

## Ga. Panel Says Insurer Not Liable For Boat Crash Coverage

By Hope Patti

*Law360 (June 29, 2022, 6:32 PM EDT)* -- Cincinnati Insurance Co. has no obligation to pay benefits to a policyholder who was injured in a boat crash, a Georgia appeals panel affirmed Wednesday, finding that a statute regarding uninsured motorist coverage does not apply to watercraft.

A Georgia state court correctly concluded that underinsured/uninsured motorist benefits pursuant to the state's insurance code are not available for damages arising from a collision between motorized watercraft on a public waterway, Judge Kenneth B. Hodges III said in the court's opinion. As a result, Randy Kelley and his wife, Susan Kelley, cannot recover underinsured/uninsured motorist benefits for the crash under their auto policy with Cincinnati.

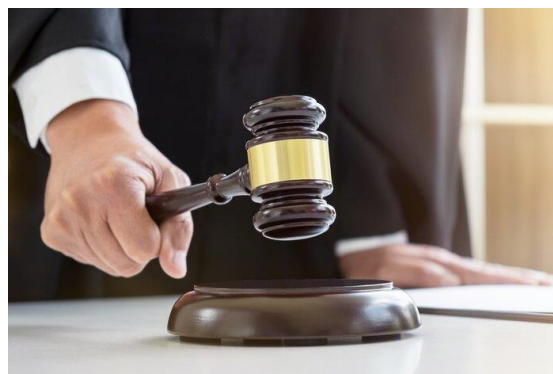
The coverage dispute dates to a boat accident involving Randy Kelley in June 2019.

While traveling on Coosa River in Georgia's Floyd County, Kelley and his friend Larry Wheat, who owned the boat, were struck by another watercraft traveling in the opposite direction. The other boat operator, Melvin Ellison, caused serious injuries to Kelley that resulted in more than \$500,000 in medical expenses, according to court filings.

Ellison maintained a watercraft policy with State Farm Fire and Casualty Co., which exhausted its policy limits and paid \$90,000 to Kelley and \$10,000 to Wheat. After State Farm exhausted its limits, the Kelleys sought underinsured/uninsured motorist and watercraft benefits under their auto and watercraft policies with Cincinnati.

After Cincinnati denied coverage, the Kelleys sued Ellison for negligence and loss of consortium among other things, and served the insurer with the complaint. The trial court subsequently granted a motion for summary judgment filed by Cincinnati, ruling that the uninsured motorist coverage statute does not apply to personal watercraft.

On appeal, the couple argued that the boat that struck Kelley was an underinsured motor vehicle covered by the statute, and, as a result, the underinsured/uninsured motorist and watercraft



A Georgia appeals court found that an insurer does not have to provide benefits to a policyholder who was injured in a boat crash, saying that uninsured motorist coverage does not apply to water vehicles. (iStock.com/Pattanaphong Khuankaew)

provisions in the policies may be enforced to provide such benefits up to their limits.

Though the phrase "uninsured motor vehicle" is not defined by the statute, the panel concluded that it refers to land vehicles and does not include motorized watercraft.

Judge Hodges said dictionaries consistently define motor vehicle as a vehicle used on land and there is no indication that the state Legislature intended to include motorized watercraft within the definition of motor vehicle. The judge added that the Kelleys' reliance on definitions of motor vehicle in other sections of the state's code are not applicable.

While neither Cincinnati nor the Kelleys cited a case addressing the applicability of the statute to motorized watercraft, Judge Hodges pointed to the Georgia Supreme Court's 1997 ruling in *Hinton v. Interstate Guaranty Insurance Co.*

In *Hinton*, the high court expanded the definition of motor vehicle to include vehicles that are designed to operate off public highways but are on public highways at the time of an accident, such as farm tractors. However, Judge Hodges said that there is no indication that the expanded definition would encompass a motorized watercraft involved in a collision on a public waterway.

"This was a really interesting case, and I believe it's one of first impression for the court of appeals," Cincinnati's counsel Daveed R. Lift told Law360, adding that there was essentially no case law addressing the issue of whether the uninsured motorist statute applies to boats or only motor vehicles.

Although the statute had been expanded in *Hinton*, Lift said the high court's ruling did not broaden it to include watercraft. Moreover, the policy language had no bearing on the ruling in this case, he said, and the court understood that Cincinnati was constrained by the law in Georgia.

Presiding Judge Anne Elizabeth Barnes and Judges E. Trenton Brown III and Kenneth B. Hodges III sat on the panel for Court of Appeals of Georgia.

Counsel for the Kelleys did not immediately respond to requests for comment Wednesday.

The Kelleys are represented by J. Anderson Davis and Sarah Martin of Brinson Askew Berry Seigler Richardson & Davis LLP.

Cincinnati is represented by James T. Brieske and Daveed R. Lift of Gray Rust St. Amand Moffett & Brieske.

The case is *Kelley et al. v. The Cincinnati Insurance Co.*, case number A22A0534, in the Court of Appeals of Georgia.

--Editing by Neil Cohen.