

RECENT DEVELOPMENT IN UM/UIM LAW: A SEPARATED OR DIVORCED PARENT CANNOT COLLECT UIM BENEFITS FOR A DECEASED CHILD UNLESS IT IS PROVEN THAT THE CHILD RESIDED WITH THAT PARENT

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The Pennsylvania Superior Court has recently issued a unanimous three-judge panel decision, in a case of first impression, holding that the father of a deceased child, who was separated from the deceased's mother, could not collect underinsured motorist benefits under his motor vehicle insurance policy because the child did not reside with him. See Erie Insurance Exchange v. Weryha, 2007 Pa. Super. 247 (Aug. 20, 2007).

The background of the case is as follows. On June 12, 2001, Timothy Weryha was killed while attempting to cross the road in front of his residence in Erie County, Pennsylvania after being struck by a vehicle driven by Lindsay S. Bedrow. At the time of the accident, Mr. and Mrs. Weryha (the deceased's parents) were separated and Mr. Weryha was living with his parents 60 miles from Erie, Pennsylvania.

Following the accident, the Weryhas reached a settlement with Bedrow's insurance carrier. Additionally, Mrs. Weryha settled her underinsured motorist claim under a policy issued by Erie Insurance. When an underinsured motorist claim was made under Mr. Weryha's policy with Erie Insurance, Erie denied coverage on the basis that Timothy was neither a named insured nor a resident as defined within the policy.

Under Mr. Weryha's policy, "resident" was defined as a "person who physically lives with you in your household. Your unmarried, unemancipated children under age 24 attending school full-time, living away from home will be considered residents of your household."

The Court affirmed the trial court's conclusion that Timothy did not physically live with his father prior to his death and, therefore, was not covered under his father's underinsured motorist policy.

The Court determined that the trial court properly concluded that the following evidence supported the trial court's conclusion that Timothy did not physically live with his father: Timothy did not have a room at his father's residence, Timothy did not receive mail at his father's residence, he did not eat regular meals at his father's residence, he did not have a key to his father's residence, he did not attend school nearby and Timothy did not spend the night on a regular basis at his father's residence. The Superior Court further stated in this regard that the terms "residence" and "living" require, at the minimum, some measure of permanency or habitual repetition. Sporadic visits and overnight stays do not establish residence.

In response, Mr. Weryha argued that the amount of time that Timothy could spend at his residence was limited by economic circumstances preventing Mr. Weryha from being able to find suitable employment and live in the same locale as the marital residence. The Court dismissed this argument as irrelevant because the issue was whether Timothy physically lived with his father; not why it was impossible for Timothy to physically live with his father.

Mr. Weryha also argued that Timothy was a resident of his home because Timothy was an unmarried, unemancipated child under age 24 attending school full-time, living away from home. The Court rejected this argument because as a matter of fact and law, Timothy's "home" was at his mother's house, therefore Timothy's home could not be at Mr. Weryha's residence.

The Weryhas final argument is that the trial court's decision violated the "Reasonable Expectations Doctrine" because Mr. Weryha expected his children's coverage under his underinsured motorist policy to continue after he moved away from the family residence. Mr. Weryha indicated that he changed his coverage in April of 1999 and April of 2000 after speaking directly with his insurance agent and informed the agent that he had separated from his wife and that his children's primary residence remained in the marital home. Accordingly, Mr. Weryha argued that based on those conversations, the agent had a duty to alert Mr. Weryha of any concern that his changed living circumstances could limit the coverage available to his children under the policy.

The Court determined Mr. Weryha's final argument lacked merit. First, the Court pointed out that the relevant issue was the son's living circumstances, not Mr. Weryha's changed living circumstances. Second, the Court stated that an insurance agent, who presumably was not an attorney, could not have been expected to make the legal inferences necessary to support the duty the Weryhas alleged the agent owed on the basis of the information provided to him or her.

Despite the Court's determination that Timothy did not physically live with his father prior to his death and, therefore, was not covered under his father's underinsured motorist policy, the Court took pains to state that it recognized that a child of separated or divorced parents may be regarded as a resident of the household of both parents when the child divides his time between the two. Moreover, the Court stated that the burden placed on insurers to phrase exclusions in an unambiguous manner, or face the consequences of failing to do so, permits such a finding as a matter of law. Finally, the Court noted that there is no impediment to allowing such coverage be explicitly bargained for.

What is obvious from this decision is that the determination of whether a child is a resident of a separated or divorced parent's home is fact-specific and will have to be determined on a case-by-case basis. Moreover, given this decision and the blatant hint by the Superior Court, the motor vehicle insurance industry in Pennsylvania may be subject to an increase in requests for UM/UIM coverage for children of separated or divorced parents.