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The Effect of Spousal Immunity on Car Insurance Coverage

The doctrine of spousal immunity has drastically affected insurance law and has created many unresolved issues for New York courts. It is a concept that is confusing, not only to the millions of drivers in New York state, but to attorneys as well.

Contrary to popular belief, spousal immunity was abrogated in New York in 1937 by General Obligations Law §3-313. Simultaneously with General Obligations Law §3-313, the Legislature passed what is now Insurance Law §3420. Insurance Law §3420(g) holds that insurance companies are generally not obligated to defend or indemnify an insured where the basis of his liability is the injuries to his spouse.

A simple example of this situation is where a passenger-wife is injured in a car accident caused by the husband-driver's negligence. Despite the abrogation of spousal immunity, the husband's insurance company would not have to defend and indemnify him if the wife sued him for damages.

The implications of §3420(g) are vast and complicated, especially in the area of automobile insurance. Moreover, after nearly 80 years, New York courts are still uncertain about how to apply §3420(g) in particular types of insurance claims.

Spousal Immunity

The doctrine of spousal immunity was based on the traditional religious belief that upon marriage, a man and a woman become one flesh. English common law incorporated this belief, proffering that a man and a woman become one legal entity upon marriage.¹ This legal entity was forged by the merging of the wife's identity into her husband's.² Consequently, wives could not enter into contracts or sue without the joinder of her husband.³ In turn, the husband was liable for all of the wife's tortious acts.⁴ Spouses were also not permitted to recover against one another in liability suits.⁵ This spousal immunity was based on the single entity rationale. Since a husband and wife were one entity, they



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could not sue each other because an interspousal suit was the equivalent of a person suing himself.

Through time, wives gained the right to sue and enter into contracts without the joinder of their husbands. Many states, though, were slow to abrogate spousal immunity. Marital harmony became the predominant justification for this immunity, as opposed to the single entity rationale.⁶ New York finally abolished spousal immunity in 1937. The Legislature and courts reasoned that recovering for damages was a substantive right that should not be disabled by marital status.⁷

Insurance Law §3420(g)

The abrogation of spousal immunity left insurance companies vulnerable to fraudulent and collusive claims by spouses. The simultaneous enactment of Insurance Law §3420(g) evidenced the legislative intent to permit a right of action between spouses that was previously denied and at the same time protect insurance carriers from collusive

spousal actions.⁸

Insurance Law §3420(g) provides, in part no policy or contract shall be deemed to insure against any liability of an insured because of injuries to the spouse or destruction of the spouse's property unless an express provision relating specifically thereto is included in the policy.

Most insurance companies do not automatically include spousal liability into their policies.⁹

Insurance Law §3420(g) created a presumption of coverage exclusion where an insured is sued because of his spouse's injuries.¹⁰ This presumption seems difficult to overcome because the insurance policy must specifically state that the insurance company will cover interspousal litigation. Generalized coverage language is not sufficient.

An example is *Government Employees Insurance Company v. Pagano*,¹¹ where the driver was involved in a car accident in which her passenger-husband was killed. The administrator of the husband's estate brought a wrongful death action against the wife-driver. The wife's insurer then sought a judgment declaring that it was not obligated to defend or indemnify the wife in the under-

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lying wrongful death action pursuant to §3420(g). The court determined that the insurance policy contained no express language specifically extending coverage for interspousal liability and that therefore the claim was exempt from her coverage.

1976 Amendment

The Legislature amended §3420(g) in 1976 by adding that the "exclusion shall apply only where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse." The consequence of this amendment was that the §3420(g) coverage exclusion could no longer apply to contribution claims against the insured spouse.¹² The Legislature determined that the chance of fraud and collusion was slight where a passenger-spouse was suing a third party which thereafter brings a claim for relative contribution against the driver-spouse, the rationale being that the recovery of the injured spouse is not dependent upon proving the liability of the driver-spouse, but rather depends on proving the liability of an unrelated third party.¹³

Specifically, this amendment was intended to address the result in the Court of Appeals decision in *State Farm Mutual Automobile Insurance Company v. Westlake*.¹⁴ In *Westlake*,¹⁵ a woman was injured in a car accident in which her husband was the driver. The husband and wife sued the defendant driver of the other vehicle. The defendant commenced a third-party action against the husband alleging that the husband-driver was partly or wholly liable. The husband's insurer sought to defeat a claim for defense and indemnification for the husband. The Court reasoned that the all-inclusive language of §3420(g) encompassed, and therefore barred, contribution claims.

The amendment of 1976 was intended to overturn the *Westlake* decision to provide that the §3420(g) exclusion did not apply to contribution claims.

In *Ward v. Accordino*,¹⁶ the driver's wife was injured in a car accident and the husband and wife sued the defendant driver of the other car. The wife and husband were awarded damages. The defendant then brought an action for apportionment of damages and proportional contribution against the husband-driver.

Contrary to *Westlake*, and pursuant to the newly amended §3420(g), the court held that the insurance company must defend the husband even though the underlying action was based on the husband's liability for his wife's injuries. The court reasoned that the wife's recovery was not dependent on her personally proving the culpability of her husband. The party that had to prove the husband's culpability was the defendant, not the wife. Because the wife had no obligation to directly prove the negligence of her husband, there was no threat of fraud or collusion. Thus, §3420(g) no longer applies to contribution claims.

Unresolved Issues

There is uncertainty regarding the proper application of §3420(g) when contribution claims are brought against an insured spouse by a third person who owns the vehicle that the insured was driving. In *Schwartz v. S. Lipkin & Son, Inc.*,¹⁷ the wife was insured in an accident where her husband was driving a car that was owned by his employer's company. The wife sued the company and the company commenced a third-party action for indemnification against the husband-driver. The husband sought a declaration that his insurer had to defend and indemnify. The Second Department denied his claim, reasoning that because the underlying claim of the wife was based on vicarious liability, she would have to prove the culpable conduct of her husband in order to recover from the company.

Contrarily, in *Matter of General Accident Insurance Company v. Elbaum*,¹⁸ a woman was injured in a car accident in which her husband was driving a car that was owned by the defendant, wife's father. The wife sued her father for negligent entrustment and the case was settled. The wife then claimed that the sum was insufficient for her injuries and filed a claim for underinsured motorist benefits with her husband's insurance policy. The insurance company alleged that §3420(g) was a bar to the wife's claim.

The court disagreed reasoning that because the underlying action was for negligent entrustment, the wife was not required to prove the husband's negligence, but rather had to prove the negligence of the wife's father. The coverage exclusion did not apply where the wife did not have to prove the culpable conduct of her husband in order to recover.

Thus, the Second Department maintains that where the underlying action is based on vicarious liability, the §3420(g) exclusion applies and there is no obligation on part of the insurance company to defend and/or indemnify. However, where the underlying action

is for an independent tort that does not require proving the spouse's negligence, §3420(g) does not apply and the insurance company must defend and/or indemnify. The Third Department agrees.¹⁹

The other New York courts have not yet determined the applicability of §3420(g) to contribution claims brought by the owner of the vehicle. It is unclear whether the other departments will wholly apply §3420(g), exempt the exclusion from such situations or selectively apply it as does the Second and Third Departments.

Insurance Law §3420(g) has caused confusion in the courts and amongst automobile insurance holders. Many New Yorkers do not realize that their policies exclude certain interspousal litigation. The courts have determined that the existence of the statute alone is sufficient notice for insurance holders that the presumption of coverage exclusion exists.²⁰ In reality, most people do not realize that this presumption exists, and so they do not request that interspousal liability be explicitly included in their policies. The result is a dangerous situation where policy holders are not covered to the extent that they believe.

1. See *Thompson v. Thompson*, 226 U.S. 551 (1913).

2. See *Bradwell v. State*, 83 U.S. 130 (1873).

3. See *Barber v. Barber*, 62 U.S. 582 (1859).

4. See *Trammel v. United States*, 445 U.S. 40, 100 S. Ct. 906 (1980).

5. See *Bank of America v. Banks*, 101 U.S. 240 (1880).

6. See *Shoemaker v. Shoemaker*, 200 G.A. App. 182, 407 S.E.2d 134 (1991).

7. See *Rozell v. Rozell*, 281 N.Y. 106, 22 N.E.2d 254 (1939).

8. See *New Amsterdam Casualty Co. v. Stecker*, 3 N.Y.2d 1, 143 N.E.2d 357, 163 N.Y.S.2d 626 (1957).

9. A typical policy states, "We will pay damages for bodily injury and property damage to others for which the law holds an insured responsible because of an accident which results from the ownership, maintenance or use of a covered automobile, a non-owned automobile or a trailer while being used with a covered automobile or non-owned automobile. We will defend the insured, at our expense with attorneys of our choice, against any suit or claim seeking these damages. We may investigate, negotiate or settle any such suit or claim."

10. See *Suba v. State Farm Fire and Casualty Company*, 114 A.D.2d 280, 498 N.Y.S.2d 656 (4th Dept. 1986).