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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

08.02.11

UIM Coverage Held To Be Illusory When Equal To Michigan Minimum Bodily Injury Liability Limits

By Daniel Rizzo

On July 14, 2011, the Court of Appeals issued its published decision in *Ile v Foremost Insurance Company*, which held that optional \$20,000/\$40,000 Underinsured Motorist Coverage purchased by Plaintiff's decedent was illusory. Under the policy language, benefits would never be afforded.

Plaintiff's decedent recovered the full \$20,000 limit of liability insurance coverage from a tortfeasor after being killed while riding a motorcycle. Prior to his death, the decedent had purchased optional Underinsured Motorist Benefits (UIM) from Defendant Foremost which were bundled with Uninsured Motorist (UM) benefits and sold under a single rate. Thereafter, Plaintiff sought the \$20,000 in UIM benefits from Foremost. The claim was denied as the Foremost policy contained unambiguous language that prevented a duplicate recovery as Plaintiff had already recovered an identical sum from the tortfeasor.

The Court of Appeals upheld the trial court's finding that based on the language contained in the Foremost policy of insurance, the UIM coverage purchased by the decedent was illusory as recovery of benefits was impossible. Simply put, there would never be a factual scenario where the insured could collect UIM benefits under the policy. The insured paid for UIM benefits, but could never receive them.

The Court went on to identify two theories of UIM coverage: one will assure that the policy holder will receive at least the amount of UIM benefits purchased; the other will afford additional coverage in excess of that held by the tortfeasor. The Court selected the latter theory to be controlling in this case. Thus, Plaintiff will be allowed to proceed with recovery up to the \$20,000 UIM policy limits.

SECRET WARDLE NOTES:

Claimants will now be allowed to proceed with recovery of UIM benefits when the policy limits are equal to the state minimum bodily injury liability limit of \$20,000, despite policy language that provides for a set-off or a reduction based on the amount recovered from the tortfeasor.

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We welcome your questions and comments.

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