An Expansive View of the Insurable Interest Requirement

By Richard M. Mitchell, Esq., CPCU

The Michigan Court of Appeals recently affirmed a trial court's ruling addressing Michigan's insurable interest requirement. In *MemberSelect Insurance Company v Flesher et al.* (Case No. 348571 decided April 23, 2020), the court held that a named insured had an insurable interest in an automobile owned by her 33-year-old nonresident son. It was undisputed that the son, not the named insured, was the owner and registrant of the vehicle and did not live with his mother. Rather, he requested that his mother insure the vehicle because the premiums would be less expensive than if he insured it in his own name. After examining the history of the insurable interest requirement in Michigan, the court held that the mother had an insurable interest in her son's vehicle. While this decision was in the context of an automobile policy, and examined primarily from a liability rather than property perspective, the language of the opinion suggests potential application to other types of policies issued to Michigan insureds.

Details of Accident and Procedural History

On July 4, 2016, Kenneth Flesher was injured in a hit and run accident while operating his motorcycle. The parties later determined that the vehicle involved was a GMC Yukon owned by Nicholas Fetzer. Flesher brought a negligence action against Fetzer. MemberSelect Insurance Company ("MemberSelect") assigned counsel to defend Nicholas in that action. MemberSelect simultaneously brought an action seeking declaratory relief claiming that its named insured, Kelly Fetzer, had no insurable interest in the vehicle.

In her deposition, Kelly Fetzer testified that Nicholas owned the vehicle, which was undisputed. She further testified that she had never ridden in it and had no plans ever to do so. Nicholas was 33 years old, had his own family and did not live with Kelly. Rather, he asked his mother to insure the vehicle under her policy because the premium payments would be significantly less than if he insured it in his own name. She paid the monthly premiums to MemberSelect and Nicholas

reimbursed her.

The trial court heard motions for summary disposition in the matter. As to the negligence claim, the Court held there was admissible evidence that strongly implied that the Yukon was not the vehicle involved in the accident and that Flesher had failed to respond with admissible evidence to raise an issue of material fact to the contrary. It, therefore, granted the summary disposition motion filed by Nicholas and MemberSelect on the negligence claim.

MemberSelect then argued that, despite this ruling, the issue in the declaratory action was not moot. The trial court held that Kelly Fetzer had an insurable interest in the Yukon stating that there was “no requirement that the insured actually owned or be the registrant of a vehicle in order to have an insurable interest.”

Analysis

The court initially examined the principle of an “insurable interest” and whether it was truly a requirement for issuance of an automobile policy. It noted that the doctrine originated in public policy concerns and case law rather than statute. Its purpose was to avoid a situation in which an insured could insure something in which he or she had no actual interest, thereby recovering without actually having lost anything. Examining *Allstate Insurance Company v State Farm Mutual Auto Insurance Company*, 230 Mich App 434 (1998) and *Clevenger v Allstate Insurance Company*, 443 Mich 646 (1993), the court found that an insurable interest was required in order to be a named insured pursuant to an automobile policy.

The court then turned to consideration of whether Kelly Fetzer had an insurable interest in her son’s GMC Yukon. The Court of Appeals agreed with the trial court that one need not actually own a vehicle in order to insure it. Rather, it found that an insurable interest could arise not just from ownership, but from any kind of benefit from the object being insured or any kind of loss that would be suffered by its damage. The Court further noted that an individual has an insurable interest in his own health and well-being. The Court noted *Morrison v Secura Insurance*, 286 Mich App 569 (2009), which stated that “family members share large portions of their lives and properties in ways that they do not with strangers.”

The Court took *Morrison* one step further, holding:

We conclude, reaching the issue that this Court declined to reach in *Morrison*, that Kelly had a sufficient interest in the well-being of her adult child that we should not void her insurance policy on public policy grounds. An insurable interest may be found, at least in some circumstances, in the property, or the life insured, by an insurance policy. . . [A]lthough unlike the adult child in *Morrison*, Nicholas does not live with Kelly (and in fact, has several children of his own), we do not believe that it is so dispositive a factor as to divest Kelly of an insurable interest: our courts have long noted that even a de minimis insurable interest may be insured. . .'

Consequently, the Court of Appeals upheld the trial court ruling that Kelly had an insurable interest in a vehicle owned by her adult son.

Conclusion

The *MemberSelect* court addressed the issue of insurable interest in the context of an automobile policy. The expansive language, however, could be interpreted to apply to other types of policies. In Michigan, the concept of an insurable interest is not dead. Michigan, however, has certainly taken a broad view of its meaning.