

COLORADO COURT OF APPEALS

Wenzell v. United Services Automobile Ass'n.

2024 COA 40. No. 23CA1327. Automobile Insurance Policies—Uninsured/Underinsured Motorist Benefits—Improper Denial of Claims—Remedies for Unreasonable Delay or Denial of Benefits—Failure-to-Cooperate Defense.

April 18, 2024

Wenzell was in a serious car crash that caused long-term spinal injuries and persistent pain. He later underwent surgery, which improved his symptoms, but then Wenzell was rear-ended in a new accident. After this second accident, Wenzell reported that his pain worsened and his recovery faltered. Wenzell sought monetary compensation from insurance. He first settled with the insurance company covering the driver who had rear-ended him, exhausting the other driver's liability insurance coverage. Wenzell then made claims with his insurance providers—State Farm Mutual Automobile Insurance Company (State Farm) and United Services Automobile Association (USAA)—seeking uninsured motorist (UIM)

benefits under USAA's UIM policy. Wenzell later added an unreasonable denial or delay of benefits claim against State Farm. The trial court granted summary judgment in favor of State Farm and USAA, disposing of the breach of contract and unreasonable denial and delay claims.

On appeal, Wenzell argued that the trial court erroneously granted State Farm's and USAA's motions for summary judgment based on his noncooperation. State Farm and USAA moved for summary judgment on grounds that Wenzell had failed to cooperate by not providing information necessary to investigate his claim, arguing that his noncooperation constituted a failure to comply with a condition precedent rather than an affirmative defense. CRS § 10-3-1118(1) provides that before an insurer can assert a failure to cooperate defense against an insured it must (1) inform the insured in writing that the insurer needs information that is unavailable without the insured's assistance, and (2) that the "request is for information a reasonable person would determine the insurer needs to adjust the claim filed by the insured or to prevent fraud." Insurers must also allow an insured 60 days to respond to the request for information and provide an opportunity to cure. Strict compliance with the statute is required. Here, neither State Farm nor USAA complied with these statutory requirements. Accordingly, neither company could assert that Wenzell failed to cooperate, so the trial court erred by granting both companies summary judgment on these grounds.

Farm's primary UIM policy. Here, the trial court concluded that USAA cannot have unreasonably delayed or denied UIM benefits to Wenzell when State Farm's UIM benefits had yet to be exhausted, and that Wenzell's noncooperation with State Farm carried over to USAA. However, if it is determined that Wenzell is entitled to damages beyond the sum of the other driver's liability insurance and State Farm's UIM insurance, USAA will be required to pay Wenzell's excess damages up to its policy limit. Therefore, the trial court erred by granting USAA's motion for partial summary judgment on grounds that USAA could not have unreasonably denied benefits until State Farm's policy had been exhausted. Further, because USAA's UIM policy does not require the exhaustion of State Farm's UIM policy, the trial court erred by determining that the acceptance of State Farm's noncooperation defense carried over to USAA, which had an independent duty to investigate Wenzell's UIM claim to determine if its coverage might be implicated.

Wenzell also asserted that disputed material facts required the trial court to deny summary judgment on his claim of unreasonable delay or denial of benefits against State Farm under CRS §§ 10-3-1115 and -1116. Here, rather than demonstrating that there was no dispute concerning a material fact, State Farm's motion for summary judgment points to facts in the record that indicate the existence of a genuine dispute of material fact. Therefore, the trial court erred by granting summary judgment in favor of State Farm and dismissing Wenzell's unreasonable delay and denial claim.

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