

State Of Insurance: Q3 Notes From Pennsylvania

By **Todd Leon** (October 30, 2025)

The third quarter of 2025 brought several important developments in Pennsylvania's insurance landscape. This article highlights two key cases and one proposed piece of legislation from the past three months, with commentary on what they mean in practical terms moving forward.

In one case, the U.S. Court of Appeals for the Third Circuit dealt with questions of class certification in a case where policyholders sued their auto insurer for underestimating the actual cash value of their vehicles.



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In a state-level auto insurance case, the Pennsylvania Superior Court held that an insured was not entitled to underinsured motorist, or UIM, coverage under his personal auto policy for injuries he suffered while driving his employer's vehicle, as he did not qualify as an insured under his employer's policy for purposes of stacking UIM coverage.

Finally, in yet another automobile insurance development, a bill was introduced in the Pennsylvania House of Representatives that would mandate the inclusion of higher property damage liability limits in automobile insurance policies.

Drummond v. Progressive Specialty Insurance

In *Drummond v. Progressive Specialty Insurance Co.*, numerous insureds brought what were pled as class actions against their automobile insurer, Progressive, alleging claims for breach of contract due to the insurer's alleged systematic underestimations of the actual cash value of the insureds' vehicles in calculating the payments for the total loss.[1]

Specifically, Progressive utilized a so-called projected sold adjustment in its total loss valuation methodology, which the plaintiffs asserted caused the actual cash value of their vehicles to be undervalued.

After the U.S. District Court for the Eastern District of Pennsylvania certified two damages classes, Progressive appealed and the Third Circuit reversed.

In its July 7 decision, the appellate panel noted that the question of whether Progressive undercompensated each class member was an individual issue, which was not capable of proof on a classwide basis.

As such, the Third Circuit concluded that the claims did not meet the standard required by the Federal Rules of Civil Procedure for the certification of a class action, namely, that "questions of law or fact common to class members predominate over any questions affecting only individual members." [2]

In short, the Third Circuit held that the question of whether each class member was actually paid less than the true actual cash value of their vehicle was an individual question. In so finding, the court determined that the plaintiffs could not, by bringing their claims jointly as a class, prove that Progressive breached the insurance contract via underpayment of claims. The circuit court thus reversed the order entered by the district court certifying the class.

and remanded the matter.

Drummond stands as a notable decision by the Third Circuit, and aligns the court with similar decisions by the U.S. Courts of Appeals for the Fourth, Fifth, Seventh and Ninth Circuits on the issue.

Of note, however, in an Oct. 9 decision in *Clippinger v. State Farm Mutual Automobile Insurance Co.*, the U.S. Court of Appeals for the Sixth Circuit disagreed with its five sister courts and concluded that class action was an appropriate mechanism for Tennessee insureds to bring claims against their insurer for alleged underpayments of actual cash value for the total losses of their vehicles.

It will be interesting to see how courts, including the Third Circuit, respond to this recent split, and whether the U.S. Supreme Court grants certiorari to decide the issue.

In any event, in the Third Circuit, and especially in Pennsylvania, Drummond will mandate that close attention will be paid in each action to ascertain whether the claims by the plaintiffs are individual or common, which will guide the ultimate determination of whether the class action procedure provided for in federal court is appropriate in a particular circumstance.

Erie Insurance Exchange v. Russo

Erie Insurance Exchange v. Russo involved a motor vehicle accident that occurred while an employee, Richard Russo, was in the course of his employment with Lancaster Plumbing, Heating, Cooling and Electrical.[3]

Russo was involved in the crash while he was driving one of his employer's vehicles. Russo sought and obtained \$35,000 in UIM benefits under the commercial auto policy issued by Donegal Insurance Group to Lancaster Plumbing. Russo then presented an additional claim for UIM coverage under his own personal auto policy, which was issued to him by Erie Insurance Exchange.

The Erie policy included a standard exclusion for bodily injury suffered by an insured during their regular use of a nonowned vehicle. Erie declined UIM coverage to Russo on that basis, and the insurer filed a declaratory judgment action accordingly.

Based upon last year's decision by the Supreme Court of Pennsylvania in *Rush v. Erie Insurance Exchange*, the Court of Common Pleas of Lancaster County granted Erie's motion for judgment on the pleadings and held that Erie did not owe UIM coverage to Russo based upon his regular use of his employer's vehicle.[4]

On appeal, the Superior Court of Pennsylvania affirmed in a July 22 ruling, but for a different reason. The appellate court held that Russo was not entitled, pursuant to the applicable statute, to stack his personal UIM coverage with his employer's commercial UIM coverage because Russo did not qualify as an insured under the policy issued to Lancaster Plumbing.[5]

Per the rationale of the court,

if Russo was not an insured under his employer's Donegal policy, then he is ineligible for inter-policy stacking under Section 1738, a consequence that would render moot the dependent question of whether the regular use exclusion in his personal auto policy

under Erie worked an unlawful, de facto waiver of a Section 1738 right to stack in this case.

The court affirmed the conclusion of the lower court that Erie was not obligated to provide UIM benefits to Russo.

Russo thus reinforces the principle that policies must be closely scrutinized to determine whether coverage may be triggered under a particular set of facts. The opinion also tacitly affirms the validity of regular use exclusions in the UIM context under Pennsylvania law. As always, however, the determination of whether the provision will be applicable in a particular case will depend upon the facts and circumstances of the matter, and especially the insured's use of the vehicle in question.

H.B. 1666

On June 25, a bipartisan group of nine state representatives — Jeff Olsommer, R-Wayne/Pike; Tarah Probst, D-Monroe/Pike; Michael Stender, R-Montour/Northumberland; Brian Smith, R-Jefferson/Indiana; Rob W. Kauffman, R-Franklin; Mike Armanini, R-Clearfield/Elk; Kyle J. Mullins, D-Lackawanna; Dane Watro, R-Luzerne/Schuylkill; and Justin Fleming, D-Dauphin — introduced H.B. 1666, which seeks to amend the Pennsylvania motor vehicle statutes.

Notably, the proposed legislation would require automobile insurers in Pennsylvania to raise the minimum property damage liability coverage afforded by personal automobile liability insurance policies from \$5,000 to \$25,000.

As drafted, the bill does not mandate any similar increases to the required minimum limits of bodily injury, UIM or uninsured motorist coverage, nor does the legislation require insurers to obtain new signatures from policyholders regarding waivers, tort elections or benefit selections. The proposed statute would apply to all automobile policies issued or renewed on or after the bill's effective date, which is set for 60 days after enactment.

The bill was referred to the House Insurance Committee and has not yet been voted upon or moved. However, the impact of the potential amendment to the existing law is likely to be far-reaching.

On a basic level, insureds, insurers and insurance producers will need to carefully monitor when and if the bill is passed, so that the coverage afforded under their policies remains in conformance with the statutory mandates. For insurers, policy forms will need to be updated, and communications and notices will need to be drafted and sent to their insureds. For consumers, the possibility certainly exists that the imposition of an obligation to carry higher limits will result in higher premiums being charged, though the manner in which the industry ultimately responds remains to be seen.

Conclusion

In sum, the third quarter of 2025 reflected both continuity and change within Pennsylvania's insurance landscape. Drummond underscored the Third Circuit's insistence on individualized proof in class actions alleging systemic underpayment, signaling an uphill path for similar claims in the region. The Superior Court's ruling in Russo reaffirmed the enforceability of long-standing coverage principles, including the regular use exclusion and the statutory limitations on stacking UIM coverage.

Meanwhile, the introduction of H.B. 1666 demonstrates a legislative effort to modernize Pennsylvania's minimum insurance requirements and align them more closely with present-day costs of vehicle damage. Collectively, these developments illustrate a legal environment that is both refining existing doctrines and cautiously adapting to evolving market realities — trends that insurers, policyholders and practitioners alike will need to monitor closely in the months ahead.

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[1] Drummond v. Progressive Specialty Insurance Co., 142 F.4th 149 (3d Cir. 2025) [decided July 7, 2025].

[2] See Fed. R. Civ. P. 23(b)(3).

[3] Erie Insurance Exchange v. Russo, 343 A.3d 291, 2025 PA Super 154 (Super. Ct. Pa. 2025) [decided July 22, 2025].

[4] Rush v. Erie Insurance Exchange, 308 A.3d 780 (Pa. 2024).

[5] See 75 Pa. C.S.A. § 1738.