

# Illinois Official Reports

## Supreme Court

### *Galarza v. Direct Auto Insurance Co., 2023 IL 129031*

Caption in Supreme Court: CARMEN GALARZA v. DIRECT AUTO INSURANCE COMPANY, Appellant (Fredy Guiracocha *et al.*, Appellees).

Docket No. 129031

Filed November 30, 2023

Decision Under Review Appeal from the Appellate Court for the First District; heard in that court on appeal from the Circuit Court of Cook County, the Hon. David B. Atkins and the Hon. Sophia H. Hall, Judges, presiding.

Judgment Appellate court judgment affirmed.  
Circuit court judgment reversed.

Counsel on Appeal Samuel A. Shelist, of Shelist LLC, of Chicago, for appellant.  
  
Lawrence Disparti and Jonel Metaj, of Disparti Law Group, P.A., of Chicago, for appellees.  
  
Sofia Zneimer, of Zneimer & Zneimer PC, of Chicago, for *amicus curiae* Illinois Trial Lawyers Association.

Justices

JUSTICE HOLDER WHITE delivered the judgment of the court, with opinion.

Chief Justice Theis and Justices Neville, Overstreet, Cunningham, Rochford, and O’Brien concurred in the judgment and opinion.

## OPINION

¶ 1 Appellees, Fredy Guiracocha and Cristopher Guiracocha, a minor by next best friend of his father, Fredy, filed an uninsured motorist (UM) claim against appellant, Direct Auto Insurance Company (Direct Auto), stemming from a hit-and-run incident where 14-year-old Cristopher was allegedly struck by a vehicle while riding his bicycle. The Guiracochas asserted Fredy was the named insured under an automobile insurance policy issued by Direct Auto and thus UM coverage applied to Cristopher based on his status as a “relative” under the policy. Direct Auto denied Cristopher coverage because Cristopher was not an occupant of a covered vehicle at the time of the accident.

¶ 2 Direct Auto filed a complaint for declaratory judgment and subsequently a motion for summary judgment. Following a hearing on Direct Auto’s motion, the circuit court entered an order granting summary judgment in favor of Direct Auto.

¶ 3 The appellate court determined the sole issue on appeal was “whether a provision in an automobile insurance policy that limits uninsured motorist coverage to insureds occupying an ‘insured automobile’ violates section 143a of the Illinois Insurance Code (215 ILCS 5/143a (West 2020))—which addresses uninsured and hit-and-run motor vehicle coverage (UM or UM coverage)—and is thus unenforceable as against public policy.” 2022 IL App (1st) 211595, ¶ 1. The court reversed and remanded. *Id.* ¶ 56. For the following reasons, we affirm the appellate court’s judgment and reverse the judgment of the circuit court.

### ¶ 4 I. BACKGROUND

¶ 5 A complete statement of facts is set forth in the appellate court’s opinion. *Id.* ¶¶ 4-22. The appellate court initially consolidated this case, *Direct Auto Insurance Co. v. Guiracocha*, No. 21-CH-2447 (Cir. Ct. Cook County, Jan. 12, 2022) (No. 1-22-0281), with *Galarza v. Direct Auto Insurance Co.*, No. 20-CH-4631 (Cir. Ct. Cook County, Nov. 24, 2021) (No. 1-21-1595). 2022 IL App (1st) 211595, ¶ 1. However, the appellate court then (1) severed the cases, (2) dismissed the *Galarza* appeal for lack of jurisdiction, and (3) proceeded solely on the *Guiracocha* appeal. *Id.* ¶¶ 27-29. This court allowed Direct Auto’s petition for leave to appeal, which addresses only the appellate court’s ruling in Guiracocha’s case. Ill. S. Ct. R. 315 (eff. Oct. 1, 2021). We summarize here only the facts pertinent to our disposition.

### ¶ 6 A. Fredy’s Direct Auto Personal Automobile Insurance Policy

¶ 7 Direct Auto issued a motor vehicle insurance policy to Fredy. Part I of the policy provides liability coverage, which includes coverage for an insured who causes bodily injury or property damage “caused by [an] accident arising out of the ownership, maintenance or use of the owned

automobile or a non-owned automobile.” The definition of “Insureds” under part I is different depending on whether the liability relates to operation of an “owned automobile” or a “non-owned automobile.” An insured with respect to an owned vehicle includes (1) the named insured or (2) any other person using such automobile to whom the named insured has given permission, provided the use is within the scope of such permission. An insured with respect to a nonowned automobile includes (1) the named insured, provided the named insured received permission, or (2) a relative, but only with respect to a private passenger automobile, provided the person using such automobile has received permission.

¶ 8 Part II of the policy provides UM coverage, which includes coverage for when the insured is injured by an owner or operator of an automobile who does not have liability insurance. The policy states UM coverage shall be available to insureds under the Direct Auto policy provided the damages (1) were caused by accident, (2) while the insured was an occupant in an “insured automobile,” and (3) were as a result of the ownership, maintenance, or use of the uninsured motor vehicle. The definition of “insured” under part II includes, in relevant part, (1) the named insured and (2) a “relative” as defined under part I of the policy. Further, part II indicates there is potential coverage for a “hit-and-run motor vehicle, provided there was actual physical contact between the insured automobile and the hit-and-run motor vehicle.” Under part II, a hit-and-run motor vehicle is defined as “a motor vehicle which hits or causes an object to hit an owned automobile which the insured is occupying at the time of the accident.”

¶ 9 In July 2020, Direct Auto renewed the existing automobile insurance policy listing Fredy as the named insured under the policy. The policy insures a 2006 Mercury Mountaineer. Under the policy, the UM coverage for bodily injury is \$25,000 per person and \$50,000 per accident.

## ¶ 10 B. Procedural History

¶ 11 In September 2020, Cristopher, then 14 years old, resided with his father, Fredy, in Chicago, Illinois. On September 24, 2020, Cristopher allegedly rode his bicycle through an intersection on a green light when an unidentified red vehicle made physical contact with Cristopher and his bicycle before subsequently fleeing the scene. The hit-and-run incident resulted in Cristopher sustaining injuries to his right arm, shoulder, and thigh, which required medical treatment.

¶ 12 Following the hit-and-run incident, the Guiracochas filed a UM claim against Direct Auto based on Cristopher’s status as a “relative” under the policy and requested administration by the American Arbitration Association (AAA), in accordance with the policy. Direct Auto denied coverage, finding Cristopher was “not occupying an ‘insured vehicle’ as defined by the policy and therefore no uninsured motorist coverage can be afforded.”

## ¶ 13 1. Circuit Court Proceedings

¶ 14 In May 2021, Direct Auto filed a declaratory judgment action in the circuit court of Cook County against Fredy and Cristopher, a minor by next best friend of Fredy. Direct Auto requested and was granted a stay of the AAA proceedings pending resolution of the declaratory judgment action. In June 2021, the Guiracochas answered Direct Auto’s complaint for declaratory action, and Direct Auto subsequently filed a motion for summary judgment.

¶ 15 In its motion for summary judgment, Direct Auto asserted that under Illinois law a bicycle is not a vehicle and thus Cristopher was a pedestrian. Accordingly, Direct Auto argued

Cristopher is not covered under part II of the policy because section 143a of the Illinois Insurance Code (215 ILCS 5/143a (West 2020)) does not require UM coverage for pedestrians or individuals not occupying a motor vehicle. In response, the Guiracochas argued Direct Auto violated public policy and section 143a of the Insurance Code by conditioning UM coverage on the insured's occupancy of his own motor vehicle and by denying coverage to pedestrians who have been physically struck by a hit-and-run vehicle.

¶ 16 Direct Auto filed a reply in support of summary judgment, arguing “[t]he Legislature enacted section 143a to protect those who use, occupy, maintain and own vehicles on the roads and [Cristopher] does not use, occupy, maintain or own a vehicle and he is not even a person insured [under the policy].” The Guiracochas filed a surreply, arguing Cristopher, as a resident relative of Fredy, is a legal insured under the Direct Auto policy and that Direct Auto did not previously challenge Cristopher's status as an insured in its coverage denial letter or its motion for summary judgment.

¶ 17 Following a January 2022 hearing on Direct Auto's motion, the circuit court entered an order granting summary judgment in favor of Direct Auto and declaring Direct Auto owed no coverage or duty to defend or indemnify.

¶ 18 *2. Appellate Court Proceedings*

¶ 19 The Guiracochas appealed, and the First District reversed and remanded. 2022 IL App (1st) 211595. The court noted the parties agree Cristopher was a pedestrian for purposes of the appeal where he was struck by a vehicle while riding his bicycle, not while in an insured automobile. *Id.* ¶¶ 35, 45. Thus, Direct Auto's policy, as written, did not provide UM coverage for Cristopher's injuries because UM coverage is restricted to insureds who are occupants in an “ ‘insured automobile.’ ” *Id.* ¶ 35.

¶ 20 However, the appellate court stated, “[t]he fact that the policy terms preclude UM coverage herein is not dispositive.” *Id.* ¶ 36. Rather, the court determined the key question to consider on appeal was “whether the denial of the Guiracochas' claim for UM coverage comports with section 143a of the Insurance Code and its underlying purpose.” *Id.* ¶ 44. The court held, “[w]hile Direct Auto's contention has facial appeal, it is contrary to both the language of section 143a and its underlying public policy.” *Id.* ¶ 47.

¶ 21 The appellate court found section 143a of the Insurance Code is expressly designed to broadly mandate UM coverage for “ ‘the protection of persons insured’ ” under an automobile liability policy and, when drafting the policy at issue, “Direct Auto effectively evaded this requirement by linking coverage to the insured's occupancy of an automobile.” *Id.* (quoting 215 ILCS 5/143a(1) (West 2020)). The court stated, “[a]lthough we recognize that insurers ‘are not required to cover every possible loss and may legitimately limit their risks’ (*Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 442 (2010)), an insurer may not directly or indirectly deny UM coverage to an insured.” *Id.* The court asserted, “ ‘It is well established that uninsured-motorist coverage is required so that the policyholder is placed in substantially the same position he or she would occupy if injured or killed in an accident where the party at fault carried the minimum liability coverage required by law.’ ” *Id.* ¶ 48 (quoting *Direct Auto Insurance Co. v. Merx*, 2020 IL App (2d) 190050, ¶ 22).

¶ 22 The appellate court determined that, “if Cristopher had been struck by a motorist carrying the minimum liability coverage mandated under Illinois law, he may be compensated for his

injuries up to the \$25,000 limit.” *Id.* “Given that Cristopher allegedly was the victim of a hit-and-run driver, however, he is potentially left without compensation for his injuries in the absence of UM coverage.” *Id.* The court stated that “[s]uch a result ‘would run afoul of Illinois’s clear public policy of ensuring coverage for policyholders injured by uninsured motorists.’ ” *Id.* (quoting *Merx*, 2020 IL App (2d) 190050, ¶ 31).

¶ 23 The appellate court further found Direct Auto’s policy, as written, is inconsistent with Illinois case law. *Id.* ¶ 49. In support, the appellate court cited *Doxtater v. State Farm Mutual Automobile Insurance Co.*, 8 Ill. App. 3d 547 (1972), *Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167 (1977), and *Merx*, 2020 IL App (2d) 190050. 2022 IL App (1st) 211595, ¶¶ 49-51. The court found in *Doxtater*—which involved an injured motorcyclist—“that our supreme court ‘would interpret Section 143a of the Insurance Code as a direction to insurance companies to provide uninsured motor vehicle coverage for “insureds,” regardless of whether, at the time of injury, the insureds occupied or operated vehicles declared in the subject policy.’ ” *Id.* ¶ 49 (quoting *Doxtater*, 8 Ill. App. 3d at 552).

¶ 24 The appellate court determined that, in *Squire*, this court “subsequently invalidated an exclusion in an insurance policy as violative of section 143a, thus allowing an injured pedestrian to recover under the UM coverage provisions in both her primary automobile insurance policy and an endorsement to that policy.” *Id.* (citing *Squire*, 69 Ill. 2d at 179). The court also analyzed *Merx*, as the appellate court in *Merx* considered the exact policy language at issue in this case and affirmed the grant of the insured’s motion for judgment on the pleadings and the denial of Direct Auto’s motion for summary judgment, stating,

“ ‘[t]o deny uninsured-motorist coverage to Merx simply because she did not occupy her insured automobile at the time of the accident \*\*\* would contravene public policy and the legislative purpose behind section 143a of the Insurance Code by foreclosing her from being placed in substantially the same position she would have occupied had she been injured in an automobile accident where the party at fault carried the legal minimum amount of liability coverage.’ ” *Id.* ¶ 50 (quoting *Merx*, 2020 IL App (2d) 190050, ¶ 42).

The court stated, “[b]ased on our review of *Merx* and related case law, we are unable to discern any meaningful basis for distinguishing between a pedestrian and a passenger under the limited circumstances herein. *Merx* supports the inclusive coverage sought by the Guiracochas in the instant case.” *Id.* ¶ 51.

¶ 25 Ultimately, the appellate court held the circuit court erred in granting summary judgment in favor of Direct Auto. *Id.* ¶ 54. The court stated, “[a]lthough we recognize that an insured seeking to invalidate an insurance policy provision as against public policy bears a heavy burden (*Merx*, 2020 IL App (2d) 190050, ¶ 16), such burden has been satisfied in the instant case.” *Id.*

¶ 26 Justice Gordon specially concurred, stating, “I agree with the well-written decision of the majority, but I must write separately to expand on the majority’s finding that the Direct Auto insurance policy for uninsured motorist coverage violates the public policy of Illinois.” *Id.* ¶ 60 (Gordon, J., specially concurring). Justice Gordon asserted:

“Direct Auto in its pleadings, alleged that Cristopher is ‘not even a person “insured” under the policy.’ However, at oral argument, Direct Auto agreed that Cristopher was a named insured because his father was a named insured together with all of the

members of his household but argued that he was not insured for an accident where he sustained injuries when he was struck by a motor vehicle, while riding his bicycle, in a hit and run accident.” *Id.* ¶ 61.

¶ 27 Justice Gordon found:

“Since Cristopher was a named insured under the policy, uninsured motorist coverage must extend to him. If the courts would find that an uninsured motorist policy as written that requires an insured to be an occupant of a vehicle as a condition precedent to coverage, then people on bicycles and other pedestrians would have no recourse for injuries caused by an uninsured driver of a motor vehicle or from a hit and run accident caused by a motor vehicle.” *Id.* ¶ 62.

Justice Gordon went on to state that, “[i]n the case at bar, Direct Auto’s condition for coverage requiring an insured to be an occupant of a motor vehicle for coverage to occur is a violation of section 143a of the Insurance Code under the law as made and provided.” *Id.*

¶ 28 This court allowed Direct Auto’s petition for leave to appeal. Ill. S. Ct. R. 315 (eff. Oct. 1, 2021). We also allowed the Illinois Trial Lawyers Association leave to file an *amicus* brief in support of the Guiracochas’ position. Ill. S. Ct. R. 345 (eff. Sept. 20, 2010).

¶ 29 II. ANALYSIS

¶ 30 Initially, we note the parties do not dispute that Fredy’s Direct Auto insurance policy, as written, does not provide UM coverage for Cristopher in this context. At oral argument, Direct Auto stated, and the Guiracochas conceded, that the insurance policy, as written, does not provide UM coverage for Cristopher’s injuries because UM coverage is restricted to insureds who are occupants in an “insured automobile” and Cristopher was injured while riding a bicycle.

¶ 31 Instead, the issue before this court is whether a provision in an automobile insurance policy that limits UM coverage to insureds occupying an “insured automobile” violates section 143a of the Insurance Code (215 ILCS 5/143a (West 2020)) and is unenforceable as a matter of public policy.

¶ 32 Direct Auto argues Cristopher, as a bicyclist, is not a “person insured” under either part I (liability) or part II (UM) of the policy absent a nexus of occupying a vehicle. Accordingly, Direct Auto contends the insurance policy at issue does not violate section 143a of the Insurance Code and its underlying public policy, because section 143a indicates UM coverage applies to “persons insured thereunder” and Cristopher was not a “person insured thereunder” while riding his bicycle. Thus, Direct Auto argues it is not required to provide UM coverage for Cristopher. Direct Auto also argues this court may have to make a distinction between a bicyclist and a pedestrian in this context.

¶ 33 The Guiracochas argue Cristopher is an insured under the policy and Direct Auto waived its argument to the contrary. Specifically, the Guiracochas assert Direct Auto failed to challenge Cristopher’s status as an insured in its motion for summary judgment and conceded he was an insured at oral argument in the appellate court. The Guiracochas argue, even if Direct Auto did not waive its argument that Cristopher is not an insured, the appellate court correctly found that Direct Auto cannot deny UM coverage to Cristopher because the Direct Auto policy limiting UM coverage to insureds who occupy an insured automobile violates section 143a of the Insurance Code and its underlying public policy. The Guiracochas contend the appellate

court's decision is consistent with this court's decision in *Squire* and the appellate court decision in *Merx*.

¶ 34 As a threshold matter, we choose to look past the Guiracochas' waiver argument and consider the merits of Direct Auto's argument in this appeal. See *In re Marriage of Sutton*, 136 Ill. 2d 441, 446 (1990) ("The rule of waiver is a limitation on parties and not on courts.").

¶ 35 A. Standard of Review

¶ 36 "Whether a provision in a contract, insurance policy, or other agreement is invalid because it violates public policy is a question of law, which we review *de novo*." *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 54 (2011). The circuit court's order granting summary judgment in favor of Direct Auto is also reviewed *de novo*. *Thounsavath v. State Farm Mutual Automobile Insurance Co.*, 2018 IL 122558, ¶ 16.

¶ 37 B. Insurance Contracts and Public Policy Concerns

¶ 38 "An insurance policy is a contract, so the rules applicable to contract interpretation govern the interpretation of an insurance policy." *Id.* ¶ 17 (citing *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010)). Accordingly, this court's primary function is to ascertain and give effect to the intention of the parties, as expressed in the policy language. *Id.* "If the insurance policy terms are clear and unambiguous, they must be enforced as written, unless doing so would violate public policy." *Id.* (citing *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 400 (2010)). The public policy of Illinois is reflected in its constitution, statutes, and judicial decisions. *Id.* Thus, if the terms of an insurance policy conflict with a statute, those terms are void and unenforceable. *Id.* "The terms of an insurance policy also cannot circumvent the underlying purpose of a statute in force at the time the policy is issued." *Id.*

¶ 39 "This court has a long tradition of upholding the right of parties to freely contract." *Rosen*, 242 Ill. 2d at 55. Accordingly, the power to declare a private contract invalid on public policy grounds is exercised sparingly, and "[a]n agreement will not be invalidated unless it is clearly contrary to what the constitution, the statutes, or the decisions of the courts have declared to be the public policy of Illinois or unless it is 'manifestly injurious to the public welfare.'" *Id.* (quoting *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 130 (2005)). A party seeking to have an agreement invalidated carries a " 'heavy burden' " of demonstrating a violation of public policy. *Id.* (quoting *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 65 (2006)). "Whether an agreement is contrary to public policy depends on the particular facts and circumstances of the case." *Progressive Universal Insurance*, 215 Ill. 2d at 130.

¶ 40 C. UM Coverage and Its Underlying Public Policy

¶ 41 To determine whether the provision in Fredy's Direct Auto insurance policy that limits UM coverage to insureds occupying an "insured automobile" violates section 143a of the Insurance Code (215 ILCS 5/143a (West 2020)) and its underlying public policy, we must look to the plain language of the statute. However, before we review the plain language of section 143a, this court must analyze the applicable law as it relates to liability coverage because liability and UM coverage are " 'inextricably linked' " where they "serve the same underlying public

policy: ensuring adequate compensation for damages and injuries sustained in motor vehicle accidents.” *Rosen*, 242 Ill. 2d at 58 (quoting *Schultz*, 237 Ill. 2d at 404).

¶ 42 All motor vehicles operated or registered in Illinois must be covered by a liability insurance policy, with certain exceptions. 625 ILCS 5/7-601(a), (b) (West 2020). The minimum amounts of liability coverage mandated by the legislature are \$25,000 per person and \$50,000 per accident. *Id.* § 7-203. “The main purpose of the mandatory liability insurance requirement is ‘to protect the public by securing payment of their damages.’ ” *Thounsavath*, 2018 IL 122558, ¶ 25 (quoting *Progressive Universal Insurance*, 215 Ill. 2d at 129). “To further that end, the legislature requires uninsured motorist coverage to place the policyholder in substantially the same position he would occupy if the tortfeasor had the minimum liability insurance” required by Illinois law. *Id.*

¶ 43 Section 143a of the Insurance Code (215 ILCS 5/143a (West 2020)) requires a motor vehicle liability policy to also include UM coverage and provides, in relevant part, as follows:

“(1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle that is designed for use on public highways \*\*\* shall be renewed, delivered, or issued for delivery in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7-203 of the Illinois Vehicle Code for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.”

UM coverage must be in an amount equal to the insured’s bodily injury liability limits unless the insured has bodily injury coverage in excess of the statutory minimum and specifically rejects that additional amount of UM coverage. *Id.* § 143a-2(1).

¶ 44 This court has recognized that “[s]ection 143a of the Insurance Code is plain and unambiguous in mandating that each policy must contain the specified uninsured motorist coverage.” *Thounsavath*, 2018 IL 122558, ¶ 33. Moreover, it has also determined that UM coverage “must extend to all who are insured under the policy’s liability provisions.” *Id.* ¶ 19. “If a person constitutes an insured for purposes of liability coverage under a policy, the insurance company may not, either directly or indirectly, deny uninsured-motorist coverage to that person.” *Schultz*, 237 Ill. 2d at 403.

¶ 45 Although “[n]either the statute nor the case law places any restriction on the right of the parties to an insurance contract to agree on which persons are to be the ‘insureds’ under an automobile insurance policy,” “once a person qualifies as an insured for purposes of the policy’s bodily injury liability provisions, she must be treated as an insured for purposes of uninsured and underinsured motorist coverage as well.” *Thounsavath*, 2018 IL 122558, ¶ 31. Accordingly, because section 143a of the Insurance Code protects insureds but does not extend its protection to those who are uninsured, we first turn to whether Cristopher is an insured under the liability policy.

¶ 46 Direct Auto argues Cristopher is not a “person insured” under the insurance policy absent a nexus of occupying a vehicle. Direct Auto asserts the Guiracochas and the appellate court read out of section 143a the qualifying language “persons insured thereunder.” See 215 ILCS 5/143a (West 2020). Specifically, Direct Auto states, “if one is not a ‘person insured’ under

the policy in Part I, then section 143a doesn't require [Direct Auto] to cover them in Part II." Thus, Direct Auto concludes, because Cristopher is not a "person insured thereunder" while riding his bicycle, it is not required to provide UM coverage for him in this context. Direct Auto contends the underlying public policy is to require those who use Illinois roads to have liability insurance for the use of a vehicle and thus the purpose of UM coverage is to mirror that obligation—those who use an automobile shall be protected from uninsured motorists.

¶ 47 In support of its position, Direct Auto relies on *Rosenberg v. Zurich American Insurance Co.*, 312 Ill. App. 3d 97 (2000), and *Stark v. Illinois Emcasco Insurance Co.*, 373 Ill. App. 3d 804 (2007). In *Rosenberg*, 312 Ill. App. 3d at 98, a pedestrian who was a nursing home resident was struck by a vehicle driven by an uninsured motorist and died. The nursing home had an auto insurance policy that included UM coverage, and the plaintiff sought coverage for the decedent's death. *Id.* The issue in *Rosenberg* was whether the decedent was an "insured" under the nursing home's policy. *Id.* at 100-01. The appellate court found the decedent was not an insured because the policy stated it extended to family members only if the insured was an individual, which the nursing home was not. *Id.* at 101.

¶ 48 To support its argument that Cristopher, a bicyclist, is not a person insured under the policy absent the nexus of occupying a vehicle, Direct Auto relies on a sentence in *Rosenberg* that states, "[w]e first note that the Illinois statute pertaining to uninsured motorist coverage does not specify that pedestrians must be included in underinsured and uninsured motorist coverage as Massachusetts statute does." *Id.* at 105 (citing 215 ILCS 5/143a (West 1998)). Direct Auto argues the legislature could have expanded section 143a in response to *Rosenberg* but chose not to.

¶ 49 Further, Direct Auto relies on *Stark*, 373 Ill. App. 3d at 811, where the appellate court found the defendant insurance company "never contemplated undertaking the risk of insuring [the] plaintiff, as a pedestrian, for purposes of underinsured motorist coverage." The appellate court in *Stark* addressed whether the policy issued to a company provided certain coverage to the company's sole officer, director, and shareholder when he was hit by a vehicle while walking through a parking lot. *Id.* at 810. The court determined that the "[p]laintiff, not being a named insured nor occupying a covered automobile at the time of the accident, had no coverage rights under the endorsement when struck by a vehicle as a pedestrian." *Id.* at 811.

¶ 50 The appellate court here found Direct Auto's reliance on both *Rosenberg* and *Stark* inapposite. 2022 IL App (1st) 211595, ¶ 52. Specifically, the court found that *Rosenberg* stated, in *dicta*, that the " 'Illinois statute pertaining to uninsured motorist coverage does not specify that pedestrians must be included in underinsured and uninsured motorist coverage as Massachusetts statute does.' " *Id.* (quoting *Rosenberg*, 312 Ill. App. 3d at 105). Moreover, the court found *Rosenberg* distinguishable from this case where it addressed a wholly different issue—whether the resident of a retirement community was entitled to UM coverage under the retirement community's automobile insurance policy. *Id.* (citing *Rosenberg*, 312 Ill. App. 3d at 98). More significantly, the court held, "section 143a broadly mandates protection for insured persons under the policy, thus obviating any need to delineate 'pedestrians' as a protected group." *Id.*

¶ 51 The appellate court here also found *Stark* distinguishable where Direct Auto relied on isolated language in *Stark*, "wherein the appellate court found that the defendant insurance company 'never contemplated undertaking the risk of insuring plaintiff, as a pedestrian, for

purposes of underinsured motorist coverage.’ ” *Id.* (quoting *Stark*, 373 Ill. App. 3d at 811). The court asserted that the appellate court’s finding in *Stark* “was unrelated to the insured’s status as a pedestrian; the appeal addressed whether the policy issued to a company provided certain coverage to the company’s sole officer, director, and shareholder.” *Id.* (citing *Stark*, 373 Ill. App. 3d at 810). We agree with the appellate court and find *Rosenberg* and *Stark* distinguishable from this case, where Cristopher claimed coverage under the automobile policy of his father.

¶ 52 The Guiracochas argue Cristopher is an insured under the policy and rely on *Squire* in support of their position. In *Squire*, the plaintiff was standing on a parkway when an uninsured motorist drove off the road and hit a parked car, which struck and seriously injured her. *Squire*, 69 Ill. 2d at 171. The plaintiff filed a claim under the family auto insurance policy and endorsement issued to her parents. *Id.* This court held, “it is well settled that section 143a requires coverage of insured persons regardless of the motor vehicle the uninsured motorist is driving, and regardless of the vehicle in which the insured person is located when injured.” *Id.* at 179. Accordingly, this court found, “[i]nsofar as the exclusion contained in the policy at bar would make coverage dependent upon the insured not being in a vehicle unlisted in the policy, that exclusion violates section 143a.” *Id.*

¶ 53 Direct Auto argues this court’s holding in *Squire* shows that UM coverage, like auto liability insurance, is about those who occupy a vehicle. However, the Guiracochas point out that the injured plaintiff in *Squire* was a pedestrian not occupying a vehicle. We agree with the Guiracochas and find *Squire* instructive.

¶ 54 When looking at the plain language of section 143a of the Insurance Code and its underlying public policy, we find Cristopher is an insured under both part I and part II of the policy. The public policy behind UM coverage is to place the insured in the same position as if the at-fault party carried the requisite liability insurance. Thus, whether the injured person occupied a vehicle at the time of the accident with an uninsured vehicle is not the proper inquiry. Rather, the inquiry should be whether the person’s injuries resulted “out of the ownership, maintenance or use of a motor vehicle,” including the uninsured at-fault vehicle. See 215 ILCS 5/143a (West 2020).

¶ 55 The plain language of section 143a of the Insurance Code makes clear that an insurance policy cannot be “renewed, delivered, or issued for delivery” in Illinois unless it provides coverage to “any person” for injuries “arising out of the ownership, maintenance or use of a motor vehicle.” *Id.* § 143a(1). A bicyclist injured by an uninsured motorist vehicle is a “person” who suffered injuries arising out of the ownership, maintenance, or use of “a motor vehicle.” Therefore, the injured person’s status as an occupant of a vehicle is irrelevant since the statute includes “any person” in the protected category. *Id.*

¶ 56 Accordingly, given that Cristopher qualifies as a relative under his father’s Direct Auto policy, Cristopher is an “insured thereunder” and thus entitled to UM coverage where he was hit by an uninsured motor vehicle. While we acknowledge the Guiracochas carried a heavy burden in seeking to invalidate the insurance policy, we find they met their burden where the provision in the policy limiting UM coverage to insureds occupying an “insured automobile” violates section 143a of the Insurance Code and is unenforceable as a matter of public policy.

¶ 57 To the extent Direct Auto argues a distinction exists between a pedestrian and a bicyclist in this context, we decline to address the argument because section 143a of the Insurance Code

does not draw a distinction and the facts of this case do not require it.

¶ 58

### III. CONCLUSION

¶ 59

For the foregoing reasons, we affirm the judgment of the appellate court and reverse the judgment of the circuit court.

¶ 60

Appellate court judgment affirmed.

¶ 61

Circuit court judgment reversed.