



# From The Bench

*legal news of interest*

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## The Louisiana Supreme Court Decides a Choice-of-Law Analysis Is Necessary When Applying an Out-of-State UM Policy

by Alicia M. Jacob

In *Champagne v. Ward*,<sup>1</sup> the Louisiana Supreme Court considered whether Louisiana law automatically applies to the interpretation of uninsured/underinsured motorist (hereinafter referred to as “UM”) coverage in automobile accident cases occurring in Louisiana and involving a Louisiana resident, but where the contract of uninsured/underinsured insurance was issued and delivered in another state. The plaintiff in *Champagne* was a resident of Mississippi who was involved in an automobile accident in Louisiana while operating a vehicle covered by a policy issued and negotiated in Mississippi. Under Mississippi law, the plaintiff’s UM benefits would be reduced on a “dollar-for-dollar” basis by the amount of liability coverage available to the plaintiff. Thus, the plaintiff’s UM benefits would be unavailable, as the tortfeasor had \$10,000 in liability coverage and the plaintiff had \$10,000 in UM coverage.

The Louisiana Supreme Court sought to resolve the issue of whether Louisiana’s UM law applied automatically or whether a conflict-of-law analysis must be conducted to determine if Mississippi or Louisiana law applied to the foreign UM policy in the context of a Louisiana accident involving a Louisiana resident. The First, Second and Third Circuit Courts of Appeal held a choice-of-law analysis, pursuant to *LSA-C.C. Articles 3515* and *3537*, must be performed to determine which state’s law should apply. On the other hand, the Fourth and Fifth Circuit Courts of Appeal held *LSA-R.S. 22:1406(D)(1)(a)(iii)* mandated automatic application of Louisiana law.

Similarly, the Louisiana Supreme Court previously resolved an earlier conflict among the courts of appeal regarding the application of Louisiana law to a foreign UM policy in *Snider v. Murray*.<sup>2</sup> In *Snider*, the issue was whether Louisiana’s UM law could be applied to a UM policy issued and delivered in Texas to a vehicle which was subsequently involved in an accident in Louisiana with a Louisiana defendant. The plaintiff was domiciled in Louisiana at the time of the accident. As in *Champagne*, the foreign law contained an offset provision, which would have reduced the plaintiff’s UM benefits by the amount of the tortfeasor’s liability policy, reducing the plaintiff’s UM coverage to zero. On the other hand, *LSA-R.S. 22:1406(D)(1)* required underinsured motorist coverage in the amount of the bodily injury liability limits.

The Louisiana Supreme Court in *Snider* relied on the express language of *LSA-R.S. 22:1406(D)(1)* which, by its own terms, affects only automobile policies “delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state.” The court concluded since the policy at issue was neither delivered nor issued for delivery in Louisiana, the plaintiffs could not avail themselves of *LSA-R.S. 22:1406(D)*.

Following the *Snider* decision, the Louisiana Legislature enacted *LSA-R.S. 22:1406(D)(1)(a)(iii)*,<sup>3</sup> which states:

This Subparagraph and its requirement for uninsured motorist coverage shall apply to any liability insurance covering any accident which occurs in this state and involves a resident of this state.<sup>4</sup>

However, the material language of *LSA-R.S. 22:1406(D)(1)* remained the same, mandating Louisiana’s UM law be applied to policies “delivered or issued for delivery in this state with respect to any motor vehicle designed for use on public highways and required to be registered in this state or as provided in this Section . . .” Regardless, several lower courts found the Louisiana Legislature intended to overrule the *Snider* decision with *LSA-R.S. 22:1406(D)(1)(a)(iii)*.<sup>5</sup>

After reviewing the history of *LSA-R.S. 22:1406(D)*, the court in *Champagne* concluded *LSA-R.S. 22:1406(D)(1)(a)(iii)* superseded *Snider* to the extent Louisiana's UM law *can* be applied to foreign insurance policies in multi-state cases when the accident occurs in Louisiana and involves a Louisiana resident. However, the court held a choice-of-law analysis under *LSA-C.C. Articles 3515* and *3537* must first be conducted to determine which state's law will apply to the interpretation of UM contracts in multi-state cases, even when the accident occurs in Louisiana and involves a Louisiana resident. In making its decision, the court relied on the introductory language of *LSA-R.S. 22:1406(D)* which states the statute is applicable to UM coverage *issued in this state*.

In *Champagne*, the court went on to conduct a conflicts-of-law analysis, concluding Mississippi's public policies would be most seriously impaired if its law was not applied to the insurance policy. While the accident had occurred in Louisiana and the defendant was a Louisiana resident who had been issued an automobile liability insurance policy in Louisiana, the plaintiff's contacts with Mississippi led the court to conclude Mississippi had a more substantial interest in the application of its laws to the insurance contract. The plaintiff was a resident of Mississippi and the plaintiff's vehicle was garaged and registered in Mississippi. The plaintiff's UM insurance policy was a Mississippi contract which had been negotiated and formed in Mississippi.

Therefore, a choice-of-law analysis will be necessary in all cases involving a Louisiana accident where the applicable UM policy has been issued in another state.

<sup>1</sup>2003-3211 (La. 1/19/05), 893 So.2d 773.

<sup>2</sup>462 So.2d 1051 (La. 1985).

<sup>3</sup>Act No. 444 of 1987.

<sup>4</sup>*La. R.S. 22:1406(D)* was redesignated as *La. R.S. 22:680* by Act No. 456 of 2003, Section 3.

<sup>5</sup>*Willett v. National Fire and Marine Ins. Co.*, 594 So.2d 966 (La. App. 3 Cir. 2/12/92), writ denied, 598 So.2d 355 (La. 1992); *Reeves v. Allstate Insurance Company*, 619 So.2d 202, (La. App. 3 Cir. 6/2/93); *Bell v. Farmers Insurance Group*, 93-2067 (La. App. 4 Cir. 4/14/94), 635 So.2d 1305; *Trautman v. Poor*, 96-627 (La. App. 3 Cir. 12/11/96), 685 So.2d 516; *Adams v. Tomason*, 32, 728 (La. App. 2 Cir. 3/1/00), 753 So.2d 416, writ denied, 2000-1221 (La. 6/16/00), 754 So.2d. 965.



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