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Indiana Supreme Court Clarifies Underinsured Motorist Insurance Law

The Indiana Supreme Court recently handed down a decision which helps to clear the all too murky waters of underinsured motor vehicle insurance law. The case, *Lakes v. Grange Mutual Casualty Company*, sought to clarify the meaning of “underinsured motor vehicle” as defined by Indiana Code section 27-7-5-4(b).

The Indiana Code sets out the requirement that every insurance policy sold to a vehicle in this state, with limited exceptions, must include uninsured and underinsured motor vehicle coverage. The basic premise of underinsured motor vehicle coverage is to allow a person who was injured in an automobile accident to receive compensation up to his or her policy limit where the person responsible for the car crash does not have insurance sufficient to compensate the injured person for the full cost of his or her injuries. While that description seems extremely straight forward, the story of Indiana case law has not been.

So we are clear, the term uninsured motor vehicle does mean exactly what you would think it means. However, the definition of underinsured motor vehicle has been one that has led to numerous Indiana Court of Appeals cases and a handful of Supreme Court opinions. The basic problem is to determine whether a

person is underinsured where his or her conduct has injured another person. In the legal world we term the person responsible for the accident as the tortfeasor and so I will use that term from here on for simplicity's sake. Indiana Code section 27-7-5-4(b) defines an underinsured motor vehicle as follows:

. . . the term underinsured motor vehicle, subject to the terms and conditions of such coverage, includes an insured motor vehicle where the limits of coverage available for payment to the insured under all bodily injury liability policies covering persons liable to the insured are less than the limits for the insured's underinsured motorist coverage at the time of the accident, but does not include an uninsured motor vehicle as defined in subsection (a).

Where this definition becomes problematic is where one tortfeasor injures more than one person. This is precisely what happened in *Lakes v. Grange Mutual Casualty Co.* In that case a mother was riding in a car with her daughters Hannah and Anitra when they were struck by the tortfeasor's vehicle after blowing a stop sign. The family members were very seriously injured with each member sustaining incapacitating injuries with the mother and the tortfeasor's passenger needing to be airlifted to a hospital.

The tortfeasor's insurance policy had bodily injury liability limits at \$25,000 per person or \$50,000 per accident. In accordance with this policy limit the mother, her two daughters, her husband (seeking loss of consortium damages – an area of law that will be covered in next week's blog post), and the tortfeasor's passenger were paid a share of the \$50,000 based upon the extent of their injuries. The key in grasping the case is to realize that the \$50,000 was not available to each plaintiff individually but was available to them as one pot of money. As such, each person was paid considerably less than \$50,000 despite their very serious personal injuries.

After receiving the payments the mother, father, passenger, and Anitra moved to dismiss their claims. The court granted these motions. However, Hannah, who had received only \$5,100 from the tortfeasor's insurance, did not seek dismissal of her claims. Instead, she sought recovery under Anitra's insurance coverage for an underinsured motor vehicle because Anitra had been the driver when they were struck by the tortfeasor. Anitra's insurance policy provided coverage for an underinsured motor vehicle accident at \$50,000 per person and \$50,000 per accident.

At issue was whether Hannah would be able to recover the additional \$44,900 of coverage from Anitra's policy. The Court of Appeals first dealt with the issue of what constitutes an underinsured driver in the 1994 case *Allstate Insurance*

Company v. Sanders. In that case the Court of Appeals relied on a Colorado opinion which held that to determine whether a person is underinsured the court should compare the per accident limits of the tortfeasor's insurance coverage with that of the injured person. The outcome being that if the tortfeasor's insurance coverage was equal to or greater than the per accident limit of the injured person, then the tortfeasor was not underinsured.

In 2002 the Indiana Supreme Court finally had opportunity to address the meaning of underinsured in the case *Corr v. American Family Insurance*. In *Corr* the Court held that the proper method for comparison was the amount actually recovered to the policy limit. Despite the court looking upon the *Sanders* decision with disfavor, the Court of Appeals went forth ignoring the opinion in *Corr*. Because *Corr* only involved a single injured person, the Court of Appeals continued to interpret the law as requiring a limit-to-limit comparison where there were multiple injured people and apply the holding in *Corr* only where there was a single injured person.

After almost a decade of misapplying *Corr* the Indiana Supreme Court was able to clarify their holding. The Court held that regardless of whether it is a single injured person or multiple injured persons, *Corr* controls. Moreover, the Honorable Justice Sullivan, writing for the Court, noted:

because the UIM statute "is a mandatory, full-recovery, remedial statute," it "is to be liberally construed" and "read in a light most favorable to the insured." . . . Therefore, the ambiguity is to be resolved in favor of the insured, which means that whether a vehicle is underinsured depends, in all cases, on whether the amount received from the tortfeasor's policy is less than the per-person limits on UIM coverage.

So to make sense of this let us first look at what this meant for Hannah. The result of this decision meant that Hannah, who had originally received \$5,100 from the \$50,000 coverage of the tortfeasor was now able to receive the entire \$50,000 amount of her sister's insurance minus what she had already recovered which means that she was able to recover an additional \$44,900. Now had the court applied *Sanders* like the Court of Appeals had been applying, Hannah would not have recovered anything from her sister's insurance company because her sister's insurance had a \$50,000 per accident cap which was the same as the tortfeasor.

Now, to make this clear let us look at an illustration which plays out the language of the Supreme Court's decision a bit more clearly. I will note that this is my interpretation of what the Supreme Court has said. Clearly sometimes courts

and attorneys can differ or there never would have been the litany of cases following *Sanders* after *Corr*. That said, here is the illustration:

A person driving in a truck by himself runs a red light and strikes a van carrying a family of 5. Each person in the van suffers \$50,000 in injuries. So we are clear, this means that collectively the family has suffered \$250,000 in injuries. The truck driver's insurance policy provides coverage of \$75,000 per person or \$150,000 per accident. The father, the driver, has a policy with \$50,000 per person or \$100,000 per accident limits in underinsured motor vehicle coverage. So, based on the Supreme Court's most recent decision in *Lakes* here is how I interpret the payments should be made.

The truck driver's insurance should pay its policy limits at \$150,000 for the accident with each of the five family members taking equally at \$30,000 per person. Once that payment is made each family member will have \$20,000 in uncompensated injuries. At this point the father's underinsured motor vehicle coverage kicks in. To determine if a family member can collect against the father's policy you compare the amount that each family member recovered from the tortfeasor with the per person cap. Here the per person cap is \$50,000 with each family member having recovered only \$30,000. As such each family member has failed to recover the full \$50,000 and as such may make a claim for their outstanding injuries against the father's policy. Now, with the family having collectively recovered \$150,000 against their outstanding \$250,000 in injuries, they have a remaining \$100,000 in uncompensated injuries. As each can lay a claim to the father's policy, each can make a claim for their outstanding injuries at \$20,000. Since the father's policy cap is at \$100,000 each person can lay claim to a share of the \$100,000. Note that while each person is compared to the per person policy cap to determine whether their claim qualifies for an underinsured motor vehicle claim, they are still limited by the policy cap which in this case applies to them collectively as \$100,000. Fortunately for this family their outstanding injuries are exactly equal to \$100,000. Thus, they are each able to recover an additional \$20,000 from the father's policy and have been fully compensated.

Now compare that result with the way the Court of Appeals had been handling things under *Sanders*. Based on *Sanders* the tortfeasor would not have been considered an underinsured motor vehicle as his per accident cap was actually greater than that of the father. That means that the hypothetical family would not have been able to recover even one cent against the father's policy leaving them with \$100,000 in uncompensated injuries.

If you followed all of that I think you can see why this was such a monumental case in helping to clarify underinsured motor vehicle law. Moreover, it

is a phenomenal decision in favor of the rights for injured persons as it goes a long way to help make sure that your insurance is actually working for you. It also does a great job of helping to decrease the amount of uncompensated personal injuries with which innocent people would otherwise be left.

There is little question that insurance companies, despite the clarity of this ruling, will continue to try and resist paying on what may well be valid claims. As such, it is important to always remember that when you or a loved one are injured the first step is to seek the best medical care you can find and the second step should be to find someone who knows Indiana law and can zealously advocate to defend your rights.

Sources

- *Lakes v. Grange Mut. Cas. Co.*, 964 N.E.2d 796 (Ind. 2012).
- *Allstate Insurance Co. v. Sanders*, 644 N.E.2d 884 (Ind. Ct. App. 1994).
- *Corr v. Am. Family Ins.*, 767 N.E.2d 535 (Ind. 2002).
- Indiana Code sections 27-7-5-2 and 27-7-5-4.

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