

## STATE SPECIFIC | PENNSYLVANIA

# WORKERS' COMPENSATION LIEN RECOVERY IN AUTOMOBILE ACCIDENT CASES



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A recent decision by the Commonwealth Court of Pennsylvania will significantly hamper the subrogation professional's ability to obtain a recovery from an employer's underinsured (UM) or uninsured (UIM) motorist policy. In *Heller v. Pennsylvania League of Cities and Municipalities*, 2008 WL 2261737 (Pa. Cmwlth June 4, 2008), the Court validated a policy exclusion that barred employees who were eligible to receive workers' compensation benefits from also receiving UIM benefits from their employer's auto policy. In *Heller*, a police officer was injured in an automobile accident while on patrol. The officer obtained the policy limit of \$25,000 from the carrier for the driver that struck his vehicle. He then sought UIM benefits from the auto policy covering his vehicle, which was owned by his employer, a Borough.

The auto insurance carrier for the Borough denied coverage based upon a provision in the policy which specifically excluded any claim for UIM benefits brought by anyone who is also eligible to receive workers' compensation benefits from its insured, the Borough. The officer filed a declaratory judgment action and argued before the trial court that the provision violated public policy. The trial court agreed with the officer and promulgated an order voiding the provision on that basis.

In reversing the matter on appeal, Pennsylvania Commonwealth Court considered the interplay between public policy, the Workers' Compensation Act and Pennsylvania's Motor Vehicle Financial Responsibility Law (MVFRL). The Court found that because the purchase of UIM insurance is optional and purchasers are allowed to reduce uninsured motorist insurance below the insured's bodily injury limits, the Legislature's intent

must have been to permit a certain degree of flexibility in the purchase of such coverage. In this instance, the Borough could have elected not to have UIM coverage but chose to have such insurance extend only to persons who are not eligible for workers' compensation benefits. The Court reasoned that this was the type of flexibility envisioned by the Legislature. It determined that neither the Workers' Compensation Act nor the MVFRL contained any specific prohibitions against the exclusion of UIM coverage where an employee is able to obtain workers' compensation benefits. Likewise, the Court found that public policy was not in any manner compromised by such exclusion.

In light of this decision, it is anticipated that other auto carriers will change the language in their UM and UIM policies to exclude UM and UIM coverage for employees of the insured who are eligible to receive workers' compensation. Insofar as Pennsylvania allows the workers' compensation lien to extend to any recovery obtained by an injured worker from an employer's UM or UIM policy, this development in the law will significantly inhibit the ability of an employer or carrier from obtaining a full recovery in accidents where benefits from the employer's UM/UIM policies would otherwise be available.

*Practice Tip: For any Pennsylvania claim arising out of an auto accident, it is important for the subrogation professional to obtain copies of any auto insurance policies that might apply to determine what limitations exist with respect to recovering workers' compensation benefits paid.*

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