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Alerts

Illinois Supreme Court Upholds Trial De Novo Provision in UIM Policy

August 25, 2011
Insurance Coverage Alert

Phoenix Insurance Company, Appellant, v. Martha Rosen, Appellee, 242 Ill.2d 48, 949 N.E.2d 639, 350 Ill.Dec

The insured, Ms. Rosen, was injured in an automobile accident. The accident was the fault of the driver of another vehicle. That driver's vehicle was insured for liability coverage of only $25,000 for bodily injury per person, per accident. Rosen carried underinsured motorists coverage on her own policy with limits of $500,000.

Pursuant to her policy language, if the insured and the insurer did not agree on the amount of damages that the insured was entitled to receive from an underinsured driver, the parties were required to arbitrate. The arbitration provision also contained a clause allowing for a trial *de novo*, stating that the arbitration was not binding in those circumstances where the amount awarded by the arbitrators exceeded the minimum liability requirements mandated by Illinois' Motor Vehicle statutes ($20,000). In other words, if the damages awarded in the arbitration were equal to or below the minimal amount of liability insurance required of an at-fault driver, the arbitration was binding. However, if the arbitration award was above that amount, either the insured or the insurer could seek a trial *de novo*, notwithstanding the arbitration award.

Because of the severity of the injuries, the arbitrators awarded Rosen nearly $400,000. Her insurer filed a complaint, seeking a declaration that the arbitration award should be set aside, and a trial *de novo* on damages be granted. The insured moved to dismiss the suit, on the basis that the trial *de novo* provision was invalid and unenforceable as against public policy. More specifically, Rosen argued that the provision allowing for a trial *de novo* was unconscionable and, in addition, against the public policy of the State of Illinois favoring arbitration.

Under the Illinois statutory scheme, with respect only to uninsured (not underinsured) motorist coverage, the statute makes allowance—in those cases where an arbitration award exceeds a $50,000 liability threshold—for *de novo* review by way of trial. However, the statute is silent in like circumstances with respect to underinsured motorist coverage. In this regard, the insured argued that absent express statutory allowance of a trial *de novo*, a challenge to the arbitral award through a trial *de novo* amounted to an unfair and unilateral advantage to the insurance company, which had an incentive to challenge higher underinsured awards, whereas lower awards, near the Illinois liability limits threshold, would typically not be challenged by the insurer.

The Supreme Court of Illinois rejected the plaintiff's contention. It noted that the purpose of the uninsured and underinsured motorist statutes was to place the insured in the same position she would have occupied if the tort feasor had carried adequate insurance. The court rejected the insured's argument that the purpose behind the underinsured motorist statute was to ensure compensation above the statutory minimal limits. Rather, the court said it was to ensure compensation consistent with an insured's actual damages, but subject in the first instance to the bargained-for terms under the insurance policy.

Given the common purpose of both uninsured and underinsured motorist statutes, the court determined that the provision in the particular contract was not unconscionable. Even though the insurance contract was a contract of adhesion, the court rejected the notion that an adhesion contract automatically renders it unconscionable. In addition, the court pointed out that the clause allowing for a trial *de novo* after an arbitration award could be invoked as readily by an insured as it

could be by an insurer, rejecting the insured's argument of an inherent bias designed to minimize the insurer company's exposure while forcing the insured to accept smaller recoveries. The court determined that the agreement was not so inordinately one sided that it should be struck down as against public policy.

Practice Note
The *Phoenix* case settles conflicting Illinois Appellate decisions and upholds the right to *de novo* review of arbitral results in underinsured motorist cases where the arbitration award exceeds the statutory liability minimum limits.

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