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OPINION	:	No. 84-1203
	:	
of	:	<u>MARCH 5, 1985</u>
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THE HONORABLE ALAN ROBBINS, MEMBER OF THE CALIFORNIA
STATE SENATE, has requested an opinion on the following question:

Does section 11580.26 of the Insurance Code require that uninsured motorist
property damage coverage be offered on publicly-owned school buses and fire trucks?

CONCLUSION

Section 11580.26 of the Insurance Code does require that uninsured motorist
property damage coverage be offered on publicly-owned school buses and fire trucks.

ANALYSIS

Since 1959 the law has required that insurance companies which issue bodily injury insurance liability coverage on motor vehicles also issue uninsured motorist bodily injury coverage to its insureds unless the parties agree otherwise. (See Ins. Code § 11580.2; Stats. 1959, ch. 817, § 1, p. 2835.)

In 1983 a similar requirement was added to the Insurance Code with respect to the issuance of property damage coverage by the enactment of section 11580.26.¹ Thus, that section presently provides:

"11580.26. (a) Except where a named insured has agreed pursuant to Section 11580.2 to delete the coverages provided by that section, no policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, *except where the policy provides insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, and except a policy insuring a commercial vehicle as defined in Section 260 of the Vehicle Code*, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless a named insured has been offered the following coverage:

"(1) Where the policy of motor vehicle liability insurance includes collision coverage as defined in subdivision (d) of Section 660, coverage which provides that the deductible amount, if any, to be paid by the named insured under the collision coverage shall be payable by the insurer in the event of collision involving a vehicle owned by the named insured and insured under the policy and an uninsured motor vehicle.

"(2) Where the policy of motor vehicle liability insurance does not include collision coverage as defined in subdivision (d) of Section 660, coverage for property damage to the insured motor vehicle, but not including personal property contained therein, caused by the owner or operator of an uninsured motor vehicle. As used in this subdivision, 'property damage'

¹ See Stats. 1983, ch. 1252, § 1. Section 11580.26 has since been amended twice by Statutes of 1984, Chapter 263, effective as an urgency measure on June 29, 1984 and by Statutes of 1984, Chapter 1196, to become operative on July 1, 1985.

The details of these amendments do not affect the resolution of this opinion.

All section references are to the Insurance Code unless otherwise indicated.

means payment for loss or damage to the insured motor vehicle resulting from collision, *not to exceed its actual cash value or three thousand five hundred dollars (\$3,500), whichever is less*, for which loss or damage the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle. Property damage does not include compensation for loss of use of the motor vehicle. As used in this subdivision, the term 'insured motor vehicle' means the motor vehicle described in the underlying insurance policy of which the uninsured motorist property damage coverage or endorsement applies. . . ." (Emphasis added.)

The issue presented for resolution herein is whether insurance companies which insure publicly-owned school buses and fire trucks must offer this new uninsured motorist property damage coverage on such vehicles.²

An examination of subdivision (a) of section 11580.26 discloses only two exemptions to its coverage requirements. The first, relating to nonadmitted Mexican insurers is not germane. This leaves only the exception for "a policy insuring a commercial vehicle as defined in Section 260 of the Vehicle Code." Accordingly, unless publicly-owned school buses and fire trucks fall within that definition, they would appear to be entitled to the benefits of section 11580.26.

Section 260 of the Vehicle Code provides as pertinent herein:

"(a) A 'commercial vehicle' is a vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used or maintained primarily for the transportation of property. . . ."

² There is no doubt that unless an exception can be found in the specific wording of section 11580.26, publicly-owned vehicles would fall within the purview of the law. The section's benefits inure to *any* "motor vehicle" having public liability bodily injury coverage.

"Motor vehicle" is defined in section 11580.06, subdivision (a), as follows:

"(a) The term 'motor vehicle' means any vehicle designed for use principally upon streets and highways and subject to motor vehicle registration under the laws of this state."

School buses and fire trucks meet both such requirements. Although publicly owned vehicles are exempt from registration *fees*, they are still subject to registration. (See Veh. Code, § 4155; see also 35 Ops.Cal.Atty.Gen. 71 (1960), discussing uninsured motorist bodily injury coverage re county vehicles.)

Publicly-owned school buses and fire trucks meet neither of the criteria set forth in this section. They, of course, are not "used, designed, or maintained primarily for the transportation of property" such as are trucks. Nor are they "used or maintained for the transportation of persons for hire, compensation, or profit." (See also *Government Employees Ins. Co. v. Carrier Ins. Co.* (1975) 45 Cal.App.3d 223.)

Accordingly, under the plain wording of section 11580.26, subdivision (a), publicly-owned school buses and fire trucks which are privately insured are to be offered uninsured motorist property damage coverage.

Furthermore, as stated with respect to section 11580.2, section 11580.26's counterpart:

"Insurance Code section 11580.2 must be liberally construed to carry out its objective of providing financial protection for injuries caused by uninsured motorists and, as a corollary, *any exception or exclusion from uninsured motorist coverage must be strictly construed. . . .*" (Emphasis added.) (*State Farm Mut. Auto. Ins. Co. v. Lykouresis* (1977) 72 Cal.App.3d 57, 61.)

Such rule militates against any attempt at a "strained construction" in an effort to fit publicly-owned school buses and fire trucks within the definition of section 260 of the Vehicle Code.

It has been suggested, however, that the Legislature could not have intended that publicly-owned school buses and fire trucks be included within the purview of section 11580.26. This suggestion arises from a comparison of the limits of the uninsured motorists property damage coverage (\$3,500.) with the tremendous cost of such vehicles.

Such argument, however, has equal applicability to a Rolls Royce, a Mercedes Benz, or even a top-of-the-line Honda.

". . . [I]f statutory language is 'clear and unambiguous there is no need for construction, and courts should not indulge in it'. . . Unless . . . [one], can demonstrate that the natural and customary import of the statute's language is either 'repugnant to the general purview of the act,' or for some other compelling reason, should be disregarded, . . . [a] court must give effect to the statute's plain meaning.' . . ." (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 218-219.)

In our view, the mere disparity between the maximum damages recoverable and the initial cost of a school bus or fire truck does not present a sufficient reason to disregard the plain meaning of section 11580.26.

An additional suggestion presented for reaching a contrary conclusion arises from a reading of subdivision (a)(1) of section 11580.26. That portion of subdivision (a) essentially provides that where the insured's policy of insurance has a deductible amount with respect to "collision coverage *as defined in subdivision (d) of section 660*," then the uninsured motorist coverage offered shall be for that deductible amount.

Section 660, subdivision (d), is found in chapter 10, part 1 of division 1 of the Insurance Code. The definitions therein are stated to be applicable to *that* chapter, which contains the provisions with respect to the *cancellation or failure to renew policies by insurance companies*. Subdivision (d) provides:

"(d) 'Automobile collision coverage' includes all coverage of loss or damage to an automobile insured *under the policy* resulting from collision or upset." (Emphasis added.)

Subdivision (a) defines "policy" (at least "[a]s used in this chapter," chapter 10), as:

"(a) 'Policy' means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, *insuring a single individual or individuals residing in the same household*, as named insured, and under which the insured vehicles therein designated are of the following types only:

"(1) *A motor vehicle of the private passenger or station wagon type* that is not used as a public or livery conveyance for passengers, nor rented to others; or

"(2) *Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured*; provided, however, that this chapter shall not apply (i) to any policy issued under an automobile assigned risk plan, or (ii) to any policy insuring more than four automobiles, or (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; or

"(3) A motorcycle." (Emphasis added.)

The argument then is that from reading this definition of "policy," section 660, subdivision (d), as incorporated in section 11580.26, means that the Legislature only intended to cover *private* individuals residing in the same household with respect to uninsured motorist property damage coverage, and only for passenger-type vehicles. In short, the argument is that the Legislature intended to exclude vehicles owned by corporate or public entities.

In our view, such argument goes too far. It is more logical to conclude that the Legislature intended, by incorporating section 660, subdivision (d), merely to define the *type of loss or damage* which it intended to cover, that is, all damage "resulting from collision or upset." Otherwise an anomaly would arise between subdivision (a)(1) and subdivision (a)(2) of section 11580.26. As will be recalled, subdivision (a)(2) provides for uninsured motorist coverage which is to be offered where there is *no* collision coverage under the basic policy of insurance. *That subdivision in no way purports to incorporate any of the definitions contained in chapter 10, part 1 of division 1 of the Insurance Code.* It merely refers to "the policy of motor vehicle insurance" and "the insured motor vehicle," which in no way excludes vehicles owned by corporate or public entities, or restricts its coverage to passenger-type vehicles.

Furthermore, had the Legislature intended to restrict the coverage provided for in section 11580.26 to individuals and to passenger-type vehicles, there would have been no need to exclude "commercial vehicles" from the scope of the section as has been done in the opening paragraph.

In short, we believe to follow such suggestion would run clearly contrary to the rules, already stated above, that uninsured motorage coverage is to be liberally construed in favor of insureds and that exemptions or exclusions must be strictly construed. To follow such suggestion would require us to imply not only the exclusion of fire trucks and school buses which are publicly-owned but *all* types of motor vehicles owned by public or corporate entities. This we decline to do. If the Legislature intended such a result, we believe it would have said so in a much more straight-forward manner.

Accordingly, we conclude that section 11580.26 of the Insurance Code does require that uninsured motorist property damage coverage be offered on publicly-owned school buses and fire trucks which are privately insured.
