

UPDATE

PIP Offset From Full UIM “Damages” Rather Than From Liability Proceeds: ORS 742.542 Versus ORS 742.544

When a PIP insurer demands repayment of PIP benefits from an injured person who demands underinsured motorist benefits from the same insurer, which statutory formula controls – ORS 742.542 or ORS 742.544?

Under ORS 742.542, PIP benefits are subtracted or offset in an uninsured (UM) or underinsured motorist (UIM) claim from the full measure of the injured person’s damages comprised of both economic and noneconomic damages. If damages are large enough the effect is to “stack” PIP and UM or UIM benefits so as to make the injured person whole.

Under ORS 742.544, PIP benefits are repaid to the extent that the insurance benefits received exceed the injured person’s economic damages. Noneconomic damages are not considered. In effect, an injured person may be only “made half.”

In *Gaucin v. Farmers Ins. Co.*, 209 Or App 99, 146 P3d 370 (2006), Farmers had tendered to the injured person the full balance of his UIM limits but insisted on the injured person’s agreement to repay PIP benefits out of insurance benefits recovered pursuant to the “make half” formula of ORS 742.544. Plaintiff Gaucin contended that the PIP insurer could not take away money in PIP repayment under ORS 742.544, which the “make whole” formula of ORS 742.542 had promised him.

The Oregon Court of Appeals held that ORS 742.544 did not operate as a stand-alone authorization for PIP recovery, separate and apart from the three traditional means of PIP recovery by way of direct intercompany reimbursement, PIP liens, or PIP subrogation. Footnotes in the opinion reveal the upshot of the decision. Because the “make whole” promise of ORS 742.542 provided the full balance of the UIM limits, the “make half” limitation of ORS 742.544 could not operate to force PIP repayment.