

Uninsured/Underinsured Motorist Coverage

Exception to Berger v. H.P. Hood, Inc.

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If the applicable policy of insurance has a severability of interests provision the plaintiff may be able to recover uninsured motorist benefits from any insured who is not the plaintiff's employer. This issue came before the Superior Court in *Ewiess v. Seaco Insurance Company, Inc.*, 2001 WL 1334301 (J. Hinkle). In the *Ewiess* case, Seaco Insurance Company issued a garage policy to Atamian Volkswagen, Inc. The policy provided for uninsured motorist coverage to all named insureds under the policy. There were numerous named insureds under the policy only of which was Mr. Ewiess's employer, Atamian Volkswagen. On or about July 22, 1998, the plaintiff, Mohamed Ali Ewiess, was severely and permanently injured in an accident caused by an unidentifiable, and therefore uninsured motorist. At the time of the accident, plaintiff was occupying, as an operator, a vehicle registered to Atamian Volkswagen, Inc., and insured under the Seaco policy. Plaintiff was driving the vehicle in the course and scope of his employment with Atamian Volkswagen, Inc. The plaintiff, Mohamed Ali Ewiess made a claim to Seaco for uninsured motorists coverage. Seaco denied the claim, stating that Massachusetts Law bars recovery under Uninsured Motorist and makes Worker's Compensation [Plaintiff's] exclusive remedy.

The Seaco policy contained a standard severability of interest provision which was central to the Plaintiff's position that since each insured should be deemed to have

a separate policy of insurance the workers compensation bar precluding an employee from pursuing a claim against his employer does not prevent the employee from receiving uninsured motorist coverage from a non-employer named insured. The relevant policy provision stated as follows:

Coverage under this policy applies individually to the interest of each insured in the same manner and to the same extent as if a separate policy had been issued to each insured, but this provisions shall not increase this policy's limit of liability.

Relying on the severability clause, and the case of *Lumberman's Mutual Casualty Co. v. Hanover Ins. Co.*, 38 Mass. App. Ct. 53 (1995),¹ the court concluded that the worker's compensation exclusivity provision did not act to bar recovery of uninsured motorist benefits from any insured not plaintiff's employer where the policy contained a severability of interests provision.

¹ In the *Lumberman's* case, the Appeals Court considered a rather complicated factual scenario involving a leased vehicle, an insurance policy in which two parties including the victim's employer were named insureds, and a standard severability clause specifying that the insurance applied separately to each insured. 38 Mass. App. Ct. 53 (1995). At issue in the *Lumberman's* case was whether or not a specific exclusionary provision in the policy barring coverage to an employee of the insured prevented the employee from obtaining coverage from the other named insureds. The policy specifically excluded from coverage: "Bodily injury to any employee of the Insured arising out and in the course of his or her employment by the Insured. However, this exclusion does not apply to bodily injury to domestic employees not entitled to worker's compensation benefits." *Lumberman's*, 38 Mass. App. Ct. at 55-56 (1995). The *Lumberman's* Court, citing the Workers' Compensation Act, M.G.L. c. 152, § 23, stated that the above policy exclusion merely "reinforces the [Worker's Compensation] Act's exclusivity of remedy provisions for work related injuries." *Id.* at 56. The Court went on to state that because the vehicle occupant would be covered by uninsured motorist coverage under a policy issued to the non-employer insured, and because the policy included severability language, the exclusion did not prevent the victim from receiving uninsured motorist coverage. See *Lumberman's Mutual Casualty Company*, 38 Mass. App. Ct. at 59.