

June 17, 2009

MOTORCYCLE INSURANCE POLICIES NOT REQUIRED TO BE REFORMED TO PROVIDE FULL UNDERINSURED MOTORIST COVERAGE PURSUANT TO MINNESOTA'S NO-FAULT ACT

In *Johnson v. Cummiskey, et al.*, -- N.W.2d --, 2009 WL 1444184 the Minnesota Court of Appeals held on May 26, 2009, that the Minnesota No-Fault Automobile Insurance Act does not require motorcycle insurance policies written to provide only limited underinsured motorist coverage under a limits-less-paid structure to be reformed to a damages-less-paid structure.

Brian Cummiskey's motor vehicle collided with Larry Johnson's Harley Davidson motorcycle resulting in \$134,000 worth of damages. Johnson recovered \$30,000 from Cummiskey's maximum liability coverage and an additional \$4,000 from him personally. Johnson claimed he was entitled to the \$100,000 maximum limits of his own UIM policy with Illinois Farmers. However, his policy contained a limits-less-paid reducing clause, which entitled Johnson to \$66,000, after subtracting the \$34,000 he obtained from Cummiskey.

Johnson sued his own insurance provider, Illinois Farmers Insurance Company for the \$100,000. The District Court granted Illinois Farmers' motion for summary judgment limiting Johnson's recovery for UIM coverage to \$66,000. Johnson appealed to the Minnesota Court of Appeals.

The Court of Appeals affirmed the holding. The Court noted Minnesota's No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2008) requires a broader method of calculating UIM coverage based on a damages-less-paid clause, which would entitle Johnson to the full \$100,000 recovery from his policy. However, motor vehicles are the only class of vehicles the Act requires covered by UIM coverage, and motorcycles are not within the Act's definition of motor vehicle. Instead, the statute defines motor vehicle as a vehicle "*other than a motorcycle.*" Thus, the No-Fault Act's requirement for full UIM coverage is not applicable to motorcycles.

The Court cited *Aguilar v. Texas Farmers Ins. Co.*, 504 N.W.2d 791 (Minn. Ct. App. 1993) when it reasoned that because the insurer was not required to provide UIM coverage at all, the operative provisions governing mandatory UIM motorist coverage under the No-Fault Act did not apply.

This letter and other State of Minnesota, Court of Appeals, and Supreme Court opinion updates are available in .pdf form on the News and Resources page of our Firm's website: www.johnson-condon.com. If you have any questions, please contact us.

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