



legal

briefs

Summer 2010

A Newsletter for the Clients of RSR&M, L.L.C.

Liability & Coverage Decisions

UM Benefits Not Applicable to Pedestrian Struck by Uninsured Motorist

In the case of Maryland Automobile Insurance Fund v. Baxter, 186 Md. App. 147, 973 A.2d 243 (2009) the Court of Special Appeals rejected the attempt by the Maryland Automobile Insurance Fund (“MAIF”) and the Estate of a deceased pedestrian to expand the applicability of the Maryland Uninsured Motorist (“UM”) Statute to include pedestrians struck by an uninsured motorist.

A vehicle owned by Teresa Ann Palugi and operated by her husband William Palugi, struck and killed pedestrian, Stephanie Scott as a result of Mr. Palugi’s negligence. The vehicle was insured by Interstate Automobile Insurance Company (Interstate) through a policy issued to Mrs. Palugi on which Mr. Palugi was listed as an excluded driver (Policy). Plaintiffs filed suit for declaratory judgment against Interstate. Plaintiffs asked the Court to decide whether they were entitled to seek recovery of UM benefits under the Policy. They also named MAIF as a defendant in the event that the Court found that there was no coverage.

The trial judge granted summary judgment in favor of Interstate, finding there was no coverage afforded under the Policy. The trial court found that the decedent was not an insured under the Policy and was not entitled to recover under the UM provisions of the Policy.

On appeal, MAIF made two primary arguments. They argued that the Policy’s language violated the requirements of the UM Statute to provide benefits to an individual who was injured by an uninsured motorist. They also argued that based upon the policy language, Ms. Scott would be

covered under the Policy regardless of the exclusion of Mr. Palugi. They argued that since Ms. Scott was in contact with the vehicle she would have been a “Clause 2” insured, as she was albeit briefly occupying the motor vehicle.

The Court rejected each of these arguments and sustained the trial court’s granting of summary judgment. The Court first noted that UM coverage is designed, in the face of a loss, to pay benefits from the insurance company to its own insured, not to pay benefits to some third party. Thus, if the individual claiming entitlement to benefits is not an insured through the definitions provided in the policy then there is no entitlement to damages. Applying this test to the claim made on behalf of Ms. Scott, the Court found that she was not insured under any of the three specific clauses set forth in the policy.

The Court also found that there is no requirement to provide uninsured motorist coverage for a pedestrian such as Ms. Scott or her surviving relatives through Maryland law. Though companies that write insurance policies in Maryland are required to provide UM coverage for damages that an insured or a surviving relative of an insured is entitled to recover from an owner or operator of an uninsured vehicle, this statutory protection is intended for the insured or relative of the insured. Maryland’s uninsured motorist statute only requires that the UM coverage be provided to persons who are insured under the policy, not third parties.

Article contributed by Tom Neary

ROLLINS, SMALKIN, RICHARDS & MACKIE, L.L.C.

a general civil and trial practice

Statutory Employer

The Maryland Court of Appeals recently reviewed the question of The Maryland Workers' Compensation Commission's ("Commission") jurisdiction in a case involving a statutory employer. In Schlosser v. Uninsured Employers' Fund, 411 Md. 355, 983 A2d 431 (2009), the Court reviewed whether the Circuit Court erred in upholding the Commission's finding that Maryland did not have jurisdiction over W.M. Schlosser Co. ("Schlosser") based on Md. Code Ann. [Lab. & Empl.] § 9-508.

The Claimant was employed by the subcontractor, Rose Industrial Services ("Rose") and resided in Maryland, but was injured in the District of Columbia. Rose only carried workers' compensation insurance in the District of Columbia. However, the statutory employer, Schlosser, did carry workers' compensation insurance in Maryland. The question presented at the Commission was whether the statutory employer was liable or whether the Uninsured Employers' Fund ("UEF") was liable to pay the Claimant's benefits.

The Court's analysis hinged on the determination of whether or not the Claimant was a covered employee under Md. Code Ann. [Lab. & Empl.] § 9-203. The Court stated that the determination of whether an injured employee is covered depends on both the employment relationship and the situs of the work. The Court found that there was no dispute that Rose and the Claimant were engaged in an employer-employee relationship and that the Claimant performed work for Rose in several job sites throughout Maryland, the District of Columbia, and Virginia. The Court determined that as to Schlosser, the Claimant worked and was injured wholly outside of Maryland. UEF argued that Schlosser, as the statutory employer, was liable for workers' compensation benefits to the Claimant, despite the fact that as to Schlosser, the Claimant was not a covered employee under Md. Code Ann. [Lab. & Empl.] § 9-203. Had the Claimant worked directly for Schlosser, his work would have been "wholly outside of this State" under Section 9-203(c); therefore, he was not a "covered employee" of Schlosser.

The Court of Appeals upheld the Circuit Court's acceptance of the Commission's determination that the UEF was liable to pay the Claimant's workers' compensation benefits.

Applicability of Second Tier Permanency Rate for Claims Involving Separate Body Parts

The Court of Special Appeals ("COSA") recently decided two cases on the same issue. In Anderson v. Board of Education of Montgomery County and Robinson v. Board of Education of Montgomery County the Court reviewed whether the Commission's application of the second tier rate was correct.

In both Anderson and Robinson, the claimants had injuries to scheduled members under the Maryland Workers' Compensation Act, as well as injuries that fell under "other cases." The permanency award for each claimant totaled or exceeded 75 weeks of compensation when the permanency ratings were combined. For example, the Commission determined that Anderson had a 20% impairment to the body as a result of an injury to her back, of which 10% was attributable to her work-related injury. The Commission further determined that Anderson had a 59% impairment to her leg, of which 9% was attributable to her work-related injury. These percentages resulted in awards of 50 weeks for the back and 27 weeks for the leg. The Commission combined these and awarded 77 weeks of compensation at the second tier rate. Robinson's case was quite similar. Montgomery County argued that the Commission erred in combining compensation for a scheduled member with compensation that fell under other cases to reach the 75 week threshold.

The COSA reversed the Circuit Court for Montgomery County. In ruling that the Commission correctly applied the Maryland Workers' Compensation Act, the COSA explained that "the history of the creation of the second tier of compensation persuades us that the legislature intended for the Commission to consider the total compensation awarded as a consequence of a single accident in making its determination of whether the enhanced rate was applicable."

Articles contributed by Andy Nichols



Wrongful Death Lawsuits Require All Beneficiaries to be Parties

In Williams, et al. v. Works, et al. (“Williams I”) and Williams et al. v. Ace American Insurance Co., et al., (“Williams II”) the Court of Special Appeals reviewed two separate wrongful death claims involving the same decedent, but claims by four different children.

In Williams I, the decedent’s widow, and mother of his two young children, filed a wrongful death suit against the tortfeasor, Work. Work’s liability carrier tendered its policy limits. The Decedent’s widow then sought additional recovery against the under-insured motorist (“UIM”) carrier. Prior to settling the case, counsel for the UIM carrier insisted that all beneficiaries be joined in the action, as required by the Maryland Wrongful Death Act. Plaintiffs’ counsel in Williams I drafted a Second Amended Complaint, which added decedent’s two sons from a previous marriage and mailed a copy to them. There was, however, no evidence in the record that the Second Amended Complaint was ever actually filed with the Court. The parties in Williams I eventually entered into a settlement agreement and filed a Joint Motion for Approval of Settlement and Entry of Judgment. The Settlement Agreement included language that the decedent’s other two children had been “notified” of the lawsuit, but had taken no action to join in the suit. The Settlement Agreement named the children as “use plaintiffs” in the action, but there was nothing in the record that showed any complaint designating them as plaintiffs of any kind was ever filed. The Circuit Court approved the settlement and entered judgment.

Approximately one year later, the decedent’s other children filed a motion to reopen Williams I and consolidate it with Williams II. Plaintiffs in Williams II asserted that they were entitled to recover for the wrongful death of their father as they did not receive compensation and had not consented to the settlement in Williams I. The Circuit Court denied the motion to reopen Williams I and granted summary judgment to the insurance carriers in Williams II. Summary judgment was granted based upon arguments that the Plaintiffs in Williams II were aware of the lawsuit in Williams I and chose to not act on their claims. Therefore, their opportunity to recover for the wrongful death of their father was foreclosed.

The Court of Special Appeals, in reviewing the Maryland Wrongful Death Act, reversed the Circuit Court’s decisions. The Court held that Maryland law makes it clear that all beneficiaries in a wrongful death suit must be a party to the lawsuit. Furthermore, Maryland law requires that any judgment entered in favor of a beneficiary or beneficiaries who did participate, but failed to include all necessary parties, be vacated. The Court stated the Maryland Wrongful Death Act does not contain a mere “notice” rule, but is express in its requirement that all beneficiaries be named parties in the lawsuit.

Article contributed by Andy Nichols



Congratulations to associate James Buck and his wife, Mary, on the newest addition to their family, Madeleine Avery. Madeleine was born on May 25, 2010, weighing 7 pounds, 9 ounces. She was welcomed home by her big brother, Jackson, 18 months old, and the family Labrador, Maggie, whose patience knows no bounds.



Circuit Court Judge Refuses to Impose Dram Shop Liability

In Troxel v. Iguana Cantina, L.L.C., which was pending in the Circuit Court for Baltimore City, Plaintiff sought \$10 million in damages for a severe head injury he alleged he sustained when he was attacked by several other patrons at a Baltimore City nightclub. The incident occurred during a “college night” promotion during which 18-20 year old men and women were permitted inside the nightclub, but prohibited from drinking alcoholic beverages. Plaintiff argued that the Defendants were negligent in holding such events and, allegedly, by failing to exercise reasonable protocols and procedures to “card” nightclub patrons and ensure that underage patrons would not consume alcohol while inside the club. James Andersen, a partner here at RSRM, filed a motion for summary judgment, arguing that Plaintiff was essentially seeking to impose “dram shop” liability on the Defendants and that Plaintiff could not prove causation because the identity of the assailants and, therefore, their ages and the amount of alcohol, if any, that was consumed, are unknown. Judge Wanda Heard listened to oral arguments from both sides and agreed with Mr. Andersen’s position and granted the Defendants’ Motion for Summary Judgment.

2010 Maryland Workers’ Compensation Educational Association, Inc. Conference

The Maryland Workers’ Compensation Educational Association, Inc.’s (“MWCEA”) 2010 conference will be held September 19-22, 2010 at the Clarion Resort Fontainebleau Hotel and Conference Center, 10100 Ocean Highway, Ocean City, Maryland 21842.

Be on the lookout for information regarding RSRM’s reception as the MWCEA Conference draws nearer or feel free to contact Paul G. Donoghue at RSRM with any questions.

Additional information concerning the MWCEA Conference can be found at <http://mwcea.com/conference.htm>.

Mandatory Minimum Vehicle Liability Coverage Increased

After much debate, including numerous proposed and rejected amendments; the Maryland Legislature passed House Bill 825.

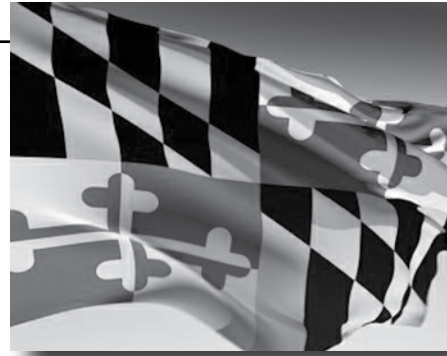
This Bill increases the minimum amounts of required security coverage for the payment of claims for bodily injury or death arising from a motor accident. The law changes the previous requirements of \$20,000 for bodily injury or death of one party to an increased minimum of \$30,000. The bill also increases the minimum requirement for claims for bodily injury or death of more than one person from \$40,000 to \$60,000. These insurance minimums will be applicable to both the issuance of and the renewal of all vehicle insurance policies beginning January 1, 2011.

Civil Jury Trials – Amount in Controversy

On May 4, 2010, the Maryland Legislature approved Senate Bills 118 & 119. The Bills affect the right of parties in a Maryland civil suit to request a trial by Jury. Specifically, the new legislation requires the amount in controversy to be greater than Fifteen-Thousand Dollars (\$15,000), not including attorney's fees and costs, in order to demand a jury trial. Prior Maryland Law required the amount in controversy to exceed Ten-Thousand Dollars (\$10,000). The Legislature initially hoped to increase the amount to Twenty-Thousand Dollars (\$20,000), however the proposed bill was amended to an increase of only five thousand dollars.

Senate Bill 118 Changes the Maryland Courts and Judicial Proceedings Law 4-402(e)(1) to read as follows: "In a civil action in which the amount in controversy does not exceed \$15,000...a party may not demand a jury trial pursuant to the Maryland Rules." Senate Bill 119 amends Article 5(a)(2) of the Maryland Constitution Declaration of Rights to read: "Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds \$15,000." SB 119 also amends Article 23 of the Maryland Constitution Declaration of Rights to read: "...The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of \$15,000, shall be inviolably preserved."

SB 118 and 119 will be voted on by the public during the next general election.



Distracted Driving – Hand-Held Cell Phone Usage Banned

Maryland has now joined the ranks of those states that have banned hand-held cell phone usage by drivers while a vehicle is in motion. Senate Bill 321, named the Delegate John Arnick Electronic Communications Traffic Safety Act (in honor of the late-delegate who originally sought legislative support in banning cell phone use while driving) was passed by a Senate vote of 24-23 and a House vote of 125-14. The law is scheduled to take effect on October 1, 2010.

SPECIFICS OF THE BILL:

Application: The Bill, applies to cell users who drive school vehicles (Class H Vehicles) carrying passengers and to drivers 18 years of age or older (the Bill does not apply to those law enforcement personnel and emergency personnel acting in their official capacity). The bill prohibits a driver from using his or her hands to use a hand-held telephone while his or her vehicle is in motion, however, the Bill provides for exceptions to this rule. Hand-held cell phones may be used by a driver to call 911, a hospital, an ambulance service, a fire department, a law enforcement agency, or a first aid squad.

Violation(s): The Bill is enforceable as a secondary offense; meaning police may only enforce the hand-held prohibition after the officer has detained a driver for a separate (suspected) violation. The fine for a First-time offender is \$40, and \$100 for a second or subsequent offense. The Bill also provides for Judicial Discretion for first time offenders. The Court may waive a penalty for a first time offender who provides proof that he or she has acquired a hands-free cell phone device.

Articles contributed by Andy Nichols

Presort Std.
US Postage
PAID
Permit 3361
Baltimore, MD

ROLLINS,
SMALKIN,
RICHARDS &
MACKIE, L.L.C.
Attorneys At Law

Rollins, Smalkin, Richards & Mackie, L.L.C. has been a Maryland-based litigation firm for over 90 years. The firm's main office is an historic four story building in Baltimore's center city. Please contact Andrew T. Nichols at (410) 727-2443 if you require any clarification or additional information concerning the contents of this newsletter.

This newsletter is provided for informational purposes only. Every effort has been made to ensure accuracy, but the contents of the newsletter should not be construed as legal advice, which, of necessity, must relate to specific advice, which, of necessity, must relate to specific factual situations and claims. You are urged to consult with counsel concerning your situation and any specific questions that you may have.

In this issue ...

*UM Benefits Not
Inapplicable to
Pedestrian Struck by
Uninsured Motorist1*

*Workers' Compensation
Update.....2*

*Wrongful Death
Lawsuits Require All
Beneficiaries to be
Parties.....3*

Firm News.....4

Legislative Update....5