

October 19, 2004

**Minnesota Court of Appeals: *Schmidt v. Clothier* does not apply to non-resident UIM policies.**

On September 21, 2004, the Minnesota Court of Appeals issued a decision in *Ziegelmann v. National Farmers Union Property and Casualty Companies*, 686 N.W.2d 563, holding that the principles set forth in *Schmidt v. Clothier*, 338 N.W.2d 256 (Minn. 1983) do not apply to non-resident policies.

The case stemmed from injuries sustained by a North Dakota resident, Mark Ziegelmann, who was involved in an auto accident in Minnesota. He settled his underlying liability claim for 90% of the available policy and submitted a letter to his Underinsured Motorist (UIM) carrier pursuant to *Schmidt v. Clothier*. The insurer did not substitute its check. The company indicated it was of the opinion North Dakota law applied to the UIM claim, not Minnesota law. Accordingly, *Schmidt v. Clothier* did not apply either. Pursuant to North Dakota law, Ziegelmann's policy required the exhaustion of the entire liability limits before the UIM limits were available. The District Court denied the insurer's motion for summary judgment, ruling Minnesota law applied to this case and, in Minnesota, such exhaustion clauses are void as against the policies of the No-Fault Act.

The Court of Appeals, however, determined Minnesota law and *Schmidt v. Clothier* do not apply because the No-Fault Act does not require that non-resident UIM policies conform with Minnesota law. Minn. Stat. §65B.50, subs. 1 and 2, have been interpreted to mean insurers licensed to do business in Minnesota need not provide UIM coverage to non-residents, and out-of-state policies providing UIM coverage will not be reformed to adhere to Minnesota UIM law. Accordingly, North Dakota UIM law and the policy's exhaustion clause applied. Ziegelmann was not allowed to receive UIM benefits because the underlying liability policy was not exhausted. In addition, the Court determined the insurer did not assent to the *Schmidt v. Clothier* procedures, because in its response to the *Schmidt v. Clothier* demand, the insurer plainly stated it felt North Dakota UIM law, not Minnesota law, applied to the claim.

We will continue to follow this case in the event of an appeal, and other cases interpreting the Minnesota No-Fault Act. Please contact us regarding this case or other legal issues.

Sincerely,

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