

THE EVOLUTION OF CURRENT WORKERS' COMPENSATION LAW REGARDING THE RECOVERY OF WORKERS' COMPENSATION BENEFITS AND UM/UIM BENEFITS

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With the advent of the Pennsylvania Workers' Compensation Law enacted in 1993, workers' compensation carriers can seek subrogation for benefits paid as a result of motor vehicle accidents, which prior to 1993 they were unable to do. See 77 P.S. § 1, et seq.

The following article discusses the significant Pennsylvania cases in this area, which have established the parameters of an employee's recovery of UM/UIM benefits as well as workers' compensation benefits and the employer's right to subrogation of same.

1. Recovery of UM Benefits and Workers' Compensation Benefits From Employer

The Pennsylvania Superior Court held an employee can recover both UM/UIM benefits and workers' compensation benefits from his employer because the UM benefits may be subrogated. See *Warner v. Continental/CAN Ins. Co.*, 688 A.2d 177 (Pa. Super. 1996), allocatur denied, 698 A.2d 68 (Pa. 1997).

In *Warner*, the plaintiff, while in the course of his employment, was operating a motor vehicle owned by his employer when he was involved in a motor vehicle accident with a third party. The plaintiff received workers' compensation benefits and the liability policy limits under the third party's insurance policy. Plaintiff thereafter made a claim for underinsured motorist benefits against his employer's motor vehicle policy, which the carrier denied claiming recovery was precluded under the exclusivity provision of the Workers' Compensation Act, specifically 77 P.S. §481.

The Superior Court stated that precluding recovery of uninsured or underinsured motorist benefits by an employee where the workers' compensation carrier has the right to seek subrogation did not further the purpose of the Workers' Compensation Act. Therefore, an employee who is injured in the course and scope of his employment is not precluded from seeking UM/UIM benefits solely as a result of the application of the workers' compensation exclusivity provision.

2. No Subrogation of UM Benefits Paid by an Employee's Personal Motor Vehicle Policy

While a workers' compensation carrier had a right to subrogation of UM/UIM benefits from an employer, the Pennsylvania Superior Court refused to extend that right to the recovery from an employee's personal automobile liability insurance policy. See *Standish v. American Man. Mutual Ins. Co.*, 698 A.2d 599 (Pa. Super. 1997).

In *Standish*, the Superior Court held that Where the insured motorist coverage was the worker's personal automobile insurance policy, which was maintained exclusively by him, any award of benefits pursuant thereto were in the nature of an accident policy for the benefit of the insured rather than a liability policy covering the uninsured motorist. We found that the uninsured motorist benefits were not subject to the subrogation rights that a compensation carrier would normally have if the driver of the automobile causing the injury had the common form of liability insurance. See *id.* at 601.

3. Recovery of a Third Party, Including a Co-Employee's UM Benefits, But Subrogation Limited Only to a Third Party, not a Co-Employee

An employee may recover both UM benefits as well as workers' compensation benefits from a co-employee. See *Gardner v. Erie Ins. Co.*, 691 A.2d 459 (Pa. Super. 1997), affirmed 722 A.2d 1041 (Pa. 1999).

In *Gardner*, the plaintiff was injured when an unknown vehicle hit the car he was driving. A co-employee, who was a passenger in the vehicle, owned the car. Both plaintiff and his co-employee were acting within the course and scope of their employment at the time of the accident. The plaintiff recovered UM benefits from his own insurance policy and received workers' compensation benefits. The plaintiff then attempted to recover UM benefits under his co-employee's insurance policy, which was denied based on the co-employee immunity provision of the workers' compensation act. The co-employee immunity provision provides that a co-employee can only hold another co-employee liable for intentional acts, not negligent acts. See 77 P.S. § 72.

The Pennsylvania Superior Court held that the co-employee immunity provision did not apply because the instant case had nothing to do with the negligence of a co-employee, but merely requested UM benefits from the co-employee's personal automobile liability policy. Nothing in the Act precluded plaintiff's recovery of benefits under the co-employee's liability policy, therefore the employee was permitted to recover UM benefits from the co-employee's policy.

The Pennsylvania Commonwealth Court later extended the holding in *Gardner* to allow a workers' compensation carrier to subrogate UM/UIM benefits received from a third party, who is not a co-employee. See *Hannigan v. Workers' Compensation Appeal Board (O'Brien Ultra Service Station)*, 860 A.2d 632 (Pa. Cmmwth 2004).

In *Hannigan*, the employee who worked as a mechanic was involved in a motor vehicle accident while driving a customer's car. The other motorist was not insured. The employee received workers' compensation benefits and subsequently made a claim under the customer's motor vehicle insurance policy and received uninsured motorist benefits. Thereafter, the employer sought to recover against the employee's recovery of uninsured benefits. The Court held that the employer was entitled to subrogate the employee's recovery of uninsured benefits. In reaching its conclusion, the court cited the threefold purpose served by the employer's statutory right of subrogation, which are:

- (1) To prevent double recovery for the same injury by the claimant;
- (2) To insure that the employer is not compelled to make compensation payments made necessary by the negligence of a third party; and
- (3) To prevent a third party from escaping liability for his negligence.

4. Conclusion

The cases discussed above, have evolved over time to allow for employer subrogation of UM/UIM benefits received by an employee from a third party not a co-worker. Stay tuned for further developments with respect to employer subrogation in this context, as the law will no doubt continue to evolve and change.