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Alert

Appellate Division Again Rules That Statutory Prohibition of UM/UIM Step-Down Clause Applies Prospectively

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The Appellate Division decision in Ruoff v. American Asphalt Company, Inc., et al., No. A-958-08T1 (November 25, 2009) is the most recent in a series of cases considering the proper application of legislation enacted in 2007 ("S-1666") prohibiting "step down" provisions in commercial automobile policies.

In Ruoff, the plaintiff was injured in a motor vehicle accident while driving an automobile owned by his employer American Asphalt Company, Inc. ("American Asphalt") on February 11, 2005, prior to the enactment of S-1666. American Asphalt had in effect a commercial auto policy with Penn National Insurance ("Penn National") that included a "step-down" provision limiting coverage to those similarly situated as the plaintiff who were "named insureds" under other policies.

In addressing whether S-1666 should be applied prospectively, which would have the effect of enforcing the "step down" provision, or retroactively, which would have the effect of invalidating the "step down" provision, the Appellate Division considered two competing principles. While "step-down" provisions limiting both UM and UIM coverage had been deemed valid and enforceable at the time the Penn National policy was issued, S-1666 now explicitly prohibits the use of such a "step-down" provision.

The Ruoff Court found that S-1666 applied prospectively and the "step-down" provision in the Penn National policy was valid and enforceable. Despite recognizing a split in authority as to the *reason* why S-1666 should apply prospectively, the Ruoff Court unanimously found that the reasoning of the court in Olkusz v. Brown, 401 N.J. Super. 496 (App. Div. 2008) was controlling because by reversing the Supreme Court's holding in Pinto v. N.J. Manufacturers Ins. Co., 183 N.J. 405 (2005), the Legislature was not "correcting or curing a judicial misinterpretation of an existing statute." Rather, according to the Court, S-1666 expresses for the first time the public policy position of the Legislature on the use of step-down provisions. Although recognizing its decision in Hand v. Philadelphia Ins. Co., 408 N.J. Super. 124, 146 (App. Div. 2009), which held that it would be manifestly unjust to an insurer to apply S-1666 retroactively, the Appellate Division found Olkusz more persuasive.

Thus, the Appellate Division again ruled that S-1666 must be applied prospectively, commencing September 10, 2007. Therefore, any UM/UIM claim predicated on an accident that predates the September 10, 2007, adoption of S-1666 must be governed by the principle articulated in Pinto v. N.J. Manufacturers Ins. Co., 183 N.J. 405 (2005) wherein the Court held "step-down" provisions in business auto policies to be valid and enforceable.

If you have any questions regarding this issue, please contact Kevin Wolff, Jim Lisovicz or Kevin MacGillivray.

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