

**Underinsured Motorist Portion of Automobile Insurance Policy  
In Relation to Physical Custody of a Child**

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The Superior Court held in the case of Erie Insurance Exchange v Werhya, etc., that a child who was the victim in a fatal automobile accident was not entitled to underinsured motorist benefits through his Father's policy, since the parents were separated and the child did not physically reside with Father.

On June 12, 2001, Timothy Werhya, a minor, was struck and killed by a car while crossing the street in front of his Mother's residence, which accident was witnessed by his Mother and two siblings. His parents reached a settlement with the driver's insurance carrier and Mother reached a settlement with Erie Insurance pursuant to the underinsured motorist portion of her policy. A claim was submitted to Erie under Father's policy; however, Erie denied benefits because the child was neither a named insured on Father's policy, nor was he a resident of Father's household, as Mother and Father were residing separately at the time of the accident.

In October, 2003, Erie filed a Petition with the Court to declare Father ineligible for compensation. The case sat dormant until June, 2006 when Erie filed a motion for resolution with the Court. The Trial Court determined that Father was not entitled to underinsured motorist benefits since Timothy didn't physically reside with him and therefore, he wasn't covered under Father's policy. The parents individually and Mother, on behalf of Timothy's estate, filed an appeal to the Superior Court.

Parents argued that the language in the policy which provided coverage for a "resident" or "relative" physically residing in the household of the policyholder (Father) was unclear and further, that Father had a reasonable expectation that his policy would cover his children.

The Superior Court held that the language was clear and only applied to a resident or relative physically living in policyholder's household. The question whether Timothy physically resided with Father was a factual determination based upon the quantity and quality of time that Timothy spent in Father's household sufficient to provide a basis for residency.

The Court found that Timothy did not have a room at his Father's residence, did not receive mail there, did not have a key, did not attend school in the area, did not eat meals or stay overnight on a regular basis and determined that Timothy did not physically reside in Father's household. Therefore, since Timothy was not living with Father, he was not covered under Father's policy and was not entitled to compensation.

As to a reasonable expectation that Father's policy would cover his children, the Court held that although Father had notified his insurance agent in 1999 and 2000 that he had separated from his Wife and changed residences, Timothy's residence was the issue, not Father's residence. Further, the agent could not have been expected to understand the possible legal ramifications of the change in Father's residence as it related to coverage of a child not physically living in his household.