

## Worker's Compensation Benefits in UM/UIM Cases

— by Julie E. Dutton

One of the more puzzling issues that arises in uninsured and underinsured motorist claims is how worker's compensation benefits are treated and how they affect a claimant's ability to collect under their uninsured and underinsured motorist policies. This is because the statute is unclear and the Courts have not come to an agreement on the issue. Therefore, the issue of how worker's compensation benefits affect a claimant's ability to collect UM/UIM benefits continues to arise again and again.

As you are probably aware, Oregon Revised Statute §742.502 requires every policy of insurance to also provide uninsured motorist ("UM") coverage with the same policy limit as the bodily injury liability coverage unless the insured elects a reduced amount. According to the statute, underinsurance ("UIM") benefits are to be equal to the UM benefits less any amounts recovered from other automobile liability insurance policies. ORS 742.504 sets out the terms for UM/UIM coverage and ORS 742.504(7)(c)(B) discusses how workers compensation benefits are to be treated in determining the amount of benefits available under a UM/UIM policy. ORS 742.504(7)(c)(B) provides:

(c) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

\* \* \*

(B) The amount paid and the present value of all amounts payable on ac-

count of such bodily injury under any workers' compensation law, disability benefits law or any similar law.

ORS 742.504(c)(B). The question that has regularly arisen regarding the above statute is what is meant by the phrase "any amounts payable under this coverage."

In 1993, the Court of Appeals interpreted ORS 742.504(c) in the case of California Casualty Indemnity Exchange v. Maritzen, 123 Or. App. 166. The Maritzen Court determined that the statute required that all payments a claimant receives from workers' compensation insurance to be subtracted from a UM/UIM policy limit to determine the amount of available UM/UIM coverage. For example, if a claimant had a \$100,000 UIM policy and received \$25,000 from a negligent driver and \$75,000 in workers compensation benefits, then according to the Maritzen case, the UIM carrier had no obligation to pay the claimant anything as the claimant had been fully compensated in the amount of the policy. However, in the dissenting opinion in the Maritzen case, Court of Appeals Judges Rossman, De Muniz, Leeson and Riggs argued that the workers compensation benefits should be applied to reduce the total amount of damages that a plaintiff may be entitled to recover from a negligent driver and not be applied to reduce the policy limit to zero.

In 1999, the Court of Appeals decided Williams v. American States Insurance Company, 163 Or. App. 179. In that case, the plaintiff, Williams, was injured in an automobile accident when he was hit by an uninsured motorist. He obtained a judgment

*(Continued on next page)*

against his UM carrier, American States, in the amount of \$14,375. The UM policy limit was \$25,000. Prior to obtaining judgment against American States, Williams had received \$8,600 from his worker's compensation insurance. Williams argued, based on the Court's holding in Maritzen, that the \$8,600 was to be deducted from the \$25,000 policy limit, regardless of the amount of the judgment for his total damages. This would allow him to recover the full \$14,375 under the policy. American States argued, however, that this would essentially allow plaintiff to collect a double payment for his injuries in violation of the terms of the policy. Thus, the \$8,600 received in workers compensation benefits should be applied to reduce the \$14,375 judgment, leaving plaintiff to recover \$5,775 under the UM policy. The Court of Appeals agreed with American States and held that when the total amount of damages awarded under a UM policy is less than the policy limit, the worker's compensation benefits received by the claimant would be subtracted from the total damages awarded, not from the policy limit, leaving the claimant to recover no more than the amount of the damages award.

The Williams court distinguished their prior holding in Maritzen by pointing out that in Maritzen, the court was asked to define the term "loss payable" under a UIM policy. Because Maritzen's total damages were greater than the policy limit, the court found that the "loss payable" and the policy limit were one and the same. The court further indicated that it followed Maritzen in subsequent cases because the plaintiffs' damages in those cases also far exceeded the applicable policy limits. In other words, the court held that if the claimant's damages exceed the policy limit, then the payments received from the tortfeasor, any other liability insurance carrier plus any worker's compensation benefits received will be subtracted from the policy limit to determine the amount of UM/UIM benefits available. However, if the total amount of a claimant's damage is less

than the UM/UIM policy limit, then the payments received would be subtracted from the total damages to determine the amount recoverable under the UM/UIM policy.

On December 2, 2004, however, the Oregon Supreme Court decided the case of Bergmann v. Hutton, et al., 337 Or 596 (2004). In that case, Bergmann was injured in an accident with an insured driver whose policy limit was \$25,000. All agreed, however, that Bergmann's damages exceeded \$650,000. Bergmann recovered the \$25,000 from the negligent driver's insurance carrier and also received \$107,652 in workers' compensation benefits. Bergmann had a UIM policy with a \$100,000 limit. Because Bergmann's damages were greater than the amount she recovered, she made a claim against her UIM policy. Her UIM carrier, Farmers, argued that because the amount she recovered from the negligent driver plus her workers' compensation benefits totaled more than her \$100,000 UIM policy limit, plaintiff had essentially been made whole under the policy and was not entitled to recover anything from Farmers. The Circuit Court agreed and granted Farmers' motion for summary judgment. The Court of Appeals affirmed the lower court's decision without opinion. The Supreme Court, however, granted review of the case and in a surprising decision, changed how workers compensation benefits are treated in a UIM claim. Under Bergmann, workers' compensation benefits are now to be deducted from the total amount a claimant would be legally entitled to recover from a negligent driver. In other words, the Court held that the \$107,652 Bergmann received in workers' compensation benefits were to be subtracted from her total damages of \$650,000, not from her \$100,000 policy limit. Thus, Bergmann is entitled to recover some amount from Farmers and the case was remanded to the Circuit Court to determine how much. Accordingly, the Court held that the phrase "any amounts payable under this coverage"

meant the total amount the plaintiff is legally entitled to receive from the tortfeasor.

While this is the current state of the law regarding treatment of worker's compensation benefits under a UM/UIM policy, this is not the end of the story. The Court is still a divided one. A dissenting opinion written by Justice Kistler was also filed in the Bergmann case. In his dissent, Justice Kistler argued that the majority of the court was incorrect in its interpretation of the phrase "any amount payable under the terms of this coverage." Justice Kistler argued that the "amount payable" under the statute refers only to the policy limit. Thus, he argues that the worker's compensation benefits should be deducted from the policy limit in accordance with the Maritzen decision. Chief Justice Carson and Justice Balmer joined in Justice Kistler's dissent. Therefore, until the Legislature makes the statute more clear or the Court comes to a final agreement, this issue is sure to be revisited in the future. ❖

*— If you have any questions, please feel free to contact the author, Julie E. Dutton, by phone at (503) 768-9600, or by email at [julie@lerlaw.com](mailto:julie@lerlaw.com).*