to arguments that form approved by Office of Insurance Regulation rejecting stacking form of UM coverage was invalid and prevents insurer from relying on exclusion, that OIR-approved form and renewal notice render policy ambiguous, or that it is against public policy for insurer to extend UM coverage to insured operating newly acquired vehicles with four or more wheels but not those with only two wheels

BENDIX THOERMER, Plaintiff, v. STATE FARM FIRE AND CASUALTY COMPANY, et al., Defendant.
Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE24001618. Division 09.
December 11, 2024. Jeffrey R. Levenson, Judge.

ORDER DENYING PLAINTIFF'S MOTION

FOR SUMMARY JUDGMENT AND GRANTING

DEFENDANT STATE FARM'S MOTION

FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court for a hearing on November 26, 2024 on Plaintiff's October 11, 2024 Motion for Summary Judgment on the Declaratory Judgment Count Against the Defendant State Farm (hereinafter "Plaintiff's Motion") and Defendant State Farm's October 24, 2024 Motion for Final Summary Judgment (hereinafter "State Farm's Motion"), and the Court having reviewed the motions and supporting material, having heard the argument of counsel, having reviewed the file, and having otherwise been duly advised in the premises, it is hereby ORDERED AND ADJUDGED as follows:

1. This action arises from a motor-vehicle accident that occurred on November 26, 2022 involving Plaintiff BENDIX THOERMER and Defendant BROOKE L. NOBIL. Plaintiff's Complaint raises four counts. Count I seeks a declaratory judgment against STATE FARM FIRE & CASUALTY COMPANY (hereinafter "State Farm") as to whether an insurance policy issued to his parents provides underinsured-motorist ("UM") coverage for the accident. Count II is an action for UM coverage against State Farm. Counts III and IV are against BROOKE L. NOBIL and SYDNEY L. NOBIL, respectively.
2. In Plaintiff's Motion, Plaintiff seeks summary judgment as to the coverage question set forth in Count I. In State Farm's Motion, State Farm seeks final summary judgment as to Counts I and II. At the hearing held November 26, 2024, counsel for Plaintiff and State Farm both agreed that the material facts were not in dispute and that only questions of law remained.
3. The Court finds that there is no genuine issue of material fact with regard to the following:
 - a. State Farm issued an insurance policy to Carsten and Bianca Thoermer covering their 2018 Volkswagen Atlas (hereinafter the "Volkswagen Policy"). The Volkswagen Policy carried nonstacking uninsured/underinsured-motorist coverage ("UM coverage") with a limit of \$1,000,000. Carsten Thoermer signed a form approved by the Office of Insurance Regulation rejecting the stacking form of UM coverage.¹
 - b. Carsten Thoermer thereafter purchased a motorcycle, but he did not purchase a separate insurance policy for the motorcycle right away. Three days after purchasing the motorcycle, his

son, BENDIX THOERMER, was driving it and was involved in a motor-vehicle crash with another vehicle driven by Defendant BROOKE L. NOBIL. After the accident, Carsten Thoermer called State Farm and requested coverage for the motorcycle.

c. The Volkswagen Policy contains an exclusion stating: “THERE IS NO COVREAGE FOR AN **INSURED** WHO SUSTAINS **BODILY INJURY** [. . .] while **OCCUPYING A VEHICLE OWNED BY YOU** IF IT IS NOT **YOUR CAR** OR A **NEWLY ACQUIRED CAR**[.]”

d. BENDIX THOERMER was occupying the motorcycle at the time of the accident, and the motorcycle was owned by Carsten Thoermer, who falls within the Volkswagen Policy's definition of “**you**.” The motorcycle does not fall within the Volkswagen Policy's definition of “**your car**” or “**newly acquired car**.”

4. The Court concludes that the exclusion quoted above is unambiguous and excludes UM coverage for BENDIX THOERMER's accident of November 26, 2022.

5. BENDIX THOERMER argues that the OIR-approved form signed by Carsten Thoermer is defective or invalid and that therefore State Farm was not authorized to rely on the above-quoted exclusion. BENDIX THOERMER further argues that the OIR-approved form and/or a renewal notice sent to his parents by State Farm are part of the policy and render the policy ambiguous. The Court rejects both of these arguments.

6. Lastly, BENDIX THOERMER argues that because the Volkswagen Policy defines a “**newly acquired car**” as a “**car newly owned by you** or a **resident relative**” and a “**car**” as a “land motor vehicle with four or more wheels designed for use primarily on public roads . . .,” the Volkswagen Policy would have covered the accident if the two-wheeled motorcycle had been a four-wheeled “**car**” instead. Plaintiff argues that it is against Florida public policy for the policy to provide UM coverage to insureds operating newly acquired vehicles with four or more wheels but not newly acquired vehicles with only two wheels. State Farm responds that nothing in section 627.727, Florida Statutes, requires nonstacking UM coverage to extend to newly acquired vehicles at all, and it is free to provide greater coverage than the statute requires by extending coverage to newly acquired “**cars**,” even if it does not also extend coverage to newly acquired motorcycles. The Court agrees with State Farm.

7. The Court therefore finds that there are no genuine issues of material fact and that State Farm is entitled to a judgment as a matter of law as to Counts I and II of BENDIX THOERMER's Complaint. Accordingly, the Court hereby enters final summary judgment in favor of Defendant STATE FARM FIRE & CASULATY COMPANY and against Plaintiff, BENDIX THOERMER. The Court shall enter a separate Final Declaratory Judgment declaring, as to Count I of the Complaint, that the Volkswagen Policy does not obligate State Farm to provide UM coverage to BENDIX THOERMER as a result of the accident alleged in the Complaint, and providing, as to Count II, that Plaintiff, BENDIX THOERMER, shall take nothing from STATE FARM FIRE & CASULATY COMPANY and that STATE FARM FIRE & CASULATY COMPANY shall go hence without day.

8. The Court will retain jurisdiction to consider and rule upon any motion for costs under section 57.041, Florida Statutes.

¹The Court recognizes that Plaintiff professed to be without knowledge as to whether the form was approved by the Florida Office of Insurance Regulation, but the Court takes judicial notice that it was.

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