

## **Who Is Insured? The 'Named Driver' Condition**

The plaintiff's allegation was that he was injured in an auto accident when he was a passenger in a vehicle owned by Walker and driven by Gilmore. At the time of the accident, Walker's vehicle was insured under a personal auto policy issued by the Titan Indemnity Co. and underwritten by Victoria Fire & Casualty Company. The policy stated that it did not provide liability insurance for any person who was not listed as a "named driver" on the policy. Walker was the sole listed driver. The insurer thus denied the plaintiff's claim, and the plaintiff, Byoung Suk An, brought suit against Gilmore and Victoria F&C Co., seeking declaratory judgment that Victoria had a duty to defend and indemnify Walker and Gilmore. The trial court reviewed the policy and found in favor of the insurer, as the driver was not listed on the policy.

Byoung Suk An appealed to the Superior Court of Pennsylvania, arguing that the "named drivers only" exclusion in the Victoria policy conflicted with and was contrary to the named driver exclusion of Pennsylvania's Motor Vehicle Financial Responsibility Law, and was therefore invalid. That law allows an insurer or first named insured to exclude any person from benefits when the first named insured has requested that the person be excluded from coverage while operating the insured vehicle. The court reviewed Walker's application, noting that she had agreed to and initialed the warranties that a person not listed in the policy would not be permitted at any time to operate any vehicle identified in the declarations. Thus the policy did not apply when the vehicle was operated by any driver not listed, and the court found no conflict with the state law.\*

Until the U.S. Supreme Court ruled in favor of "gay marriage" in 2015, there was frequently a conflict between states that recognized such marriages and those that did not or had laws opposing gay marriage. The Personal Auto Policy defines the insured "you" as "1. The 'named insured' shown in the Declarations; and 2. The spouse if a resident of the same household..." "Spouse" is not defined, and normal definition would not include a "partner" of whichever gender.

While no major litigation had arisen on this issue before the Supreme Court's ruling, the problem still exists to some extent in states that do not recognize what is known as "common law marriage." Fourteen states plus the District of Columbia recognize such marriages, although there are caveats, such as cut-off dates in Georgia, Idaho, New Hampshire, Pennsylvania and in Ohio, where it is recognized for inheritance purposes only. While "partners" would normally be "permissive users" in states where they are not a "common law" spouse, there are potential situations in which "Mrs. Smith" who is not legally

married to “Mr. Smith” could create coverage issues, such as where the non-legal spouse partner gives permission to someone to use a vehicle other than the “covered auto,” and a serious accident results. The PAP does include as an *insured* “any person using ‘your covered auto,’” which is defined in the policy. If permission was given for use of any other auto by the non-spouse, a question of permissive use could arise.

It is because of this type of claim that Crawford & Company®’s Educational Services offers both classroom and KMC on Demand courses that cover the intricacies of insurance coverage, contract and liability issues and an understanding of damages.

\*Pa.: *Byoung Suk An v. Victoria Fire & Cas. Co.*, 113 A.3d 1283, (Pa. Supr., 2015).