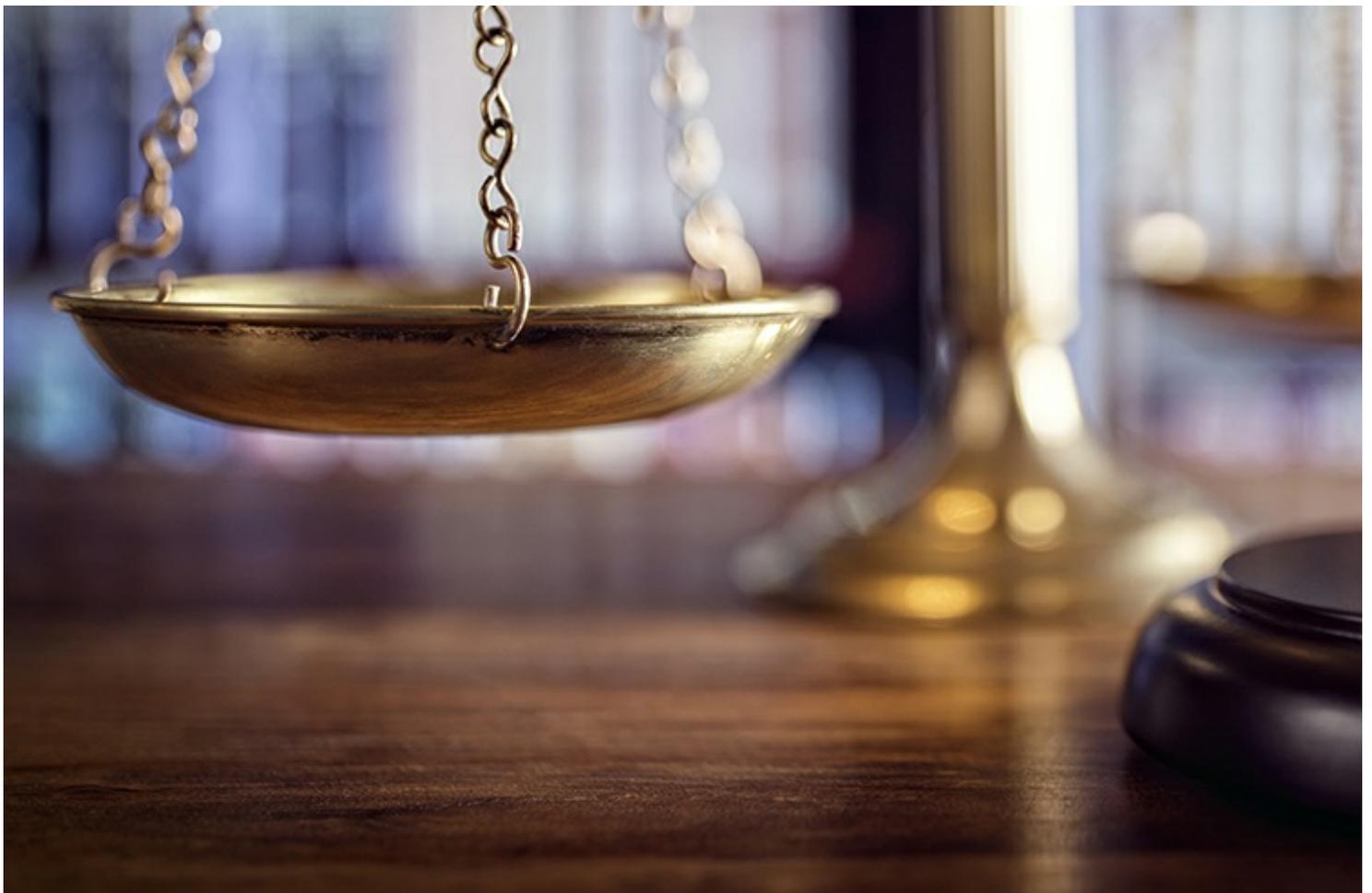

Waiving Subrogation on UIM Payment Does Not Reduce Judgment Against Tortfeasor

BLOG | APRIL 8, 2019



The North Carolina Supreme Court held in a matter of first impression that underinsured motorist (UIM) benefits paid to an accident victim do not reduce the judgment against the tortfeasor, even if the insurance carrier waived its subrogation rights.

In Hairston v. Harward, 821 S.E.2d 384 (N.C. Dec. 7, 2018), Plaintiff Hairston was injured in a motor vehicle accident caused by Defendant Harward, resulting in a jury verdict against Defendant of \$263,000. The judgment exceeded Defendant's liability insurance coverage limits of \$100,000 per person. As a result, Plaintiff's UIM carrier paid Plaintiff \$145,000 and waived its subrogation rights. After accounting for certain other payments and prejudgment interest, the trial court reduced the judgment against Defendant by the \$145,000 UIM payment. A divided Court of Appeals affirmed the trial court's decision to reduce the judgment by the UIM payment.

The Supreme Court reversed, holding that the judgment should not have been reduced by the amount of the UIM payment. The Court applied the collateral source rule, which provides that the amount owed by a tortfeasor is not reduced by gratuitous payments made to a plaintiff by "a beneficial society" such as the plaintiff's family, employer, or insurance company.

The fact that Plaintiff's UIM carrier had waived its subrogation rights did not change the outcome. The Court explained that "[T]here is no escaping the fact that one party to this case or the other will receive ... a 'windfall' as a result of our decision in this case. In light of that fact, we believe that the better option is to allow plaintiff to retain the 'windfall' that results from his foresight in voluntarily electing to purchase underinsured motorist coverage rather than allowing defendant, who failed to purchase enough liability coverage to adequately compensate plaintiff for his injuries, to be the

ultimate beneficiary of plaintiff's decision to procure additional insurance coverage. ... We see no reason why defendant should be entitled to different treatment simply because [Plaintiff's UIM carrier] elected to waive its subrogation rights rather than attempting to enforce them."



David Earley is a litigator at Young Moore. His practice focuses on business litigation, insurance coverage analysis, and insurance bad faith litigation. Please contact David at david.earley@youngmoorelaw.com or (919) 782-6860 if you have any questions about this article or would like to discuss it further.

CONTACT US

Phone: 919-782-6860

Fax: 919-782-6753

OFFICE

Young Moore and Henderson, P.A.

3101 Glenwood Ave. Suite 200

Raleigh, N.C. 27612

MAILING ADDRESS

Young Moore and Henderson, P.A.

P.O. Box 31627

Raleigh, N.C. 27622-1627