

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

MICHAEL DAVID LAWRENCE, JR.,
INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATES
OF HIS UNEMANCIPATED MINOR
CHILDREN, MICHAEL D.
LAWRENCE III, ZEKE LAWRENCE,
AND DEGAN LAWRENCE; SUMMER
LAWRENCE, INDIVIDUALLY; AND
MICHAEL DAVID LAWRENCE, JR.
AND SUMMER LAWRENCE AS
PERSONS HAVING PARENTAL
AUTHORITY OVER THEIR
UNEMANCIPATED MINOR
CHILDREN, MICHAEL D.
LAWRENCE III, ZEKE LAWRENCE,
AND DEGAN LAWRENCE

NO. 2018 CW 1401
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VERSUS

KALIN GLEN MCKENZIE, ET AL

CONSOLIDATED WITH

GINA GEROT GROH AND TYRE
WILLIAM GEROT

VERSUS

KALIN MCKENZIE, PROGRESSIVE
INSURANCE, MICHAEL LAWRENCE,
HEAVY MACHINES, INC., AND
TRAVELERS INDEMNITY

NOV 30 2018

In Re: Phoenix Insurance Company and Travelers Property
Casualty Company of America, applying for supervisory
writs, 21st Judicial District Court, Parish of
Tangipahoa, No. 2013-0002165 c/w 2013-0002590.

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

WRIT GRANTED. That portion of the trial court's August 31, 2018 judgment granting the plaintiffs' motion for partial summary judgment as to the credits to be given to the UM insurers is reversed. The Phoenix Insurance Company provides primary uninsured/underinsured motorist coverage to the plaintiff's employer. The policy contains a valid and enforceable exclusion which provides, "This insurance does not apply to: The direct or indirect benefit of any insurer or self-insurer under any workers compensation, disability benefits or similar law." See **Travelers Ins. Co. v. Joseph**, 95-0200 (La. 6/30/95), 656 So.2d 1000. Travelers Property Casualty Company of America provides excess coverage to the plaintiff's employer. Its policy similarly excludes coverage for "Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law." These exclusions preclude coverage for past and future workers' compensation benefits paid to or on behalf of the plaintiff,

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regardless of whether the plaintiff settles with the workers' compensation insurer or the uninsured/underinsured motorist insurer. See **Bergeron v. Williams**, 99-0886 & 99-0887 (La. App. 1st Cir. 5/12/00), 764 So.2d 1084, writ denied, 2000-1697 (La. 9/15/00), 768 So.2d 1281 and **Advantage Personnel and Louisiana Safety Assn of Timbermen v. Van Cleave**, 2013-1618 (La. App. 1st Cir. 5/5/14), 146 So.3d 221, writ denied, 2014-1443 (La. 10/24/14), 151 So.3d 603. See also **McCarroll v. Prime Cut Lawn Care & Tractor Work, L.L.C.**, 2013-1341 (La. App. 1st Cir. 3/21/14), 2014 WL 1165855 (unpublished). Therefore, we find the trial court erred by granting this portion of the plaintiffs' motion for partial summary judgment. The credit owed to the uninsured/underinsured motorist insurers for past benefits paid to the plaintiffs should include the amount the plaintiffs paid to settle the workers' compensation lien. Furthermore, the uninsured/underinsured motorist insurers are entitled to a credit for future workers' compensation benefits paid to or on behalf of Michael Lawrence, Jr. This portion of the plaintiffs' motion for partial summary judgment is denied.

JMM
WJC
GH

COURT OF APPEAL, FIRST CIRCUIT



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FOR THE COURT