

Court of Appeals Rules UIM Limits Are Reduced Only by Worker's Compensation Actually Received

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Secura Supreme Insurance Company v. The Estate of Daniel Keith Huck, 2020AP1078-FT (Ct. App. Sept. 29, 2021)

In *Secura*, the decedent Huck was killed by a motorist while working in the course and scope of his employment for the Village of Mt. Pleasant. After receiving the tortfeasor's liability limits of \$25,000 and worker's compensation from the Village's insurer, the Estate submitted a claim for underinsured motorist's ("UIM") coverage under Huck's automobile insurance policy with Secura, which had limits of \$250,000. Secura's policy language provided that UIM limits would be reduced by "all sums ... [p]aid or payable because of the bodily injury under ... [w]orker's compensation law," tracking the language of Section 632.32(5)(i)2. While the Estate initially received worker's compensation benefits of \$35,798.04, it was obligated by Section 102.29 to refund the insurer \$9,718.73 from its settlement with the tortfeasor, netting \$26,079.31. Secura and the Estate agreed the UIM policy limits were reduced by the \$26,079.31 paid to and kept by the Estate but disagreed whether the limits were also reduced by the amount paid by and then paid back to the insurer pursuant to Section 102.29. The circuit court found for the Estate, and Secura appealed.

The Court of Appeals affirmed, guided by the Wisconsin Supreme Court's statutory analysis of Section 632.32(5)(i)2. in *Teschendorf v. State Farm Ins. Co.*, 2006, WI 89, 293 Wis. 2d 123, 717 N.W.2d 258. As the Court noted, the "consistent focus" of *Teschendorf* was on "what the injured person actually received from the worker's compensation insurer." The Court rejected Secura's effort to distinguish *Teschendorf* by asserting that the worker's compensation insurer did pay the Estate \$9,718.73, which ignored that the amount initially paid was paid back. The Court concluded a UIM insurer is permitted to reduce its limits only "by the total amount of worker's compensation actually received".

The decision is recommended for publication.

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