

was premised on the exclusion contained in the SUM endorsement. On the hearing date of October 18, 2007, the parties agreed to the introduction into evidence of a copy of the GEICO automobile policy and stipulated that the court's adjudication rested upon an interpretation of the applicability of the SUM exclusion to Lang's motorcycle.

The Exclusions sections of the SUM endorsement of the GEICO policy reads in part: "This SUM coverage does not apply... (2). to bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage under the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy."

Lang argues that the term motor vehicle and motorcycle are defined separately in the "Other Definitions" section of the no-fault (PIP) endorsement of the policy and pursuant to that definition, a motor vehicle does not include a motorcycle.

While the term motor vehicle was not specifically defined in the SUM endorsement of the policy, unlike the language in the PIP endorsement, a motorcycle was not specifically excluded from its definition. Further, the term motor vehicle has been construed to include a motorcycle for purposes of uninsured motorist coverage (see Country-Wide Ins. Co. v Wagoner, 45 NY2d 581 [1978]; Nationwide v Riccadulli, 183 AD2d 111 [1992]). Specifically, the policy exclusion relied upon by GEICO has been held to be unambiguous as it applies to a motorcycle owned and occupied by the insured that is not insured for SUM coverage (see USAA Cas. Ins. Co. v Hughes, 2006 NY Slip Op 9259; Utica Mut. Ins. Co. v Reid, 22 AD3d 127 [2005]; Cohen v Chubb Indem. Ins. Co., 286 AD2d 264 [2001]; Liberty Ins. Co. v Panetta, 187 AD2d 719 [1992]).

It is well settled that the liability, no fault and uninsured motorist portions of a comprehensive automobile insurance policy are discrete and internally complete coverages and should be read that way (see Utica Mut. Ins. Co. v Reid, 22 AD3d 127, supra; Eveready Ins. Co. v Asante, 153 AD2d 890 [1989]). SUM coverage exists separate and apart from the policy to which it is annexed and thus can not be qualified by inapplicable provisions of the PIP portion of the policy (see Knickerbocker Ins. Co. v Faison, 22 NY2d 554 [1968]; Eveready Ins. Co. v Asante, 153 AD2d 890 [1989]; Cohen v Chubb Indem. Ins. Co., 286 AD2d 264 [2001]).

Here, as it is undisputed that Lang, an insured under the GEICO policy, was operating an uninsured motorcycle he owned at the time of the subject occurrence, he is precluded from recovering underinsurance benefits pursuant to the exclusion in GEICO's SUM endorsement.

Accordingly, GEICO's petition for a permanent stay of underinsurance arbitration demanded by Lang is granted.

Dated: December 3, 2007
Index No.: 29079/06

J.S.C.