



Workers' Compensation eALERT

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Uninsured Motorist Carrier Allowed Credit for Workers' Compensation Benefits Paid to Injured Employee

On May 22, 2009 the Louisiana Supreme Court issued a new opinion on the relationship between uninsured motorist coverage and workers' compensation claims in its decision of *Cutsinger v. Redfern*, ___ So.3d __ 2008-2607 (La 5/22/2009).

In this particular decision the uninsured motorist carrier sought to enforce policy language which allowed the UM carrier to reduce the amounts the UM paid to the injured employee by the amount the employee had received from workers' compensation. The plaintiff of course opposed this contending the Collateral Source Doctrine prevented the UM carrier from taking such a credit.

The Louisiana Supreme Court reversed the lower court's holding and held that the UM carrier was in fact entitled to such an offset because the UM carrier and the workers' compensation insurer were solidary obligors such that the payment by one solidary obligor extinguished the obligation of the other to the extent of payment.

The Court notes that the Collateral Source Doctrine does not apply here because the tortfeasor does not benefit from this, and therefore the Collateral Source Doctrine is simply inapplicable. The Court also notes that since the workers' compensation carrier cannot intervene against the UM carrier to allow the plaintiff to collect both would indeed allow a double recovery. The Court therefore applies its basic rules of solidary liability set forth in the Louisiana Civil Code so that the UM carrier receives the benefit of the compensation payments made.

The interesting question that this raises then for compensation purposes would be whether or not a compensation carrier would then be allowed a credit against compensation due for any UM payments that were made to the claimant. In the past, we have not taken a credit for UM payments made because of previous cases indicating that the compensation carrier did not have rights against UM under the Third Party Claim Provisions of La.R.S. 23:1101 *et. seq.* due to the policy provisions in the UM coverage. It is clear that these provisions in the contract still apply and that there is no intervention right against the UM carrier. However, if the UM carrier is a solidary obligor then any payment it makes should extinguish the obligation by the compensation carrier and allow a dollar for dollar credit.

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Of course, the Court in *Cutsinger* does not address the issue of whether or not this would then be a violation of La.R.S. 23:1163 which prohibits making the employee contribute to compensation. Clearly where the employee has purchased the uninsured motorist coverage 1163 could apply. However, if the uninsured motorist coverage in question is the employer's and the premium has been paid by the employer it would seem that the solidary obligation language should obtain and there should be an offset.

Unfortunately, in *Cutsinger* all the Court says is that the UM carrier gets a credit and does not address whether or not the compensation carrier is entitled to a like credit. It would seem that if basic solidary obligation principles are applied that would be the case but in analyzing past decisions in this area the Courts have not always been consistent. Apparently the Courts have adopted Daniel Webster's statement from the floor of the United States Senate when he was accused of inconsistency - that "consistency is the hobgoblin of little minds".

What is clear however is that the UM carrier does receive a credit for compensation actually paid (not compensation due). Left open for future consideration is the possibility that where the UM carrier does actually make a payment and there is a continuing compensation liability, there may then be a credit for the compensation carrier for those payments as well. We will continue to follow this area of jurisprudence as it develops and if you have any questions or would like a copy of the *Cutsinger* decision please let me know.

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