

The Wisconsin Supreme Court Issues Two Decisions Concerning the Interpretation of Underinsured Motorist (UIM) Reducing Clauses

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Secura Supreme Insurance Company v. Estate of Huck **2023 WI 21, 406 Wis. 2d 297, -- N.W.2d --** **(Filed March 22, 2023)**

In *Estate of Huck*, the decedent Daniel Keith Huck was killed by a motorist while performing his job duties for the Village of Mount Pleasant. The Supreme Court of Wisconsin affirmed the court of appeals' decision, which affirmed the order of the trial court, granting judgment to the Estate of Daniel Keith Huck. After receiving the tortfeasor's liability limits of \$25,000 and \$35,798.04 in worker's compensation benefits from the Village's insurer, the Estate submitted a claim for underinsured motorist's ("UIM") coverage under Huck's automobile insurance policy with Secura. Huck's UIM policy with Secura had limits of \$250,000 and contained a reducing clause compliant with the provisions of Wis. Stats. § 632.32(5)(i).

While the Estate initially received worker's compensation benefits in the amount of \$35,798.04, the Estate was obligated by Wis. Stats. § 102.29 to refund the Village's insurer \$9,718.73 from its settlement with the tortfeasor, netting \$26,079.31. Therefore, the Supreme Court evaluated whether Secura was permitted to reduce its \$250,000 UIM limit by the \$35,798.04 initially received by the Village's insurer, or just by the net amount of \$26,079.31 retained by the Estate.

The Supreme Court held that a UIM insurer is permitted to reduce its limits, pursuant to Wis. Stats. § 632.32(5)(i) and a policy's reducing clause, "by the total amount of worker's compensation actually received." Thus, Secura was permitted to reduce its \$250,000 UIM limit by the \$26,079.31 in worker's compensation benefits that the Estate retained after reimbursing the Village's insurer. UIM insurers are not statutorily permitted to reduce their UIM limits by the amounts injured parties are obligated to pay back to their worker's compensation carrier.

Acuity v. Estate of Shimeta **2023 WI 28, -- Wis. 2d --, -- N.W.2d --** **(Filed April 7, 2023)**

In *Estate of Shimeta*, Michael Shimeta (driver) was killed and Terry Scherr (Shimeta's passenger) was seriously injured in a motor vehicle accident caused by Douglas Curley when Curley lost control of his vehicle. Pursuant to Curley's automobile liability insurance policy issued by Farmers Insurance Company, which provided a \$250,000 "per person" limit of liability and a \$500,000 "per accident" limit of liability, Farmers paid \$250,000 to the Estate and \$250,000 to Scherr. Both the Estate and Scherr sought an additional recovery of \$250,000 each under a policy that Acuity issued to Shimeta prior to the accident. Acuity's policy included underinsured motorist (UIM) coverage with a \$500,000 limit for "each person" and a \$500,000 limit for "each accident."

Acuity contended it was not obligated to pay the Estate or Scherr any UIM benefits under its policy because of the language of the policy's UIM reducing clause, which states: "[t]he limit of liability shall be reduced by all sums... [p]aid because of the bodily injury by or on behalf of persons... who may be legally responsible." According to Acuity, based on the reducing clause, the \$500,000 in combined payments that the Estate and Scherr received from Farmers reduces Acuity's UIM policy limits to \$0.

The Supreme Court of Wisconsin affirmed the court of appeals' decision that Acuity's UIM reducing clause operates on an individual basis to reduce the limit of liability for "each person" by the payment that "each person" insured under the policy received. In other words, the Supreme Court concluded that Acuity owed the Estate and Scherr \$250,000 each, because the "limit of liability" in the reducing clause unambiguously refers to only the "each person" limit.

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