



## COLORADO WORKERS' COMPENSATION EXCLUSIVE REMEDY PRECLUDES CLAIM AGAINST IMMUNE CO-WORKER'S UNINSURED/UNDERINSURED MOTORIST COVERAGE



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The Colorado Supreme Court's decision in *Ryser v. Shelter Mutual Insurance Company*, 2021 CO 11 (Feb. 16, 2021), clarifies that the exclusive remedy provisions of, and the immunity granted by, the Workers' Compensation Act ("WCA"), C.R.S. §§ 8-41-102 and -104, extends to an immune co-worker's uninsured/underinsured motorist (UM/UIM) insurer, barring such claims.

Mr. Ryser was riding in a vehicle owned by one co-worker and driven by another co-worker when he was injured in a single-car accident. All three employees were within the course and scope of their employment at the time of the accident and Mr. Ryser received workers' compensation benefits for his injuries. As co-workers, both the driver and the vehicle owner were immune from a liability claim under the WCA. So Ryser pursued a claim against his own UM/UIM coverage (contending that because the co-workers were immune, it was an uninsured vehicle) and then pursued a claim seeking uninsured motorist coverage from the co-worker's policy.

The Supreme Court observed that the case involves the "interplay" of two statutes, the UM/UIM statute and the WCA. While the decision of the Colorado Court of Appeals turned on interpretation of Colorado's UM/UIM statute, C.R.S. § 10-4-609, the Supreme Court ruled that it is the WCA which decides the issue. Specifically, that "the WCA's exclusivity and co-employee immunity principles preclude Ryser from bringing a UM/UIM benefits action against a

co-employee vehicle owner's insurer for damages stemming from a work-related accident caused by the negligent driving of another co-employee."

Under the WCA, employers and employees gain the benefit of the coverage and waive certain rights. C.R.S. § 8-41-102 provides that neither an employer nor its insurance carrier is "subject to any other liability for the death of or personal injury to any employee" except as provided under the Act. Section 8-41-104 provides that the Act "shall be construed to be a surrender by the employer, such employer's insurance carrier, and the employee of their rights" to any cause of action or remedy other than under the Act. These provisions have been interpreted to apply to co-workers as well as the employer.

The WCA affords the exclusive remedy available to a covered employee when injured on the job, and employers and negligent co-workers are immune from common law liability for such injuries.

The Supreme Court held that the Act also bars a claim against the co-worker's insurer. Because the injured worker's exclusive remedy for his on-the-job injury is the benefits afforded by the WCA, and because the negligent co-worker is immune under the Act, his claim against the co-worker's insurer was also barred.

This decision has significant implications for employers and their coverage, as well. Though not at issue in this decision, under the Court's reasoning claims against the employer's UM/UIM coverage would likely also be barred for the negligence of the employer or a co-worker.

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