



## Case Establishes New Standard for Determining UM Priority

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This month, the Supreme Court of Kentucky published the long-awaited decision of *Countryway Ins. Co. v. United Financial Cas. Ins. Co. Et al.*<sup>1</sup> This case addressed the issue of priority of uninsured motorist (UM) coverage in a case with more than one UM policy in play. The Supreme Court's ultimate conclusion is that the vehicle owner's UM coverage is primary.

In 2007, Sharon Bartley was a passenger in a tractor-trailer owned and operated by her son, Joey. The vehicle was involved in a collision with an uninsured motorist, whose negligence was determined to have caused the accident. Sharon Bartley suffered injuries as a result.

Joey Bartley's tractor-trailer was insured by United Financial and included UM coverage of \$50,000/\$100,000 per person, per accident. Sharon Bartley's personal vehicle was insured by Countryway, and carried UM coverage of \$100,000/\$300,000. By virtue of her status as a passenger in the United Financial vehicle and as the spouse of Countryway's named insured, Sharon Bartley was deemed an additional insured by both carriers. However, each insurer maintained that the other company's coverage was primary.

Sharon Bartley sought a determination at the trial court level as to priority of the UM coverage. Countryway had an "other insurance" clause, which provided in relevant part that Countryway's UM coverage for any vehicle not owned by its insured would be excess over any other available UM coverage. Because Ms. Bartley did not own the tractor-trailer, Countryway considered its UM coverage to be excess.

United also had an "other insurance" clause, to which there was an exception for "relatives" of the insured. However, United argued that because Ms. Bartley did not reside in Joey Bartley's

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<sup>1</sup> At the time of this article, the final citation was not yet available. The Supreme Court case number is 2014-SC-000265.

household, she was not his relative under the policy terms, and could not avail herself of the exception to the provision making United's UM coverage excess over any other available UM coverage.

United argued that because coverage under both policies was excess, the rule of "mutual repugnance" applied. United asserted that the competing excess clauses nullified each other, leaving each insurer to pay its *pro rata* share of the damages up to policy limits. The trial court accepted this argument; Countryway appealed.

Countryway argued to the Court of Appeals that the rule for priority of UM coverage should be the same as the rule for liability insurance, as stated in the Supreme Court's then recent decision of *Kentucky Farm Bureau Mut. Ins. Co. v. Shelter Mut. Ins. Co.* In *Shelter*, the Court had held that notwithstanding an "other insurance" clause, the accident vehicle's insurance is the primary coverage up to policy limits.

The Court of Appeals agreed with Countryway as to the public policy behind *Shelter*, stating that it was as important for accident victims in UM cases as it was for other claimants to have their claims expeditiously resolved. Notwithstanding this theory, the Court of Appeals reasoned that indemnity insurance (such as UM coverage) is different from liability insurance, to the extent that indemnity insurance is personal to the insured, and follows the person, rather than the vehicle. The Court of Appeals therefore held that *Shelter* did not apply, and ruled that the UM coverage for the injured person, rather than the accident vehicle, would be primary.

The Supreme Court agreed with the importance of efficiently resolving an accident victim's claims. It found that *pro rata* sharing of UM coverage should be abolished. However, the Supreme Court disagreed with the Court of Appeals as to which insurer would ultimately be responsible for coverage. The Court rejected the distinction between indemnity and liability coverage, as well as the appellate court's conclusion that the personal nature of the insurance necessitated resolving the priority dispute against the insured's own carrier.

The Supreme Court ultimately found that "in instances where both the vehicle owner and a non-owner passenger are separately insured with UM coverage, the vehicle owner's coverage shall be primary."