

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2005 CA 1906**

**SUNDAY JUMONVILLE, ET AL.**

**VERSUS**

**ALLSTATE INSURANCE COMPANY, ET AL.**

Judgment Rendered: SEP 20 2006

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On Appeal from the 18<sup>th</sup> Judicial District Court  
In and For the Parish of Iberville, State of Louisiana  
Trial Court No. 61,000, Division "B"

Honorable J. Robin Free, Judge Presiding

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**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

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**HUGHES, J.**

This is an appeal from a summary judgment granted in favor of an insurance company dismissing claims for coverage by an automobile passenger for uninsured motorist coverage. For the following reasons we affirm.

On June 22, 2003, Sunday Jumonville was a passenger in a 1996 Nissan Maxima, driven by Dylan J. Bagwell and owned by Arthur Bagwell, which was involved in a motor vehicle accident with a 1993 Chevrolet Blazer driven by Jessie Landry. Ms. Jumonville was injured and subsequently filed suit, individually and on behalf of her minor children, alleging negligence on the part of both Dylan Bagwell and Jessie Landry. Ms. Jumonville named as defendants in the suit: Dylan J. Bagwell and Allstate Insurance Company (Allstate), the insurer of the Nissan. Arthur Bagwell had both an automobile insurance policy and personal umbrella policy, which included uninsured motorist coverage. In addition to liability coverage, Ms. Jumonville asserted coverage in her favor under the uninsured motorist provisions of the Allstate umbrella policy.<sup>1</sup> In a subsequent amending and supplemental petition for damages, Ms. Jumonville further contended that she was entitled to exemplary damages under LSA-C.C. art. 2315.4, based on the reckless disregard of Dylan Bagwell in operating a motor vehicle while intoxicated.

Allstate admitted in the trial court that under the primary policy of automobile insurance applicable to the Nissan, Ms. Jumonville was an

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<sup>1</sup> On June 21, 2004, Dylan Bagwell filed a third party petition asserting the sole fault of Jessie Landry and alleging that Mr. Landry had minimal liability coverage with Southern Farm Bureau Casualty Insurance Company (Southern Farm Bureau). Mr. Bagwell further alleged that Southern Farm Bureau had tendered to him the policy limits, which he alleged were inadequate to compensate him for his damages. Mr. Bagwell named Allstate as the third party defendant, asserting entitlement to coverage under the uninsured motorist coverage provisions of the policy at issue. However, these claims are not at issue in the current appeal.

insured as she met the policy definition of any person “while in, on, getting into or out of an insured auto” with permission. Allstate contended in the lower court that it tendered the \$100,000 limits of uninsured/underinsured motorist coverage under the primary policy; however, Allstate claimed that Ms. Jumonville was not an insured for purposes of the personal umbrella policy, which only covered the named insured and “any resident relative and their legal representatives.”

Both Allstate and Ms. Jumonville filed motions for summary judgment seeking a ruling on the issue of coverage. Following a hearing, summary judgment was granted in favor of Allstate, finding no coverage under the umbrella policy, and dismissing the claims of Ms. Jumonville; Ms. Jumonville’s countermotion for summary judgment was denied.<sup>2</sup> The judgment was designated a final appealable judgment. Ms. Jumonville appeals, asserting the trial court erred in failing to find uninsured motorist coverage in her favor under the Allstate umbrella policy.

On appeal, Ms. Jumonville contends in essence that it is impermissible under Louisiana’s uninsured motorist statute, LSA-R.S. 22:680, for two “primary” policies of automobile insurance to have different definitions of an “insured.”

This court has previously decided the precise issue presented in this appeal in **Lambert v. Lavigne**, 2004-1961 (La. App. 1 Cir. 9/23/05), 923 So.2d 704, writ denied, 2005-2283 (La. 3/10/06), 925 So.2d 515, which also dealt with the uninsured motorist coverage(s) provided by Allstate

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<sup>2</sup> At the hearing on the motions, the trial court interpreted the Allstate personal umbrella policy as providing liability coverage for any negligence of Dylan Bagwell, but found that since Ms. Jumonville was not an insured under the policy, she was not entitled to uninsured motorist coverage.

automobile and personal umbrella policies. In the **Lambert v. Lavigne** case, this court stated:

It is undisputed in this case that [plaintiff] does not meet the personal umbrella policy's narrowly drawn definition of an "insured" for the purposes of UM coverage, which defines an insured to include [the named insured] and relatives residing in his household.

Nevertheless, [plaintiff] insists that the UM law mandates that Allstate extend UM coverage provided for in the umbrella policy to persons who are injured while occupying an automobile owned by the named insured. In support of this argument, [plaintiff] cites a section of the UM law, LSA-R.S. 22:680(1)(c)(i), commonly referred to as the "anti-stacking" provision. [Plaintiff] contends that the language of Allstate's policy regarding other insurance conflicts with the mandatory language of the anti-stacking provision, and thus impermissibly excludes him from UM coverage.

[Plaintiff's] reliance on the anti-stacking provision, however, is misplaced. This provision does not delineate those persons to whom UM insurance coverage must be made available. Rather, this provision prohibits the stacking of multiple UM coverages available to the same insured except under limited circumstances. The question of stacking only arises once it is determined that the person seeking to cumulate benefits on two or more UM coverages is an "insured" under the terms of those policies. Since [plaintiff] is not an insured under [the named insured's] personal umbrella policy, this provision has no bearing on the coverage dispute at issue in this case.

Although the result mandated by the policy language seems onerous, given the nature and purpose of an umbrella policy, i.e., to afford an added layer of protection to consumers who obtain such policies, we must conclude the parties are bound by the policy language as written. Thus, in line with the established jurisprudence, we find that an excess insurer is not required, by existing statute or public policy, to provide UM coverage to a guest passenger injured in an automobile owned by its insured.

**Lambert v. Lavigne**, 2004-1961 at pp. 4-5, 923 So.2d 704, at 706-7 (citation omitted).

Because **Lambert v. Lavigne** is controlling in this case, we cannot say the trial court erred in granting summary judgment in Allstate's favor, finding no uninsured motorist coverage available to Ms. Jumonville under the Allstate umbrella policy.

Therefore, we affirm the trial court judgment in accordance with Uniform Rules - Courts of Appeal, Rule 2-16.1(B). All costs of this appeal are to be borne by appellant, Sunday Jumonville.

**AFFIRMED.**