



November 18, 2010

Re: RECENT KENTUCKY SUPREME COURT DECISION ON UM/UIM COVERAGE

The Kentucky Supreme Court recently decided [State Farm Mut. Auto. Ins. Co. v. Carlene Slusher, Administratrix of the Estate of Donald Slusher, Deceased](#). That decision addresses the issue of what an insured's entitlement is to UM/UIM coverage when he has been injured by a co-worker in a work related motor vehicle accident. The parties stipulated that Mr. Slusher's death occurred during the course of his employment and the accident was covered by the Kentucky Workers' Compensation Act, KRS Chapter 342. Ms. Slusher sought and received all Workers' Compensation benefits she was entitled to recover. Pursuant to KRS 342.690(1), the exclusive remedy provision of the Workers' Compensation Act, the Estate could not directly assert a wrongful death claim against the tortfeasor/co-worker or his employer.

Mr. Slusher had an automobile insurance policy through State Farm which provided UM/UIM coverage. When the Estate sought payment under these provisions State Farm denied the claim on the grounds the policy language limited UM/UIM damages of the Estate to those they were "legally entitled to collect" from an owner or operator of an uninsured or underinsured motorist's vehicle, and KRS 342.690(1) limited the Estate's legal entitlement to collect any damages from either the employer or co-worker in excess of the workers' compensation benefits paid on account of Mr. Slusher's death.

The Supreme Court held because of the exclusive remedy provisions of the Workers' Compensation Act, a worker is not legally entitled to collect any further amounts from either his employer or co-worker, thereby barring any recovery for UM/UIM coverage. The Court reasoned by a plain reading of the insurance contract (specifically the language "legally entitled to collect") ultimately recovery would not be possible due to the exclusive remedies found in the

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Workers' Compensation Act the Estate barring recovery from either the tortfeasor or his employee. Because the Estate was not now or ever will be legally entitled to collect any amounts from the tortfeasor or the employer then they cannot collect UIM benefits under the language of the policy. The Court does make note to distinguish the fact this applies strictly to a person being able to recover from their co-worker and/or employee. If there is an independent third party tortfeasor, entitlement to UM/UIM benefits are analyzed differently. Should you have any further questions regarding this decision or its implications, please do not hesitate to contact our firm.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Matthew J. Smith". The signature is fluid and cursive, with the first name "Matthew" being the most prominent part.

Matthew J. Smith