

LEGAL UPDATE

Orsag v. Farmers New Century Insurance

Supreme Court Rules UM and UIM Sign-Downs Do Not Require Separate Forms

March 16, 2011



We want to bring to your attention a March 14, 2011, decision by the Pennsylvania Supreme Court which may be of significance with respect to your handling of UM and UIM claims. In Orsag v. New Century Insurance, Jeffrey Orsag applied for automobile insurance and in the process signed an application for insurance in which the liability limits requested were \$100,000 per person but the UM/UIM coverage requested was only \$15,000 per person. Other than the application itself, Orsag signed no other document indicating that he had been offered the opportunity to purchase UM/UIM coverage in limits equal to his liability limits and chose to decline that option.

After being involved in an accident Orsag made claim for UIM benefits and contended that his limits of liability should be reformed to \$100,000 because his signature on the application alone did not constitute a "request in writing" for lower limits of UM/UIM coverage as is required by section 1734 of the Motor Vehicle Financial Responsibility Law. Instead, Orsag argued, the statute contemplates a separate writing other than the application itself as proof of the intent to accept lower limits. Orsag alleged that the insurer had not provided him with the "Important Notice" mandated by section 1791 of the statute which would have outlined the UM/UIM coverage available to be purchased. Both the Court of Common Pleas and the Superior Court ruled in favor of the insurer concluding that section 1734 required nothing more than a "request in writing" for lower UM/UIM coverage limits and the application clearly constituted such a request.

After granting review, a divided Pennsylvania Supreme Court affirmed, holding that the signature on the application did comply with the requirements of section 1734 so that the sign-down of limits was valid. It is important to note, however, that only three of the justices of the

court joined in that opinion. Two other justices agreed that the lower court decisions should be affirmed but did so on a separate basis that will undoubtedly lead to more litigation. According to the concurring justices, the only issue before them was the sufficiency of Orsag's signature under section 1734 and not any issue "pertaining to [Orsag's] notice regarding [his] options including the adequacy of the offer provided by [New Century]". These justices strongly suggested that they would have liked to have heard more about what offer had been made to Orsag concerning the availability of UM/UIM limits equal to his liability limits and particularly why no section 1791 form had been provided. However, they concluded that the issue had not been adequately preserved by Orsag in the lower courts and that, therefore, it could not be considered for the first time on appeal to the Supreme Court.

Given that even the lead opinion contains comments that it would be "laudable" for insurance companies to provide insureds with more information than that contained on the typical insurance application, we would still suggest that insurers' sign-down documents reflect that the insured was provided with information concerning his or her alternatives for coverage. But the enclosed opinions can be read for the proposition that the mere signature of the insured on the application reflecting differing limits is sufficient to effect the sign-down.

The referenced opinions are available on our website:

Opinion: <http://www.bbs-law.com/publications/cii/orsag.pdf>

Concurring: <http://www.bbs-law.com/publications/cii/orsag-concurring.pdf>

Dissenting: <http://www.bbs-law.com/publications/cii/Orsag-Dissenting.pdf>

Should you have any questions about the above, please do not hesitate to contact me at (2157) 665-3400, bricklin@bbs-law.com.

Very truly yours,

/s/ Louis E. Bricklin

Louis E. Bricklin
Managing Attorney

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