NC Court of Appeals Clarifies Calculation of Underinsured Motorist Coverage

Practices

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On 5/3/22, the North Carolina Court Appeals published its decision in Tutterow v. Hall, et al. and changed the way Underinsured Motorist (UIM) carriers calculate the coverage available for UIM claims. The holding gives UIM carriers a credit for all liability policies when tendered, not just the first liability policy that offers to pay its limits.

In *Tutterow*, plaintiff's decedent was a passenger in Car #1 involved in an accident with Car #2. The parties stipulated that both drivers were at fault. Car #1 was covered by a $100,000 liability policy issued by Horace Mann. Car #2 was covered by a $100,000 liability policy issued by Nationwide ($200,000 in liability coverage total). The decedent was also covered by a $100,000 UIM policy issued for Car #1 and the decedent's own $100,000 UIM policy issued by State Farm ($200,000 in UIM coverage total).

Plaintiff brought a wrongful death claim against the drivers of both cars and both liability carriers tendered policy limits (one shortly before the other), but plaintiff did not accept. However, because both policies were tendered, the *Tutterow* Court held that $200,000 of liability limits were considered exhausted and, after giving credit to the UIM policies for the exhausted liability policy limits, the UIM coverage was $0.00.

Many months later, Plaintiff accepted the $100,000 liability policy limits for Car #1 (but not yet Car #2). The UIM policy for Car #1 was likely primary but that coverage was eliminated by an offset of the $100,000 Car #1 liability limits. This left $100,000 in UIM coverage available from the decedent's State Farm policy.

State Farm then forwarded its $100,000 and expressly reserved the right to reimbursement from Car #2's liability limits, which were previously tendered.

Sometime later, Plaintiff accepted the $100,000 limits for Car #2 after which State Farm argued it was entitled to reimbursement.

The trial court agreed with State Farm, holding that State Farm did not have a duty to pay anything because the initial tender of both liability policies, even though it was rejected by plaintiff, eliminated UIM coverage. The Court of Appeals affirmed.

The narrow holding of this case is that UIM limits are reduced by all liability policy limits that are tendered *before* the time that a UIM carrier is required to pay its coverage. In *Tutterow*, because both liability policies were tendered close together (within 30 days of each other), we do not know the timing of when a UIM carrier must pay its coverage in order to preserve a right to reimbursement. The Court of Appeals left that decision for another day.

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A separate issue on which *Tutterow* may be helpful is when a defendant #1 tenders, then a UIM carrier pays its coverage, then a defendant #2 tenders. In *that* scenario, is the UIM carrier reimbursed from the settlement with defendant #2? With the *Tutterow* opinion, such an argument is now available.

If you have a UIM case with multiple at-fault parties, consider reaching out to Austin for additional insight.

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