

RECENT PENNSYLVANIA SUPREME COURT DECISION CHANGES FUTURE COURSE OF UM/UIM CLAIMS

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On December 30, 2005, the Pennsylvania Supreme Court rendered its decision on the long-contested issue of whether automobile insurance policies issued in Pennsylvania are required to contain a provision that uninsured ("UM") and underinsured ("UIM") claims be resolved by way of mandatory, binding arbitration. Arbitration of UM and UIM claims has long been the practice in Pennsylvania, and prior attempts by insurers to eliminate, or render optional, arbitration of such claims have been previously rejected by the Pennsylvania Insurance Department. While potentially less costly to litigate, the UM/UIM arbitration forum, comprised of a panel of three attorneys rather than a judge or jury, is generally regarded as claimant-friendly, allowing a claimant to proceed in a less formal setting without scrutiny from a jury of his or her peers.

The dispute giving rise to the Supreme Court's recent decision in *Insurance Federation of Pennsylvania, Inc. v. Koken*, J-95-2004 (Eakin, J.) originated with a July 16, 2001 declaratory opinion and order issued by the Insurance Commission, wherein the Commissioner stated that the Insurance Department may disapprove policies not requiring binding arbitration of UM and UIM disputes. The Commonwealth Court affirmed the Department's decision, and the Supreme Court granted an allowance of an appeal on the issue of whether the Insurance Department had the authority to require mandatory binding arbitration of UM/UIM disputes.

In its December 30, 2005 decision, the Supreme Court reversed the previous decisions of the Insurance Department and the Commonwealth Court, holding that the Insurance Department had no authority to require Pennsylvania-issued automobile insurance policies to contain mandatory arbitration clauses. Specifically, the court found that there was no express authority granted by the Pennsylvania legislature or within any applicable Pennsylvania statute that allows for the Insurance Department to require arbitration of UM/UIM claims. The Court also found there was no implied authority within the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL") mandating arbitration, noting that the "public policy underlying the . . . MVFRL does not create an implied legislative mandate allowing the Insurance Department to change the normal course of judicial proceedings simply because arbitration is less costly and less time-consuming than traditional litigation." *Id.* at 6-7. The Court concluded that the Insurance Department had "exceeded its express and implied authority" and "overstepped its legislative mandate" in issuing a regulation requiring mandatory binding arbitration in UM and UIM disputes. *Id.* at 7.

This recent decision will have a profound effect on the way the UM/UIM provisions in automobile insurance policies issued in Pennsylvania may be written, and on how UM/UIM disputes will be resolved as claims are made under those policies. Insurers are now free to state within the policy language how UM/UIM disputes will be resolved. For example, the policy may require that all UM/UIM claims be resolved within the "traditional" legal system by a court of competent jurisdiction, or alternatively, that arbitration is available as a means of resolution, but only where both insured and insurer agree. As such, the Insurance Federation holding will result a re-examination and re-drafting of policy language by insurers, and will significantly affect how claimants will proceed and recover in the UM/UIM setting.