

## Appellate Disagreement Over Mandatory Per Person UIM Limits

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On February 28, 2011, the Indiana Court of Appeals held that a trial court erred when finding that it should use a tortfeasor's per accident policy limits, rather than the per person policy limits, when determining whether the tortfeasor was underinsured in *Lakes v. Grange Mut. Cas. Co.*, Case No. 89A05-1009-CT-54. The Court also concluded that I.C. § 27-7-5-2(a) mandates UIM coverage of \$50,000 per person.

In the motor vehicle accident that led to this case, four people were in a car that was hit by another person. They sued the tortfeasor and their insurer (Grange), seeking underinsured motorist benefits. The tortfeasor's insurance policy had a per person liability limit of \$25,000 and a per accident liability limit of \$50,000. The tortfeasor's insurer paid its per accident limits, which was divided among the various accident victims. One passenger, Hannah, received \$5,100, which did not fully compensate her. Grange's UIM policy limits were \$50,000 per person and \$50,000 per accident, so Grange moved for summary judgment. All of the plaintiffs but Hannah dismissed their claims with prejudice and Hannah responded to the motion for summary judgment. The trial court concluded that it must look to the per accident limits and, therefore, found that the tortfeasor was not underinsured.

On appeal, the Court described the relevant statutes and case law and concluded that the key to determining whether to use the per person or per accident policy limits when determining whether a tortfeasor is underinsured is the number of claimants.

Here, we are faced with multiple victims in the accident but only one of them — Hannah — is a claimant under the insurance policy at issue. ... Therefore, because a single individual makes a claim for underinsured coverage under Grange Mutual's policy, we compare the per person liability limit of the tortfeasor's policy with the per person UIM coverage available to Hannah.

Grange Mutual, as did the trial court in its Order, asserts that the focus should be placed on the number of people injured in the accident and the number of possible UIM claims that can be made rather than on the actual claimants under the policy. ... We disagree.

A careful reading of [the relevant case law] indicates that the case law speaks

in terms of claimants, not injured individuals who potentially might file a claim as a determinative element in the application of the UIM coverage limits.

Finally, the Court looked to whether I.C. § 27-7-5-2(a) mandates UIM coverage limit of \$50,000 per person. A prior decision by a different panel of the Court had concluded that it did not in *Progressive Halcyon Ins. Co. v. Petty*, 883 N.E.2d 854 (Ind. Ct. App. 2008), *trans. denied*. However, the panel made clear that it could ignore that decision because it did not take the statutory history of I.C. § 27-7-5-2(a) when reaching its conclusion.

we respectfully note that *Petty* is not binding on this court. Indiana does not recognize horizontal *stare decisis* and therefore, each panel of this court has coequal authority on an issue and considers any previous decision by other panels but ultimately is not bound by those decisions.

Although *Petty* relied on three considerations in concluding that the per person UIM coverage under the statute is a mandatory limit of \$25,000, conspicuously absent from its analysis is a reference to the statute's legislative history. A fundamental rule of statutory construction is that an amendment changing a prior statute indicates a legislative intention that the meaning of the statute has changed. Such an amendment raises the presumption that the Legislature intended to change the law unless it clearly appears that the amendment was passed in order to express the original intent more clearly.

The statutory history was one of expanding the availability of uninsured and underinsured motorist coverage and convinced the Court of "an intent by our Legislature to give insureds the opportunity for full compensation for injuries inflicted by financially irresponsible motorists." Thus, the Court disagreed with *Petty* and held that the mandatory per person limits for underinsured coverage is \$50,000.

The Court's method of reasoning (concentrating more on the statutory history than the language of the statute) to determine legislative intent is interesting and could be of use in certain situations. Because of the explicit disagreement between this case and *Petty* that this decision creates concerning the mandatory limits of UIM coverage, it is likely that the Indiana Supreme Court will grant transfer to resolve this issue.

#### Lessons:

1. Courts must look to the number of claimants to determine whether to use per person or per accident policy limits when determining whether a tortfeasor is underinsured.
2. Courts will assume that a statute has been amended for a reason.
3. The Indiana Court of Appeals does not recognize horizontal *stare decisis*.

4. There is current a split among the Court of Appeals concerning whether I.C. § 27-7-5-2(a) mandates UIM per person policy limits of \$50,000.