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Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP MARCH 2010

Supreme Court Denies Petition For Allowance of Appeal in Important Auto Insurance Case

On March 23, 2010, the Supreme Court of Pennsylvania denied the plaintiff's Petition for Allowance of Appeal in *Pusl v. Means, et al.*, No. 512 WAL 2009. Thus, the Superior Court's decision in favor of the defendants is now settled law. The defendants were represented before the Superior Court and Supreme Court by Craig Murphey of MacDonald Illig.

Pusl has important ramifications to any auto accident litigation involving both a UIM and third party claim. Therefore, it has been followed closely by the insurance industry and lawyers who routinely handle automobile lawsuits.

Ms. Pusl was injured in a car accident on April 26, 2002. She pursued a UIM claim against her own carrier and at the same time filed a civil lawsuit against the other driver. She settled her UIM claim for $75,000.00 *before* a verdict in the third party lawsuit. Her third party case was then tried and the jury returned a verdict of $100,000.00.

The defendants in the third party case then asked the court to mold the verdict by reducing it by the amount of the UIM settlement. The trial court granted the motion to mold and reduced the verdict to $25,000.00. The trial court held that the set-off for the UIM settlement was necessary to prevent Ms. Pusl from recovering more for her claim than its value, as set by the jury. Importantly, the trial court noted that the UIM carrier does have a right of subrogation, but since there was no evidence that the UIM carrier had preserved its right of subrogation or was going to pursue reimbursement from Ms. Pusl's recovery, the only way to avoid an improper excess recovery was to mold the verdict.

Ms. Pusl appealed to the Superior Court, which affirmed the trial court's decision. Ms. Pusl then sought an appeal to the Supreme Court. By Order of March 23, 2010, the Supreme Court denied the request.

The Superior Court's decision in *Pusl* stands for the proposition that a third party defendant is entitled to a set-off equal to the amount of a prior UIM settlement for the same accident, unless the UIM carrier chose to pursue its subrogation claim. This is a positive development because it prevents a claimant from recovering more than his or her case is worth, as determined by the jury hearing the third party case.

For more information, please contact the author of this article, any member of MacDonald Illig's Insurance Practice Group or the MacDonald Illig attorney with whom you have worked.

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