PLUNKETT COONEY

Underinsured Motorist (UIM) Coverage Update

May 15, 2025

Erie Ins. Prop. & Cas. Co. v. Cooper
No. 23-702, 2025 WL 1232887 (W.V. April 29, 2025)

On a certified question from the U.S. Court of Appeals for the Fourth Circuit, the West Virginia Supreme Court of Appeals held that an insurance company that issues a commercial auto insurance policy which provides liability coverage to a named insured for particular owned vehicles does not have to offer underinsured motorist coverage (UIM) for non-owned vehicles.

This insurance coverage dispute arose after James Cooper was severely injured in a car accident in August 2019 while riding as a passenger in a vehicle owned by co-worker Rick Huffman. A vehicle crossed the center line and struck Huffman's vehicle head-on. At the time of the accident, Cooper and Huffman were employees of Pison Management, LLC (Pison) and were driving to a jobsite in the course of their employment for Pison. Because Cooper's injuries exceeded the third-party's driver's insurance limits, Cooper sought UIM coverage under Pison's commercial auto policy issued by Erie Insurance Property & Casualty Company (Erie).

Erie's policy provided liability and UIM coverage for the two vehicles owned by Pison. It also provided liability coverage for a class of non-owned vehicles (i.e., "hired auto[s],") if any. However, the auto policy did not provide UIM coverage for non-owned vehicles, so Erie denied coverage to Cooper. After denying coverage, Erie filed suit in the U.S. District Court of West Virginia Southern Division, seeking a declaration that its policy did not provide the UIM coverage sought by Cooper.

The parties filed cross-motions for summary judgment and the district court granted Cooper's motion, holding that West Virginia Code § 33-6-31 required that an insurer must offer UIM coverage to all vehicles covered by a liability policy, including non-owned vehicles. The trial court declared that, as a matter of law, Cooper was entitled to receive coverage equivalent to the liability coverage limit, $1 million, because Erie did not offer UIM coverage to Pison. Erie timely appealed to the federal court of appeals. Because there was no West Virginia authority that definitively answered whether the state's statute requires an insurer to offer UIM coverage to a named insured for vehicles not owned by the named insured, the Fourth Circuit appellate court certified the question to the West Virginia Supreme Court of Appeals.

The West Virginia Supreme Court of Appeals answered the certified question in the negative, holding that West Virginia Code § 33-6-31 does not require an insurer that issues a commercial auto policy to a named insured providing liability coverage for particular owned vehicles to offer UIM coverage for

non-owned vehicles. The appellate court noted that Section 33-6-31 requires auto insurers to provide UIM coverage at least equal to a policy's own liability coverage limit for insureds. The statute splits insureds into two classes. Class I insureds are the named insured, their spouse and resident relatives, and Class II insureds are anyone else who uses the insured vehicle with the named insured's consent.

The appellate court disagreed with Cooper's position that he was entitled to UIM coverage under the Erie policy because he was a Class II insured and had permission to use the co-employee's vehicle. Instead, the appellate court agreed with Erie that Cooper was not a Class I or a Class II insured under the statute. He was not a Class I insured under the statute because he was not a named insured, the spouse of a named insured or a resident relative of a named insured. He was not a Class II insured because Pison could not consent to Cooper's use and occupancy of Huffman's vehicle since Pison did not have possession or control of a vehicle owned by Huffman. Because Cooper did not qualify as either a Class I or Class II insured, he was not entitled to UIM benefits under the Erie auto policy. Having answered the certified question in the negative, the matter was returned to the federal court of appeals for further proceedings consistent with the state appellate court's decision.

By Amy Diviney