

Policy Strictly Controls Underinsured Motorist Coverage

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The Michigan Court of Appeals recently held that despite a tortfeasor's policy having been exhausted by payment to *other* injured parties, the claimant's automobile insurance carrier was, nonetheless, entitled to a setoff for those amounts pursuant to the Underinsured Motorist (UIM) coverage provisions of the claimant's UIM policy.

In *Farm Bureau Gen Ins Co of Michigan v Hare*, No. 320710, 2015 WL 4988753 (Mich Ct App Aug. 20, 2015), Andrea Diamond struck a vehicle operated by Duane Alexander. Yvonne Hare, Olivia Hare, Jack Hare, Carl Alexander and Patricia Alexander were all occupants in Duane's vehicle. Patricia died from injuries sustained in the accident, and the other occupants were severely injured.

Duane was a named insured on a no-fault policy issued by Farm Bureau. The UIM provisions provided for UIM coverage limits of \$100,000 per person and \$300,000 per occurrence. Diamond, the tortfeasor, was insured by GEICO, whose policy limits were \$250,000 per person and \$500,000 per occurrence.

Duane and the passengers in his vehicle, including the estate of Patricia, sought UIM coverage from Farm Bureau, which denied their claims and filed a declaratory action, arguing that it did not owe UIM benefits to the six claimants injured in the accident. At or about the time Farm Bureau filed its declaratory action, GEICO tendered its policy limits.

Farm Bureau refused to consent to the settlement. In the interim, Yvonne agreed to settle her claims with GEICO for \$250,000, and Patricia's estate settled its claims with GEICO for \$250,000, thus exhausting the GEICO policy limits.

The trial court granted summary disposition in favor of Farm Bureau on the basis of the setoff provision in the UIM coverage endorsement. Specifically, the Farm Bureau policy indicated UIM coverage would be reduced by any amount "paid or payable" for the same bodily injury.

The four remaining claimants appealed, arguing that the trial court erred because GEICO's settlements with Yvonne and Patricia's estate exhausted the tortfeasor's policy limits, and as such, there was no amount "paid or payable" to the remaining occupants of the vehicle.

The appellate court rejected this argument, reasoning that the benefits from the GEICO policy were "payable" to the remaining occupants of the vehicle, but were only rendered unavailable after the families, their attorneys and GEICO structured a settlement, allocating all of the policy limits to the two

occupants who suffered the most catastrophic injuries.

The court further held that because the amount payable under the GEICO policy was greater than the UIM policy limits afforded by the Farm Bureau policy, Farm Bureau was entitled to a complete setoff as indicated in the Farm Bureau policy.

It is important to note the court emphasized in its opinion that UIM coverage is not required coverage by the Michigan No-Fault Act, and consequently, “the scope, coverage, and limitations of underinsurance protection are governed by the insurance contract and the law pertaining to contracts.”

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