

IN THE COURT OF APPEALS
STATE OF GEORGIA

SAFECO INSURANCE COMPANY
OF ILLINOIS

Appellant-Defendant

vs.

NANCY SMARR, INDIVIDUALLY
And as ADMINISTRATOR OF THE
ESTATE OF THOMAS J. COCHRAN, II

Appellee-Plaintiff

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) CASE NO. A09A2334
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SUPPLEMENTAL BRIEF OF APPELLANT
SAFECO INSURANCE COMPANY OF ILLINOIS

Appellant Safeco Insurance Company of Illinois files this supplemental brief pursuant to the Court's request at oral argument to identify the following case, *Young v. Maryland Casualty Co.*, 228 Ga. App. 388 (1997).

Young v. Maryland Casualty Co. stands for the proposition that payments to a plaintiff cannot deplete a liability policy of insurance to create an uninsured or underinsured motorist situation.

In that case the insureds sought uninsured motorist coverage after settling with the liability carrier for the policy limits. The insureds contended that their settlement extinguished the liability coverage on the vehicle thus rendering it uninsured. This Court rejected the insureds' claim noting that such payments cannot exhaust the liability policy and create an uninsured or underinsured motorist situation. *Id. See also Phillips v. Government Employees Ins. Co.*, 288 Ga. App. 504 (2007)(holding a claim is not considered denied where a policy has been exhausted as a result of payment made to a plaintiff.) This Court then went on to hold that, "such a construction defies both the meaning and intent of the uninsured motorist statute. It would allow *every* plaintiff who receives policy limits from the liability carrier to then pursue an uninsured motorist claim as the subject vehicle would then be uninsured." *Young v. Maryland Casualty Co.*, 288 Ga. App. 388 (1997)(emphasis in original.)

The holding in the *Young v. Maryland Casualty Co.* case is relevant to the instant matter because it stands for the proposition that payments made directly to a plaintiff or plaintiffs under a liability policy cannot create an uninsured or underinsured motorist situation. In other words, if the liability and underinsured

coverages are identical then payments to either a plaintiff or plaintiffs that deplete a single layer of per-person coverage cannot lead to an underinsured situation.

Wherefore, for the foregoing reasons, Appellant respectfully requests that the Court reverse the trial court's Order.

Respectfully submitted this 23rd day of November, 2009.



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CERTIFICATE OF SERVICE

This is to certify that I, David N. Nelson, attorney of record for Appellant-Defendant Safeco Insurance Company of Illinois have, as of the date set forth below, served a copy of the Brief of Appellant Safeco Insurance Company of Illinois upon all counsel of record, by placing a copy of the same via First Class Mail to ensure proper delivery.

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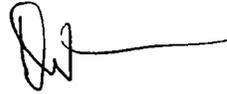
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