Insurance Law Update

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Uninsured and Underinsured Motorist Coverage Set-offs

Resolving uninsured and underinsured motorist coverage claims almost always involves the issue of set-offs. Drawing from tort, contract and public policy principles, the courts’ decisions often seem confusing and difficult to master. The various decisions do, however, usually make sense if viewed under the general standards Illinois courts employ when ruling on these issues. In uninsured motorist claims, the courts have held that the Illinois statute governing uninsured motorist coverage (215 ILCS 5/143a) is intended to supply coverage providing compensation to the same extent as if the insured had been injured by a motorist insured in compliance with the Financial Responsibility Act. Glidden v. Farmers Automobile Insurance Association, 57 Ill. 2d 330, 312 N.E.2d 247 (1974). The statute governing underinsured motorist coverage (215 ILCS 5/143a-2) is intended to place the insured in the same position he would have occupied had he been injured by a motorist who carried liability coverage in the same amount as the insured’s UIM coverage. Sulser v. Country Mutual Insurance Co., 147 Ill. 2d 548, 591 N.E.2d 427 (1992).

The following is a collection of significant authority in this sometimes confusing area of law.

Uninsured Motorist Cases

No Medical Payment Set-off to Extent Damages Exceed UM Limits

Recovery for payments made under medical payments coverage in the UM policy cannot be set off to the extent that damages exceed the UM limits. Glidden v. Farmers Automobile Insurance Association, 57 Ill. 2d 330, 312 N.E.2d 247 (1974).

Payments Made on Behalf of Insured Drivers

**Liability Payments Under Same Policy**

Set-offs for liability payments made under a policy are allowed against the UM coverage in the same policy to the extent the set-off prevents double recovery. *Schutt v. Allstate Insurance Co.*, 135 Ill. App. 3d 136, 329, 478 N.E.2d 644 (2nd Dist. 1985).

**Workers’ Compensation Benefits**


**Extent of Workers’ Compensation Set-off**


**Pension Related Medical Payments**


**Dram Shop Set-off Does Not Include Attorneys Fees**


**No Attorneys Fees for Medical Payment**

An insurer is not required to deduct amounts paid by the claimant for attorneys fees under the Common Fund Doctrine from medical payment set-offs. *Johnson v. State Farm Mutual Automobile Insurance Co.*, 323 Ill. App. 3d 376, 752 N.E.2d 449 (5th Dist. 2001).

**Effect of Separate Premiums**


**Underinsured Motorist Cases**

**UIM Set-off Taken from Amount Recovered Not Policy Limits**

A UIM set-off is the amount actually recovered from the underinsured motorist, not the amount of the underinsured motorist’s liability limits. 215 ILCS 5/143a-2(4).
Medical Payments


Liability Payments from Source Other Than Underinsured Motorist

Public policy does not allow a UIM set-off for payments received from a party other than the underinsured motorist except to prevent double recovery. Farmers Automobile Insurance Association v. Coulson, 402 Ill. App. 3d 779, 931 N.E.2d 1257 (5th Dist. 2010); King v. Allstate Insurance Co., 269 Ill. App. 3d 190, 645 N.E.2d 503 (1st Dist. 1994).

Stacked Policies from Same Insurer

Where policies issued by the same insurer are stacked, the insurer gets to set off the full amount received from the underinsured motorist against each policy. Kapinus v. State Farm Mutual Automobile Insurance Co., 317 Ill. App. 3d 185, 738 N.E.2d 1003 (3rd Dist. 2000).

Stacked Policies from Different Insurers

Where policies issued by different insurers are stacked, each company is only allowed a pro rata set-off of the liability recovery. Janes v. Western States Insurance Company, 335 Ill. App. 3d 1109, 783 N.E.2d 37 (5th Dist. 2001).

Non-stacked Policies from Different Companies

Where UIM policies from different companies are not stacked, each company is allowed a full set-off for the liability recovery and only owes its proportionate share of the difference between the liability recovery and its UIM limits. Obenland v. Economy Fire & Casualty Company, 234 Ill. App. 3d 99, 599 N.E.2d 999 (1st Dist. 1992).

Workers’ Compensation Benefits


Social Security Benefits


Primary and Excess Policies

If primary and excess UIM policies apply, only one set-off for workers’ compensation benefits is allowed. The set-off is applied to the primary coverage first, and any additional amount is applied to the excess coverage. Roberts v. Northland Insurance Co., 185 Ill. 2d 262, 705 N.E.2d 762 (1999).
Amount Received from Underinsured Motorist

Set-offs for amounts paid on behalf of underinsured drivers are allowed even without a double recovery because the UIM statute (215 ILCS 5/143a-2) sets a maximum ceiling on recovery, rather than a minimum like the UM statute (215 ILCS 5/143a). *Banes v. Western States Insurance Co.*, 247 Ill. App. 3d 480, 616 N.E.2d 1021 (2nd Dist. 1993).

Apportioning Pool of Coverage

A claimant’s recovery from a pool of UIM coverage that is available to multiple claimants is reduced by that claimant’s recovery from UIM coverage exclusively available to that claimant. *Columbia Mutual Insurance Co. v. Herrin*, 2012 IL App. (5th) 100037, *Janes v. Western States Insurance Co.*, 335 Ill. App. 3d 1109, 783 N.E.2d 37 (5th Dist. 2001).

Miscellaneous Procedural Rules

Set-off from Policy Limits


Set-off Waived If Not Claimed at Arbitration


Workers’ Compensation Set-off Allowed after Arbitration

Set-offs may be claimed for workers’ compensation payments received after the arbitration hearing in a UM claim. *Laatz v. Intergovernmental Risk Management Agency*, 336 Ill. App. 3d 863, 784 N.E.2d 877 (2nd Dist. 2003)

Arbitration Not Stayed Until Workers Compensation Set-off Determined

UM arbitration need not be stayed until the amount of the workers’ compensation set-off is determined, but the insured must hold in trust any payments received and reimburse the insurer. *Pekin Insurance Co. v. Hiera*, 362 Ill. App. 3d 699, 840 N.E.2d 1236, (4th Dist. 2005).

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