Drinker Biddle

Client Alert

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# Colorado Supreme Court Allows Duplicative Recovery Under UM/UIM Coverage

A divided Colorado Supreme Court held on November 7, 2016, that automobile insurers may not reduce uninsured/underinsured (UM/UIM) benefit awards to account for benefits already received under separate coverages. *See Calderon v. American Family Mutual Insurance Co.*, 14SC494 (Colo. Nov. 7, 2016). This decision effectively permits UM/UIM claimants to recover more than their uninsured loss and has already sparked a small wave of class action lawsuits in Colorado.

The plaintiff-insured in *Calderon* sustained injuries following a motor vehicle accident with an uninsured motorist. The plaintiff's auto policy with American Family provided $300,000 in UM/UIM coverage and $5,000 in medical benefits coverage. American Family immediately paid the $5,000 limit of medical benefits coverage but disputed the amount of uninsured motorist benefits due. The insured sued and received a jury verdict in the amount of $68,338. The trial court reduced the award by $5,000 to account for the medical benefits payment already received.

Although Colorado's intermediate appellate court affirmed the reduced award, in a 4-3 split decision, the Colorado Supreme Court reversed, finding that set-offs for benefits paid were not permissible. The statute at issue provides as follows: "The amount of the [UM/UIM] coverage available pursuant to this section shall not be reduced by a setoff from any other coverage, including, but not limited to, legal liability insurance, medical payments coverage, health insurance, or other uninsured or underinsured motor vehicle insurance." The court stated that "coverage available" refers the coverage available on a particular claim rather than the coverage limit under the policy. The court reasoned that a contrary conclusion would result in disparate recoveries depending on the sufficiency of the tortfeasor's insurance, which undercuts the purpose of UM/UIM coverage.

Three of the court's members dissented, finding that the majority's decision was not supported by the statute or public policy. According to the dissent, the statute prevents a reduction in the total amount of coverage available to the insured but does not prohibit a reduction where an insured has been fully compensated. In this case, the jury determined that the plaintiff's total sum of damages was $68,338, which included medical expenses. According to the dissent, allowing the plaintiff to recover the full amount of the jury verdict plus the previously paid $5,000 in medical payments benefits resulted in a duplicative recovery.

The dissent reasoned that the phrase "coverage available" could only refer to the total limits of available coverage. For example, if the plaintiff had an uninsured loss in excess of $300,000, he would have been entitled to the full limit of his UM/UIM policy notwithstanding his earlier receipt of $5,000 in medical payments coverage. In other words, the statute was intended to prevent a setoff where the insured has not been fully compensated for his damages.

Although the decision in *Calderon* was issued less than two weeks ago, it has already set off a small wave of class action lawsuits against insurers that have allegedly reduced UM/UIM benefits to account for previously paid medical benefit payments.

## Insurance Litigation and Coverage

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