

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000554-MR

LADONNA ROY  
AND WILLIAM KEITH MONROE

APPELLANTS

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE THOMAS R. LEWIS, JUDGE  
ACTION NO. 98-CI-00855

KENTUCKY FARM BUREAU  
MUTUAL INSURANCE COMPANY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: HUDDLESTON, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: This is an appeal from a declaratory judgment finding that the appellee had waived his right to assert a claim for underinsured motorist (UIM) benefits because he failed to provide notice of settlement to his UIM insurer. Finding no error, we affirm.

The underlying facts of this action are not in dispute. Ladonna Roy was insured under a policy of automobile liability insurance with Kentucky Farm Bureau Mutual Insurance Company (Kentucky Farm Bureau). William Monroe became a covered person under that policy by virtue of his marriage to Ladonna Roy on

July 25, 1996. Monroe was also covered under a separate automobile insurance policy with State Farm Mutual Automobile Insurance Company.

On August 23, 1996, Monroe was involved in an accident in Warren County when the motorcycle he was operating collided with a vehicle driven by Rita Bray. Following the accident, Bray's liability insurance carrier, Grange Insurance Company, offered to settle the claim for her policy limits of \$50,000.00, in exchange for Monroe's release of all claims against Bray. Prior to accepting the settlement, Monroe notified State Farm of the proposed settlement. On May 1, 1997, State Farm agreed to waive its subrogation rights against Bray. Monroe settled with Grange and Bray on May 16, and he settled his UIM claim with State Farm for its policy limits of \$25,000.00 on June 12.

After conferring with his attorney concerning potential benefits available under his wife's policy, Monroe filed a formal presentation of claim for UIM benefits with Kentucky Farm Bureau on August 5, 1997. Kentucky Farm Bureau denied the claim. Thereafter, Kentucky Farm Bureau filed a petition for declaration of rights in Warren Circuit Court, seeking to determine its obligations to Monroe under the UIM policy. The circuit court determined that Monroe failed to notify Kentucky Farm Bureau of the settlement prior to accepting the policy limits from the liability carrier. Since he failed to comply with the procedural requirements of Coots v. Allstate Insurance Co., Ky., 853 S.W.2d 895 (1993), the trial court concluded that Monroe's claim for UIM coverage against Kentucky Farm Bureau is now barred. Monroe and Roy now appeal from this judgment.

In Coots v. Allstate Insurance Co., *supra*, the Supreme Court considered, among other things, whether a judgment is required against the tortfeasor before a claim for UIM may be maintained. Previously, this Court held that when a UIM insured settles his or her tort claim before obtaining a judgment against the tortfeasor, the insured has abrogated his or her right to UIM benefits, even if the insured would otherwise be entitled to UIM coverage. Kentucky Central Insurance Co. v. Kempf, Ky., App., 813 S.W.2d 829 (1991). In Coots, the Supreme Court overruled Kempf, finding that the UIM insured's settlement of the claim against the tortfeasor does not preclude a further claim for UIM benefits. However, the Court recognized that such a settlement would necessarily entail a release of the tortfeasor from further liability, resulting in a loss of UIM carrier's right of subrogation against the tortfeasor.

Consequently, the Supreme Court established a procedure to allow the UIM insured to receive the benefit of the settlement, and to allow the UIM carrier the opportunity to preserve its subrogation rights against the tortfeasor. The UIM insured must advise the UIM carrier of his intent to settle the claim for the limits of the tortfeasor's liability policy. At this point, the UIM carrier may either waive its right to subrogation and allow the settlement to go forward, or it may substitute its payment to the UIM insured in an amount equal to the proposed settlement. In this way, the UIM carrier will protect its subrogation rights, and the UIM insured will receive the amount of the settlement immediately. Coots, 853 S.W.2d at 902.

The trial court concluded that Monroe's failure to notify Kentucky Farm Bureau of the proposed settlement deprived it of the opportunity to preserve its subrogation rights against Bray. Monroe argues that the Supreme Court's opinion in Coots allowed the UIM insurers in that case to substitute the amount of the settlements to the liability carriers and thereafter to pursue the tortfeasors for any further sums for which the UIM carriers may become obligated to the UIM insureds under the UIM policies. Id. at 904. Monroe asserts that Kentucky Farm Bureau still has the option of repaying Grange for the amount of the settlement and pursuing any potential subrogation claim against Bray.

This is not an accurate interpretation of the holding of Coots. In overruling Kentucky Central Insurance Co. v. Kempf, supra, and in establishing the new rule allowing a UIM carrier to substitute the amount of the proposed settlement to preserve its subrogation rights against the tortfeasor, the Supreme Court in Coots recognized that it was making new law. Furthermore, the tortfeasors in that case had already tendered their policy limits and settled their respective claims. To carry out the effect of its decision for the parties before it, the Supreme Court directed that the UIM carriers in that case should have the option either to honor the settlement or to repay the settlement sums to the liability carriers and thereafter pursue the tortfeasors and their liability carriers for any further sums for which the UIM carriers might be obligated to pay to their UIM insureds. The directive of the Supreme Court in

Coots was specific to the parties in that action, and it does not have general application beyond that case.

The primary holding of Coots is clear: a UIM insured must notify his UIM carrier prior to the settlement and afford the UIM insurer an opportunity to protect its subrogation rights. Monroe failed to provide timely notice of the tentative settlement to Kentucky Farm Bureau. Therefore, he has waived his right to recover UIM benefits under that policy.

Furthermore, there are no material facts in dispute which would have precluded judgment. Monroe asserts that he notified Kentucky Farm Bureau of the accident prior to the settlement. Assuming this to be correct, there is no dispute that Monroe failed to notify Kentucky Farm Bureau of the proposed settlement. In the absence of such notice, Monroe is not entitled to UIM benefits, even if Kentucky Farm Bureau was aware that the accident had occurred. Lastly, we find no authority for Monroe's contention that Kentucky Farm Bureau had an affirmative duty to advise Monroe of UIM coverage and the proper procedure for filing a claim. As a result, the trial court properly granted the declaratory judgment for Kentucky Farm Bureau.

Accordingly, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
APPELLANTS:

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BRIEF AND ORAL ARGUMENT FOR  
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