

INSTRUCTIONS

You may use one bluebook if you write on both sides of the pages, or two bluebooks if you write on only one side (or every other line, or anything that adds up to one bluebook on both sides). If you type, make a good faith estimate of the equivalent. Please put answers in the bluebook; if you type, put the pages into the bluebook cover.

You may use any materials you wish, but nothing beyond the casebook and class discussion is necessary.

QUESTION 1

Bob and his wife Betty were injured in an accident in Tennessee with an uninsured driver; the pickup truck they were driving was also uninsured. At the time Bob was temporarily living with his parents and Betty with her parents, both in Tennessee. They had been living in Pennsylvania while Bob attended graduate school and were planning to move to Virginia, where Bob had a job scheduled to begin six weeks after the accident. They had found a house in Virginia and negotiated a lease, but the lease was not signed until a few days after the accident. They had also made a deposit for telephone service to that house and were receiving some mail there. Neither had a Tennessee driver's license and their car was licensed in Pennsylvania. They were registered to vote in Tennessee, but had not voted for several years; they did not plan to register in Virginia.

Both sets of parents had vehicles, insured by the same insurer, and each claimed under the uninsured motorists provision of his or her parents' policy. Both policies had \$10,000/\$20,000 limits and covered family members, defined as "a person related to you by blood, marriage or adoption, who is a resident of your household." The insurer denied the claim on the ground that neither was resident in the household. Decide the case.

QUESTION 2

Sarah and Jack Allen operate a marina with docks for about 100 boats. Gregory has been their insurance agent for several years, and procured all-risk insurance for them. In 1993 the insurer notified Gregory and the insureds that the policy would not be renewed. Gregory contacted more than two dozen companies to procure a replacement policy, but he could obtain only defined risk coverage. He wrote the Allens, explaining that the new policy would cover fire, extended coverage, and vandalism, and would exclude theft. He did not mention that it would not cover ice and snow as the all-risk policy had. He sent the new policy to them with an accompanying letter, but it did not address the issue of ice and snow clearance. These months later an ice and snow storm caused eighteen covered wooden docks at the marina to collapse. Sarah

filed a claim with Gregory; he forwarded it to the carrier, which denied it because ice and snow was not one of the perils named in the policy.

The Allens sued Gregory, alleging that he was negligent in failing to inform them that ice and snow were not covered. At trial, he testified that at the time the policy was issued the market for marina insurance was very tight and that he had informed Sarah of that fact. He said that they had never specifically requested ice and snow coverage. The Allens' insurance expert (and subsequent agent) supported Gregory's testimony that the market was tight and also stated that a year or two later, when he was able to obtain the coverage for the Allens, the premium was so high, that they were not willing to pay for it. However, he testified that an agent has a duty to notify the client if coverage in a renewal or replacement policy is less than previous coverage. Jack testified that, if he had known that the policy did not cover ice and snow, he would have tried to find the coverage elsewhere because ice and snow is a great risk to marinas. Sarah stated that, regardless of coverage, they would continue to operate the marina, and she admitted that if the coverage was prohibitively expensive they would not have purchased it.

The trial court entered judgment for the plaintiff. It found that Gregory breached a duty to fully disclose material changes in the coverage and that this caused a loss. The court of appeals reversed. It agreed that Gregory breached a duty to inform, but concluded that this was not the cause of the loss because the coverage was unavailable and Sarah would not have been able to do anything about it even if she were aware of it. Sarah appealed to the supreme court.

Decide the case.

QUESTION 3

Jim Jones was injured when the company car he was driving collided with a car driven by Pam Smith. The company car was a covered auto under a multiple-coverage fleet policy. Jim brought an action against Pam, alleging negligence in failing to keep a proper lookout and driving in a reckless manner. He claimed for serious and permanent injury causing medical and other expenses and decreased earning capacity. Jim and Pam had automobile insurance with the same insurer. Jim's policy insured three vehicles and had underinsured motorist coverage limits of \$100,000 per person and \$300,000 per accident. Pam's policy had liability limits of \$50,000 per person and \$100,000 per accident. The insurer paid the liability limit and Jim settled for \$25,000 under the underinsured part of his policy. Jim then claimed under the underinsured motorist provision of the company policy, seeking \$1,200,000. The trial court in the tort action entered judgment against Pam for \$750,000; the judgment stated that the parties had waived trial by jury and specific findings of fact and conclusions of law, and provided that Jim could recover from Pam to the extent of underinsured motorist coverage provided by Jim's insurer, limiting the insurer's total liability for both liability and underinsured motorist coverage to \$75,000.

The company's insurer notified Jim's attorney that the maximum that might be available under the fleet policy was \$60,000, and that an umbrella provision did not apply to Jim's claim; no underinsured motorist coverage had been endorsed onto the umbrella provision. Jim sued the insurer, alleging gross negligence and unfair and deceptive acts or practices in violation of a

statute that requires underinsured motorist coverage in an amount equal to the policy limits in automobile policies covering bodily injury liability unless the insured rejects it. The company had not rejected it. The insurer responded that the statute did not apply to umbrella coverage and that Jim could not recover from the company because he had not exhausted his own underinsured motorist coverage. The trial court entered summary judgment for the insurer. Jim appealed.

1. Argue the case for Jim.
2. Argue the case for the insurer.

QUESTION 4

Paul bought a homeowner's policy from United Insurance Company. He elected to pay premiums in installments. He paid the first premium, but failed to pay the next premium when the billing arrived. United sent a statement of account, requiring payment by a specified date, and stated that the policy would be canceled if payment was not received. He did not pay. United sent a notice that the policy was canceled for nonpayment of premiums, but gave Paul the opportunity to reinstate the policy by paying the accompanying bill. Paul submitted payment and United reinstated the policy even though the payment was received after the date specified. Paul continued to ignore billings, responding only to notices of cancellation and then paying something less than the total amount due. Three additional cancellation notices were sent and the policy was reinstated after payment twice. The third time, the payment arrived a day after the specified date. United negotiated the check and sent Paul a check refunding the amount over what was owed up to the cancellation date. When Paul's secretary received the check, she called the agency that handled the policy and was told the policy had been canceled. Four months later the house was damaged by fire, with a loss in excess of \$100,000. Paul submitted a claim. United rejected it because the policy had been canceled.

Paul sued, alleging breach of contract, and arguing that the policy would have continued in force if the payment had been received by the specified date (which United conceded), and that because that date was on Sunday, receipt on Monday was timely. Paul also argued that the payment was effective when mailed, at least when it was received a reasonable time after mailing, and that United had chosen the mail as its agent and so failure of timely delivery was the fault of United's agent. Finally, Paul argued that United had waived or was estopped to assert the cancellation date by its past practice of accepting late payments. The trial court granted summary judgment to United. Paul appealed. Decide the case.