

THOUGHT LEADERSHIP

News

EXCLUDED DRIVER STILL EXCLUDED EVEN AFTER NAME CHANGE - INSURER DID NOT HAVE TO PLEAD FOR REFORMATION OF THE POLICY

Newsbrief

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An appellate court in El Paso recently affirmed a trial court's declaration that a named driver exclusion applied even after a name change and that the insurer needn't seek to have the policy reformed to do so. *Donias v. Old American Cty. Mutual Fire Ins. Co., et al.*, No. 08-20-00207-CV, 2022 WL 2128065 (Tex. App.—El Paso June 14, 2022) involved a claim for defense and indemnity coverage arising out of a motor vehicle accident involving Felicia Donias ("Ms. Donias") and another driver. The policy was issued to Leticia Godoy and added a vehicle for her son Michael Godoy but excluded his fiancé Felicia Donias naming her in the exclusion as Felicia Godoy.

On August 6, 2014, Ms. Donias was involved in an automobile accident that led to a personal injury lawsuit being filed against her. The Officer's Crash Report listed Felicia Donias as a 26-year-old female with a birthdate of May 2, 1988. But it was after the accident that Ms. Donias married Ms. Godoy's son Michael when she officially changed her last name to Godoy. The automobile insurance policy for the vehicle driven by Ms. Donias included a named driver exclusion for "Felicia Godoy," and Ms. Godoy's birthdate was listed as May 2, 1988.

After the accident, the insurer, Old American County Mutual Fire Insurance Company ("Old American"), contacted the named insured Ms. Godoy by phone and she acknowledged Ms. Donias was her daughter in law and was "not on her policy." The next day, Old American issued a letter denying coverage to Felicia Donias / Godoy accident based on the named driver exclusion.

A 2016 lawsuit against Ms. Donias resulted in a \$25,381.01 damage award for the other driver involved in the accident. Ms. Donias then filed a lawsuit against Old American and other parties, seeking a declaratory judgment that Old American owed her a duty to defend and seeking damages for breach of contract and extra-contractual claims. Ms. Donias' case underwent a bench trial, and Ms. Donias objected to the trial court hearing any evidence to support a reformation of the insurance policy based on mutual mistake, claiming that name in the exclusion was different from her real name. The trial court entered findings of fact, including that Felicia Donias—now known as Felicia Godoy—was the driver of the vehicle that caused the 2014 accident. In response, Felicia Donias / Godoy argued that the policy excluded "Felicia Godoy," not "Felicia Donias," and Old American could not seek reformation of the policy because it did not specifically ask the court for such relief in its pleadings. In response, the trial court stated that it was not seeking a determination on the reformation issue and instead was interpreting the contract to

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give effect to the parties' intentions, and it was clear that the parties intended that Ms. Donias be an excluded driver. Therefore, the trial court concluded that Ms. Donias was not entitled to relief against the defendants and entered findings of fact, including that Felicia Donias—now known as Felicia Godoy—was the driver of the vehicle that caused the 2014 accident. The trial court also found that Felicia Godoy was an excluded driver under the Old American policy. Ms. Donias appealed and argued that the trial court erred by reforming the policy without a specific pleading requesting reformation.

The appellate court first pointed out that neither party was challenging the trial court's decision to hear evidence about matters outside the "eight corners" of the insurance policy and the automobile accident Plaintiff's petition nor whether the court could receive extrinsic evidence that Ms. Godoy and Ms. Donias are one in the same for the purposes of the duty to defend issue.

Next, the appellate court reviewed the record and agreed with Old American that nothing supported Ms. Donias' assertion that a reformation of the policy occurred. Instead, the trial court stated it was not making a determination on the reformation issue and simply found that the intent of the contracting parties was clearly to exclude Ms. Donias / Godoy from coverage, given that she was one and the same person. As a result, the appellate court affirmed the trial court's judgment that Old American did not owe automobile coverage to Ms. Donias / Godoy.