

UIM Carrier Cannot Set Off The Total Paid By Two Drivers Who Settled With Insured From Its Policy Limits



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The insured was a passenger who sustained significant injuries when the car in which she was riding collided with another car. She sued both drivers. One driver had \$100,000 policy limit which was tendered in full. The other driver had limits of \$300,000 which was likewise tendered, resulting in a total payment of \$295,000. She also had underinsured motorist coverage of her own with Illinois Emcasco having limits of \$500,000. In this declaratory judgment action, Emcasco said it was required to only cover the difference between what its insured received from the two drivers and what she contracted for with it, so that it owed her \$105,000. The insured claimed she should be able to apply the \$500,000 limits as to each driver separately so that she would receive a total of \$605,000. The trial court entered summary judgment for Emcasco in the amount of \$105,000.

The First District reversed. It held Emcasco could not collectively set off the total paid by the insurers for the two drivers. Rather, each instance of underinsurance must be considered separately. However, it disagreed with the insured that she was entitled to \$605,000. The most she could recover would be \$500,000 from Emcasco which was the limit of its liability. *Illinois Emcasco Ins. Co. v. Tufano*, 2016 IL App

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