

RECENT DEVELOPMENT IN UM/UIM LAW: UNDERINSURED MOTORIST BENEFITS MAY BE EXCLUDED WHEN WORKER'S COMPENSATION BENEFITS ARE AVAILABLE

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The Pennsylvania Commonwealth Court, by a 2-1 vote, has reversed a trial court's ruling that it was a violation of public policy to exclude anyone eligible for worker's compensation benefits from also recovering underinsured motorist benefits ("UIM"). See [Heller v. Pennsylvania League of Cities and Municipalities](#), 2008 Pa. Commw. LEXIS 254 (June 4, 2008).

The factual background of the case follows. Plaintiff, Frank Heller, was injured in a motor vehicle accident while in the course of his employment as a police officer for Sugarcreek Borough, Pennsylvania. Heller obtained a maximum recovery of \$25,000.00 from the other driver involved in the accident and put his personal automobile insurer on notice of a potential UIM claim. Heller also received medical expenses and two-thirds of his salary through worker's compensation benefits. Sugarcreek Borough continued to pay Heller the remaining one-third of his salary. Heller sought UIM benefits from Sugarcreek Borough under its policy with The Pennsylvania Leagues of Cities and Municipalities, doing business as Penn Prime Trust ("Penn PRIME"), a municipal insurer, and was denied.

Plaintiffs, Frank and Beverly Heller, then filed a declaratory judgment action in the Venango County Court of Common Pleas seeking a determination that a provision in Penn PRIME's insurance policy with Sugarcreek Borough that excluded UIM coverage claims for persons eligible to receive worker's compensation benefits was in violation of public policy. The trial court granted Plaintiffs' motion for summary judgment on this issue. Penn PRIME appealed the trial court's holding that the policy exclusion of UIM benefits for persons eligible for worker's compensation benefits violated public policy.

The policy provision at issue related to underinsured and uninsured motorists and stated as follows: "This coverage does not apply to . . . [a]ny claim by anyone eligible for workers compensation benefits that are the statutory obligation of the Member."

Penn PRIME argued that the trial court erred in ruling that the provision of the insurance policy violated public policy because there was no legislative mandate requiring UIM benefits be provided and because cost containment was a more important policy concern than whether an injured employee could seek benefits through both worker's compensation and automobile insurance.

Penn PRIME asserted that under the Pennsylvania Motor Vehicle Financial Responsibility Law the purchase of UIM insurance was optional and permitted purchasers to reduce UIM coverage below the insured's bodily injury limits. Therefore, this decision to allow such choices reflected the legislature's intent to permit flexibility in the purchase of UIM coverage. Accordingly, Sugarcreek Borough could have opted to have no UIM coverage, but instead chose to make UIM coverage available to only those claimants who were not eligible for worker's compensation benefits. Penn PRIME asserted that, in light of the foregoing, plaintiffs' position was an all or nothing approach that made little practical or policy sense. Penn PRIME also contended that public policy would not support a scenario in which it would require an insurer to pay benefits for which it was not compensated.

In reaching its decision, the Commonwealth Court stated that there was nothing in the Workers' Compensation Act or the Motor Vehicle Financial Responsibility Law that would prohibit the exclusion of UIM coverage where an employee was able to obtain worker's compensation benefits. The Court stated that:

As legal precedents have established that a Court should not act as a super-legislature in redrafting contract documents on the sole basis of outcomes that may be desired for the general good, and as the courts have also expressed a distaste for such action when a contracting party will be required to bear the loss of an unanticipated risk, and in the case of insurers, loss of premiums, we believe that the conflicting policy consideration falls on the side of the insurer under the present circumstances, and conclude that the trial court erred in determining that the worker's compensation exclusion in the Borough's insurance policy contract with Penn PRIME was void as against public policy.

In the dissenting opinion, Judge Rochelle Friedman stated that in situations where a UIM carrier denied coverage to anyone who was eligible for worker's compensation benefits, a worker's compensation carrier cannot seek subrogation against UIM payments and an employee cannot recover all applicable damages. According to Judge Friedman, this would defeat the two-pronged public policy of: (1) shifting the burden of paying from worker's compensation carriers to UIM carriers where an uninsured or underinsured third party tortfeasor causes a work-related injury and (2) enabling the employee to recover all applicable damages. For the foregoing reason, Judge Friedman would have affirmed the decision of the trial court.

This decision is significant because it addressed an issue that had not previously been ruled on by any Pennsylvania appellate court. Accordingly, at least for now, this decision provides guidance to the insurance industry, insureds and injured parties with respect to the interplay between UIM coverage and worker's compensation benefits. As always, however, the applicability of this decision would depend on the specific language of the insurance policy at issue and the case specific factual underpinnings.