AUGUST 7, 2015

CASE LAW UPDATE

Minnesota Supreme Court Expands Availability of Excess Underinsured Motorist (UIM) Coverage under Section 65B.49, subd. 3a(5) of the Minnesota No-Fault Act.

Following a school bus accident in February 2008 and a settlement with the insurers for the at-fault vehicle and school bus, an injured bus passenger sought excess UIM coverage under his family's auto insurance policy. Even though the school bus had $1,000,000 in UIM coverage and his damages only totaled $140,000, the injured passenger only received $34,543.70 from the school bus's policy because 18 other individuals were also injured. The injured passenger thus sought $65,456 in excess UIM benefits from his policy, which provided $100,000 in UIM coverage.

Minn. Stat. § 65B.49, subd. 3a(5) governs the availability of excess UIM coverage in such cases:

> If at the time of the accident the injured person is occupying a motor vehicle, the ***limit of liability for*** uninsured and ***underinsured motorist coverages available*** to the injured person is the limit specified for that motor vehicle. However, if the injured person is occupying a motor vehicle of which the injured person is not an insured, the injured person may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured. The excess insurance protection is limited to the extent of covered damages sustained, and further is available only to the extent by which the limit of liability for like coverage applicable to any one motor vehicle listed on the automobile insurance policy of which the injured person is an insured exceeds the ***limit of liability of the coverage available*** to the injured person from the occupied motor vehicle.

Based on the third sentence of the above subdivision, the excess UIM insurer denied coverage because the injured passenger's excess UIM coverage ($100,000) did not exceed the school bus's UIM coverage ($1,000,000). The district court and court of appeals agreed. But, in a split decision issued on August 5, 2015, the Minnesota Supreme Court reversed. *Sleiter v. Am. Family Mut. Ins. Co.*, — N.W.2d —, 2015 WL 4637198.

The majority focused on the phrase "coverage available" in the third sentence of subdivision 3a(5), which explains how to calculate excess UIM coverage, and found it to be ambiguous. According to the majority, the phrase "coverage available" can reasonably be interpreted to mean either (1) the policy limit of the occupied vehicle's UIM coverage, or (2) the amount recovered by the injured person from the occupied vehicle's UIM policy. While the injured passenger would not be entitled to excess UIM benefits under the first interpretation (his UIM coverage limit did not exceed the bus's UIM coverage limit), he would be entitled to benefits under the second interpretation (his UIM coverage limit exceeded the amount he recovered under the bus's UIM coverage).

Having found the statute to be ambiguous, the majority turned to the legislature's intent and found the injured passenger's interpretation of the ambiguous phrase to more fully advance the purposes of Minnesota's No-Fault Act by compensating accident victims while also limiting their claims to the amounts of coverage selected by the insured. The majority also found that its chosen interpretation was not inconsistent with its decision in *Schons v. State Farm Mut. Auto. Ins. Co.*, 621 N.W.2d 743 (Minn. 2001) that "a passenger injured in an accident involving two underinsured at fault automobiles is not entitled to underinsured motorist benefits from her own insurer where her underinsured motorist limits do not exceed the limit of underinsured motorist benefits available from the host driver's policy." The majority reasoned that unlike the injured passenger in *Schons*, who was the only victim and thus had the limit of the occupied vehicle's UIM coverage "available" to her, the injured passenger in *Sleiter* was one of 19 victims and did not have the full limit of the occupied vehicle's UIM coverage "available" to her.

Concluding that the injured passenger's interpretation produces to a better result, the majority held that "coverage available" means the benefits actually paid to the insured under the coverage provided by the occupied vehicle's policy.

This opinion marks a departure from prior excess UIM claims handling in Minnesota. Under *Schons*, insurers could engage in a simple "difference in limits" analysis by comparing the stated limits on the respective policies to determine if a policy provides excess UIM coverage. This is the approach followed by the insurer and approved by Justice Stras in his dissent. As noted by Justice Stras, this remains the analysis for single-victim accidents. But, a new analysis is now required for multi-victim accidents. The majority's focus on the amount recovered under the occupied vehicle's policy as opposed to the policy's stated limits raises several questions. For instance, will excess UIM coverage now be available if an injured person enters into a traditional settlement for less than the UIM limits on the occupied vehicle? Or will a traditional settlement by one injured occupant automatically reduce the "available coverage" for other injured occupants? It is also unclear whether there will now need to be some court involvement, as in this case, to make a legal determination of the "coverage available." We will continue to monitor these developments.

If you have any questions regarding the recent Minnesota Supreme Court Decision or any other automobile liability or insurance related issues, please contact a member of our Liability Practice Group at (952) 831-6544. This letter and other court opinion updates are available in .pdf form on the News and Resources page of our Firm's website: www.olwklaw.com.

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