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Municipal Liability Cap and Insurance: Butler Snow

Although attempts have been made to expand the meaning of "legally entitled to recover" when the municipal statutory damages cap is involved, plaintiffs have not been successful in recovering beyond the statutory cap in Alabama.

In *State Farm Mutual Automobile Insurance Company v. Causey*, 509 F. Supp. 2d 1026 (M.D. Ala. 2007), State Farm filed a declaratory judgment action seeking the court to declare that it had no obligation or duty to pay uninsured/underinsured motorist benefits to the defendants as a result of an accident with a municipal employee. The central issue presented was whether an insured can recover uninsured/underinsured motorist benefits from her own UM/UIM carrier when the alleged tortfeasor is a municipality and enjoys the benefit of a statutory cap on damages.

In *Causey*, the defendants were involved in an automobile accident with a street sweeper operated by a municipal employee. The defendants alleged the operator of the street sweeper negligently and wantonly caused the automobile accident which injured the defendants. As a result of the accident, the municipality on behalf of itself and its employee paid its policy limits of $100,000 to the defendants.

State Farm argued it had no liability to the defendants for any judgment in excess of the $100,000 since the undisputed evidence showed that the tortfeasor was acting in the line and scope of his employment with the municipality at the time the accident occurred and the municipal damages cap found in Alabama Code §11-93-2 applied, as a matter of law, to municipal employees acting in the line and scope of their municipal employment.

The municipal damages cap set forth above was held constitutional by the Alabama Supreme Court in *Home Indemnity Co. v. Anders*, 459 So.2d 836, 841 (Ala. 1984). In *Causey*, the Court held that the defendants had already received what they were "legally entitled to recover" as a result of the accident and affirmed the judgment in favor of State Farm.

The same issue was presented in the case of *Kendall v. United Services Auto. Ass'n*, 23 So.3d 119 (Ala. 2009), where the meaning of the phrase "legally entitled to recover" was discussed. The Alabama Supreme Court, in discussing its prior decision in *Ex parte Carlton*, 867 So. 2d 332 (Ala. 2003), held that "[t]oday we return to the point from which this Court never should have departed – the language of the statute. The language of the uninsured-motorist statute is plain and unambiguous." *Kendall* at 1112. In *Kendall*, the Alabama Supreme Court agreed with the holding in *Causey*, refused to expand the meaning of "legally entitled to recover" and affirmed the lower court's ruling that the insured was not legally entitled to recover damages from the county beyond the statutory cap she already received through settlement, and, thus, was not entitled to UIM benefits.

With the decisions of *Causey* and *Kendall* controlling, the statutory cap on recovery is preserved.

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