



Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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SUPREME COURT OF PENNSYLVANIA HANDS DOWN IMPORTANT NEW DECISION REGARDING SELECTION OF REDUCED UM/UIM COVERAGES

On March 14, 2011, the Supreme Court of Pennsylvania published its decision in *Orsag v. Farmers New Century Insurance*, No. 109 MAP 2009. In a five to two vote, the Supreme Court held that the policyholder's signature on an application for auto insurance was sufficient to allow the insurance carrier to enforce the policyholder's request for uninsured/underinsured ("UM/UIM") coverage limits lower than the bodily injury liability limits of the same policy.

Issue

This is the specific question decided by the Supreme Court in *Orsag*:

If an insured signs an insurance application that contains lowered UM/UIM coverage limits, is that signature alone sufficient to meet the requirement of Section 1734 of Pennsylvania's Motor Vehicle Financial Responsibility Law?

In short, the Supreme Court answered "yes."

Reasoning

The Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL") provides that an auto insurance policy will automatically contain UM/UIM coverage limits equal to the policy's bodily injury liability limits unless the applicant specifically rejects UM/UIM coverage, or requests such coverage in

lower amounts.

Rejection of coverage is governed by Section 1731, while a request for reduced coverages is controlled by Section 1734, which states:

A named insured may request in writing the issuance of coverages under Section 1731 (relating to availability, scope and amount of coverage) in amounts equal to or less than the limits of liability for bodily injury.

75 Pa.C.S.A. § 1734. In *Orsag*, the court was faced with the question of whether a two-page application for automobile insurance submitted to Farmers New Century, signed by Mr. Orsag, was sufficient to constitute the "request in writing" required by Section 1734.

The Application

The Farmers New Century application constituted two pages. The first identified the applicants, listed the vehicles to be insured and included a section detailing the coverages and premiums. The coverages section, still on the first page, was completed by hand to indicate bodily injury liability coverage of \$100,000 per person / \$300,000 per accident, and UM/UIM coverage of \$15,000 per person / \$30,000 per accident. The second page included sections relating to the applicant's employment, their prior insurance, and 16 questions relating to details about the drivers and insured cars. The second page also contained a place for the applicant's signature. Mr. Orsag signed the application, immediately below the following preprinted statement:

I have read the above application and I declare that to the best of my knowledge and belief all of the foregoing statements are true. ...

* * *

I understand that the coverage selection and limit choices here or in any state supplement will apply to all future policy renewals, continuation and changes unless I notify you otherwise in writing.

The Holding

In his majority opinion, Justice Eakin reviewed prior appellate authority and the provisions of the MVFRL, and also considered the fact that most insurers use dedicated forms to obtain "sign-downs" of UM/UIM coverage. Ultimately, he

described the Court's holding as follows:

Accordingly, we hold the insurance application in question here satisfies § 1734's writing requirement as it clearly indicated appellant's desire for reduced UM/UIM coverage, and was signed by the insured. There may be a more detailed way of satisfying "writing" requirement, but it is unnecessary given the simple language of § 1734 and the manner in which insurance coverage amounts are selected. Though it is laudable for insurance companies to provide additional information regarding UM/UIM insurance beyond what is found in the application, we see no purpose in requiring a separate statement when it is clear from the coverage selected that the insured intended reduced UM/UIM coverage.

Orsag, slip op. at 9.

Justices Baer and McCaffery dissented from the decision, finding that the generic application for auto insurance, without more, does not satisfy the writing requirement of Section 1734. Writing for the dissenters, Justice Baer concludes that a Section 1734 written request requires more than a signature on an application that provides the coverage amounts. He does not say exactly how much more, but clearly believes that a satisfactory request must include not only the amount of UM/UIM coverages, but also some language indicating that the insured is informed that he could purchase UM/UIM coverages equal to the bodily injury liability coverage of policy.

Summary

The *Orsag* decision is an important one. Previously, lower appellate courts and the federal courts had issued conflicting decisions on whether application forms could constitute the "request in writing" mandated by Section 1734. *Orsag* is decided in fairly broad language, lending support for the conclusion that just about any signed application for coverage that requests a specific amount of UM/UIM coverage, which amount is less than the bodily injury liability limits sought in the same application, will constitute an adequate Section 1734 request for reduced UM/UIM coverages.

For further information about the *Orsag* decision or other Pennsylvania Motor Vehicle Financial Responsibility Law issues, contact Craig Murphey or any other lawyer in MacDonald Illig's Insurance Practice Group.

For more information:

→ Craig Murphey
(814) 870-7655
cmurphey@mijb.com

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100 STATE STREET, SUITE 700
ERIE, PA 16507-1459

PHONE: (814) 870-7600
FAX: (814) 454-4647

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