

INSURANCE AND REINSURANCE

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The Vermont Supreme Court holds that an Underinsured Motorist carrier's maximum liability in a single accident is the amount shown on the Declarations Page as the Combined Single Limit of UIM coverage, regardless of the number of UIM claimants. The carrier's setoff against payments made by or on behalf of the tortfeasor to the UIM claimants is measured in the aggregate, not on a claimant-by-claimant basis.

Vermont Supreme Court Holds That “Combined Single Limit” and “Limits of Liability” Provisions in UIM Policy Cap Auto Insurer’s Total UIM Payout, Despite Multiple UIM Claimants

ABOUT THE AUTHOR



Walter Judge represents businesses in the state and federal courts of Vermont, Massachusetts, and Maine in commercial matters (contract disputes, unfair competition, etc.), intellectual property litigation (enforcement of copyright, trademark, and trade secret rights) and in products liability and personal injury defense. He defends retail establishments, premises owners, trucking companies, institutions, and individuals against negligence and personal injury claims. In 2019 Walter obtained a \$3.6 million jury verdict in federal court on behalf of an aviation company against a competitor. He is a member of IADC and other defense organizations. He can be reached at WJudge@drm.com.

ABOUT THE COMMITTEE

The Insurance and Reinsurance Committee members, including U.S. and multinational attorneys, are lawyers who deal on a regular basis with issues of insurance availability, insurance coverage and related litigation at all levels of insurance above the primary level. The Committee offers presentations on these subjects at the Annual and Midyear Meetings. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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In an important coverage decision, the Vermont Supreme Court has determined that the Combined Single Limit amount of the policyholders' (husband and wife) UM/UIM policy is the maximum the insurer is required to pay regardless of the number of claims. This appears to be a case of first impression by the Court, although the issue of multiple claimants on limited coverage has vexed litigants in the past.

In *Progressive Northern Insurance Company v. Todd and Melissa Muller*, the Mullers were badly injured while riding together on a motorcycle that was hit by a car. Each of the Mullers received \$100,000 from the other driver's insurance and then sought UIM coverage from their carrier, Progressive Northern.

The Mullers had a UIM policy with a Combined Single Limit of \$300,000. The policy stated that the Combined Single Limit is the most that Progressive would be required to pay regardless of the number of claims made. The Setoff provision in the policy stated that Progressive would reduce its UIM liability by "all sums . . . paid because of bodily injury." Progressive offset the combined \$200,000 that the Mullers received from the tortfeasor and determined that it was liable for a total of \$100,000 in UIM coverage to the Mullers (300 minus 200). The Mullers took the position that the Setoff provision in the policy was ambiguous as to how it would apply when there are multiple claimants. They argued that the provision did not state clearly that any setoffs would be aggregated

or cumulative in the event of multiple claims. If the Setoff provision applied separately to each claimant, each of the Mullers would have been entitled to \$200,000 in UIM coverage (300 minus 100).

Because of the dispute, Progressive filed a declaratory judgment action. The trial court agreed with the insurer's position and granted summary judgment in its favor, ruling that the "all sums" language in the Setoff provision was not ambiguous and that Progressive's maximum UIM liability was \$100,000 total. The Mullers appealed.

The Vermont Supreme Court affirmed. Analyzing the policy as a whole, it found that the language in various parts of the policy together expressed a clear intent that the Combined Single Limit of \$300,000 would be the most that Progressive would have to pay in UIM coverage, regardless of the number of claims. Such language included:

- the Combined Single Liability Limit of \$300,000 on the Declarations page;
- the Limits of Liability section of the policy explaining that "the amount shown [on the Declarations page] is the most we will pay for the total of all bodily injury damages resulting from any one accident";
- in the same section, language explaining that the liability limit is the most Progressive will pay "regardless of the number of:

1. claims made;
2. covered motorcycles;
3. insured persons;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid”;

and

- the Setoff provision, explaining that “the limits of liability for bodily injury . . . will be reduced by all sums:

1. paid because of bodily injury by or on behalf of any persons or organizations that may be legally responsible. . . .

Given the clarity of the policy as a whole as to Progressive’s maximum obligation on UIM coverage, the Court rejected the Mullers’ argument that the Setoff provision should have separately explained how setoffs would be applied in the event of multiple claimants. The Court cited to out-of-state cases agreeing with its conclusion, and rejected Ohio case law cited by the Mullers for the proposition that each insured’s claim should be treated separately and successively under the setoff provisions of a UIM policy.

This is an important decision clarifying an insurer’s coverage obligations in cases of multiple claimants under a limited policy.

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