# Operation of law expands minimum auto policy limits

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The statutes governing the amount of insurance coverage required in a motor vehicle liability policy since Jan. 1, 1996 clearly and explicitly require, at a minimum, "twenty-five thousand dollars [$25,000] because of bodily injuries to and fifty thousand dollars [$50,000] because of death of one person in any one accident and, subject to said limit for one person, to a limit of fifty thousand dollars [$50,000] because of bodily injury to and one hundred thousand dollars [$100,000] because of death of two or more persons in any one accident, and to a limit of ten thousand dollars [$10,000] because of injury to or destruction of property of others in any one accident . . . ." *See*, VTL §§ 311(4); 345(b)(3). The same minimum statutory requirements apply to uninsured motorist coverage as well. *See*, Ins. L. § 3420(f)(1). The law also allows insurers to write policies of bodily injury liability and/or uninsured motorist coverage with "combined single limits," which include coverage for multiple claimants (and, in the case of liability coverage, includes property damage coverage as well).

It is well-established that any policy that does not comply with the statutorily required minimum limits will be deemed to so comply. *See*, Ins. L. §3420(f)(1); *Rowell v. Utica Mut. Ins. Co.*, 77 N.Y.2d 636, 569 N.Y.S.2d 399 (1991); *Public Serv. Mut. Ins. Co. v. Kutcher*, 36 N.Y.2d 295, 367 N.Y.S.2d 752 (1975); *Michigan Mut. Ins. Co. v. Miller*, 170 A.D.2d 102, 573 N.Y.S.2d 305 (2d Dept. 1991).

A question that often arises is: what is the total available coverage under a minimum limits (25/50/100) policy in a situation where two (2) or more people are injured and two (2) or more people are killed in a single accident? An even more interesting question, and one that naturally follows from the first, is: what is the total bodily injury or uninsured motorist coverage under a $100,000 combined single limit policy under the same circumstances? In *Allstate Ins. Co. v. Libow*, 106 A.D.2d 110, 482 N.Y.S.2d 860 (2d Dept. 1984), *aff'd*, 65 N.Y.2d 807, 493 N.Y.S.2d 128 (1985), the Court held that if a claim is made on behalf of one person for both pain and suffering and death which follows, the applicable coverage limit is not the combined total of the limits for bodily injury and death – then $10,000, now $25,000-- plus $50,000, but, rather, only the limit for death – $50,000. Although the Court held that there could be no aggregation of claims for bodily injury and death to the same persons, it did not address the question of aggregation of bodily injury and death claims involving different

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persons. *See, also, Allen v. Haskins*, 120 Misc.2d 1073, 467 N.Y.S.2d 153 (Sup. Ct. Nassau Co. 1983).

In *Boylin v. Branicky*, 134 Misc.2d 549, 511 N.Y.S.2d 529 (Sup. Ct. Erie Co. 1987), a case in which two individuals were injured and a third individual was killed, the court was called upon to determine the extent of insurance coverage available under a $50,000/$100,000 personal injury liability policy. The Plaintiffs argued that there was a total of $150,000 available – $50,000 for the death and $100,000 ($50,000 each) for the two injuries. The insurer argued that the policy provided for a total of $100,000 coverage – $50,000 for the death and a total of $50,000 for the injuries. In determining this question, the court referred to a 1979 Circular Letter (No. 28) of the State Superintendent of Insurance regarding the implementation of the 1979 statutory amendment that established the $50,000/$100,000 minimum limits for death. The court noted that the Superintendent had opined that the $50,000/$100,000 death minimum was separate and distinct from the (then $10,000/$20,000) personal injury liability minimum. The court also noted that "According to various illustrations offered by the Superintendent in this Circular Letter, it appears that he interpreted the statute to preclude 'stacking' of coverage by one individual, but not with respect to the aggregation of injury and death claims by different individuals. The Superintendent's fourth illustration, under a policy with $10,000/$20,000 limits, concerned two or more persons dying and two or more persons injured in a single accident. According to this illustration, the available coverage would total $120,000 – a maximum of $100,000 for the two death cases and a maximum of $20,000 for the two personal injury cases. Likewise, in a hypothetical case with policy limits of $25,000/$50,000, where two or more died and two or more sustained personal injuries, the Superintendent took the position that a total of $150,000 would be available – a maximum of $100,000 for the two death cases and a maximum of $50,000 for the two personal injury cases."

Based upon the foregoing analysis, the court held that under the facts of the Boylin case, the plaintiffs were correct and there was $150,000 available coverage – $50,000 for the single death, and $100,000 for the two injuries. Notably, the court added that to adopt the insurer's contrary position "would result in the anomalous result whereby there would be more coverage available under a $25,000/$50,000 policy than under the $50,000/$100,000 policy involved in the case at bench."

The *Boylin* court further added that the categories of personal injury not resulting in death and cases involving death are "separate and distinct" and that the statutes and regulations do not indicate "that by using up a portion or all of one category that the available coverage in the other category is in any respect diminished."

Similarly, two years later, in *Oto v. Ogtong*, 143 Misc.2d 905, 542 N.Y.S.2d 953 (Sup. Ct. N.Y. Co. 1989), where two persons were injured and one was killed, the court held that $150,000 was available under a policy with coverage limits of $50,000/$100,000. Therein, the court noted that "The intent of the Legislature was to grant a minimum coverage of $50,000 in the event of death arising out of an auto accident. The position taken by [the insurer] is that because of the $100,000 limit of the policy, each injured party would receive a maximum of $25,000 each, with $50,000 to be paid on the death claim. Such a position is totally unsupported by the record or applicable law. The statutory minimum coverage is not to be made available at the expense of the contractual coverage of $50,000 for each injured party."

In *Harleysville Mut. Ins. Co. v. Boerst*, 115 Misc.2d 1006, 454 N.Y.S.2d 826 (Sup. Ct. Erie Co. 1982), aff'd on opinion below, 101 A.D.2d 686, 475 N.Y.S.2d 809 (4th Dept. 1984), a case in which one person was killed and four were injured, the defendant, a Pennsylvania resident, had a $75,000 combined single limit policy. The court found that this policy conformed with New York's then-applicable statutory minimums (10/20/50/100) because $50,000 was to be set aside for the death, $20,000 was to be available for the four personal injury actions, and $5,000 was to be set aside for the property damage claims ($5,000 property damage required coverage at that time). Significantly, the court added that while the policy provided adequate coverage under the New York limits, if such were not the case, and the policy did not provide the minimum required amounts recoverable under New York law, the court would intervene to read the policy as meeting those limits. *See, also, Boylin v. Branicky, supra*, 134 Misc.2d at 553-54, 511 N.Y.S.2d at 532.

In *Hertz Corp. v. GEICO*, 250 A.D.2d 181, 683 N.Y.S.2d 483 (1st Dept. 1998), a case where two people were killed and two were severely injured, Empire, the insurer for one of the defendants, which had issued a $50,000 CSL policy, offered $150,000 towards a total settlement, which included a $50,000 combined single limit for bodily injury and $100,000 for the two deaths.

Given the logic of these cases, it is clear that $100,000 combined single limit policy cannot provide less coverage than a $25,000/$50,000 split limit policy. Just as a $25,000/$50,000 policy – the smallest possible automobile bodily injury liability policy under the law – is deemed, by operation of law, enlarged to include a total of $150,000 in coverage where there are two (or more) deaths and two (or more) injuries, so, too, must a $100,000 combined single limit policy be enlarged to $150,000 to bring it into compliance with the statutory minimum coverage. Indeed, the Supreme Court, Suffolk County, Justice Catterson, recently held exactly that in the unreported case of *Canales v. Clarendon National Insurance Company*, Index No. 02-08660 (Order dated May 16, 2003).

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