Deputy Recovers Insurance Policy Limits After Favorable Judgment

On April 5, 1998, Deputy Doe pulled off the side of a busy interstate highway to assist a motorist who had run out of gasoline. Deputy Doe walked to the trunk of his patrol car to obtain flares for the roadway to caution approaching motorists. Though it was broad daylight, another motorist approaching the scene ran into the back of the patrol car, pinning Deputy Doe between the two cars. The impact resulted in the traumatic bilateral amputation of both of Deputy Doe's legs. It also resulted in massive injuries to his body, as well as serious head injuries.

The disabled vehicle and the vehicle which struck Deputy Doe from behind were underinsured and uninsured respectively. Consequently, Deputy Doe turned to the coverage carried by his department, on his patrol car, for additional compensation. Florida Statute 768.28 dictates that governmental entities, such as the Sheriff's department in this case, enjoy sovereign immunity with liability limits capped at $100,000 per injury and a total of $200,000 per occurrence. Deputy Doe's department chose to be self-insured for the $100,000/$200,000 sovereign immunity limits. Over and above that, the department purchased insurance coverage to respond to any claims exceeding the statutory limits.

In the state of Florida, every motor vehicle bodily injury liability policy must provide uninsured motorist coverage with limits equal to the amount of liability coverage provided by the policy. In order to carry lesser uninsured motorist coverage, Florida Statutes require the policyholder to specifically reject the coverage by signing a particular form. **Continued on page nine.**

Accident site where Deputy Doe was injured.

Favorable Summary Judgment For Injured Deputy

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However, according to the statute, this rejection requirement only applies to what are deemed to be "primary" policies.

In Deputy Doe's case, his department's insurance company took the position that the insurance coverage it had purchased was "excess" coverage, given the fact that they were self-insured up to the statutory $100,000/$200,000 cap. By arguing that the policy was not primary, the carrier took the position that it was not subject to the uninsured motorist coverage rejection procedures required by statute. Deputy Doe took the position that the department's "self-insurance" was not insurance at all, and that the excess insurance coverage purchased by the department was actually the primary insurance policy available to Deputy Doe.

In response to the insurance company's Motion for Summary Judgment, the court ruled that this policy at issue was indeed a "primary" insurance policy that was subject to the rejection requirements of the Florida statute. Since the carrier had never obtained an appropriate rejection form, the carrier was held responsible for providing excess uninsured motorist protection for Deputy Doe as a matter of law.

Attorneys Chris Searcy and Earl Denney, along with attorney Todd Middlebrooks of Ft. Lauderdale, represented Deputy Doe. In the end, Deputy Doe's case was resolved for the full amount of his department's excess coverage, plus an aggregate total of $300,000 in the coverage provided by his personal insurance policy and the insurance policies carried by the other motorists involved. ■