ADVANCE SHEET HEADNOTE
September 30, 2024

2024 CO 66

No. 23SA142, *Klabon v. Travelers*—Workers' Compensation—Automobile Insurance.

The supreme court accepted jurisdiction under C.A.R. 21.1 to answer the following question of law certified by the United States District Court for the District of Colorado:

> Whether an employee injured in the course of his employment by the acts of an underinsured third-party tortfeasor, and who receives worker's compensation benefits as a result, is barred, under Colorado's Workers' Compensation Act, Colo. Rev. Stat § 8-41-104, from bringing suit against his employer's UM/UIM insurer?

The court now concludes that under Colorado law, an employee who is injured in the course of their employment by a third-party tortfeasor and who receives workers' compensation benefits as a result of that injury can also sue to recover benefits from their employer's separate uninsured/underinsured motorist ("UM/UIM") carrier. The court reaches this conclusion because the plain language of the pertinent section of the Workers' Compensation Act of Colorado

("WCA"), §§ 8-40-101 to 8-47-209, C.R.S. (2024), immunizes only employers and their workers' compensation insurance carriers from liability.

The court further determines that when an employee is injured by the negligence of a third party, rather than by an employer or co-employee, a suit to recover UM/UIM benefits does not constitute a suit against the employer or co-employee and, therefore, is not barred by the exclusivity clause of the WCA. Accordingly, the court answers the certified question in the negative.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 66

Supreme Court Case No. 23SA142
Certification of Question of Law
United States District Court for the District of Colorado Case No. 22-cv-02557-NRN

Plaintiff:

Kevin Klabon,

v.

Defendant:

Travelers Property Casualty Company of America.

Certified Question Answered
en banc
September 30, 2024

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT**, **JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART,** and **JUSTICE SAMOUR** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 In this case, we accepted jurisdiction under C.A.R. 21.1 to answer the following question of law certified to us by the United States District Court for the District of Colorado:

> Whether an employee injured in the course of his employment by the acts of an underinsured third-party tortfeasor, and who receives worker's compensation benefits as a result, is barred, under Colorado's Workers' Compensation Act, Colo. Rev. Stat § 8-41-104, from bringing suit against his employer's UM/UIM insurer?

¶2 We conclude that the answer to this question is no. Under Colorado law, an employee who is injured in the course of their employment by a third-party tortfeasor and who receives workers' compensation benefits as a result of that injury can also sue to recover benefits from their employer's separate uninsured/underinsured motorist ("UM/UIM") carrier. We reach this conclusion because the plain language of the pertinent section of the Workers' Compensation Act of Colorado ("WCA"), §§ 8-40-101 to 8-47-209, C.R.S. (2024), immunizes only employers and their workers' compensation insurance carriers from liability.

¶3 We further determine that when an employee is injured by the negligence of a third party, rather than by an employer or co-employee, a suit to recover UM/UIM benefits does not constitute a suit against the employer or co-employee and, therefore, is not barred by the exclusivity clause of the WCA. Accordingly, we answer the certified question in the negative.

I. Facts and Procedural History[1]

¶4 Plaintiff Kevin Klabon worked as a technician for CMI Legacy, LLC ("CMI"), a company that installs and services heating, ventilation, and air conditioning units in Denver, Colorado. While working for and driving a van owned by CMI, Klabon was struck by a vehicle driven by Rodrigo Canchola-Rodriguez when Canchola-Rodriguez failed to stop at a red traffic light. Klabon alleges that he suffered serious injuries in the accident, causing him to incur over $500,000 in medical expenses. Klabon sought and recovered workers' compensation benefits from CMI through its WCA carrier, Pinnacol Assurance. He subsequently settled a claim with Canchola-Rodriguez's auto liability insurer, Progressive Preferred Insurance Company, for $25,000, the limit for bodily injury claims under Canchola-Rodriguez's policy. Klabon then filed a claim under CMI's commercial auto insurance policy, issued by Travelers Property Casualty Company of America ("Travelers"). In addition to liability coverage, the Travelers policy provided up to $1 million in UM/UIM coverage.

¶5 Travelers ultimately valued Klabon's UIM claim at $78,766, based in part on its medical expert's finding that some of Klabon's injuries predated the accident.

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[1] We derive the following facts from Klabon's complaint and the district court's certification order.

Travelers did not pay out the full value it assigned to the claim, instead issuing $45,766.68 in total payments for UIM benefits to Klabon.

¶6 Klabon sued Travelers in state court, alleging that Travelers unreasonably denied and delayed payment of UIM benefits, and that such denial was done in bad faith and in breach of its contract. *See* § 10-3-1115, C.R.S. (2024) (forbidding an insurer from unreasonably delaying or denying payment of a claim for benefits). He asserted that, by virtue of his employment with CMI, he was a "covered driver" under CMI's policy and was thus entitled to additional UIM benefits. Travelers removed the case to federal court.

¶7 Travelers then moved for summary judgment, asserting for the first time that Klabon's receipt of workers' compensation benefits barred his suit to recover UIM benefits. Citing the WCA's "exclusivity and immunity provisions," §§ 8-41-102, -104, C.R.S. (2024), Travelers argued that Klabon's acceptance of workers' compensation benefits rendered the WCA the exclusive remedy for his injuries, and consequently, that Klabon had surrendered his right to bring a claim against his employer's UIM carrier. Klabon responded that since he was injured by the negligence of an underinsured third party, rather than by CMI or a co-employee, the WCA's exclusivity and immunity provisions posed no impediment to his suit against Travelers for UIM benefits.

¶8 United States Magistrate Judge N. Reid Neureiter heard arguments on the motion and raised sua sponte whether the issue would be best addressed by this court as a certified question of law. Travelers agreed that certification was appropriate. Klabon disagreed because, in his view, our decision in *Aetna Casualty & Surety Co. v. McMichael*, 906 P.2d 92 (Colo. 1995), resolved the issue. There, this court held that an employee's suit to recover UM/UIM damages sustained due to the negligence of a third party was not barred by a workers' compensation exclusion in the underlying policy. *Id.* at 100. This was because the benefits sought were not workers' compensation benefits. Rather, they were UM/UIM benefits that were substituted for benefits McMichael would have received from the motorist who caused his injuries had the motorist been sufficiently insured. *Id.* Klabon argued that his lawsuit, like McMichael's, represented a claim "based on the liability incurred by the driver who caused the accident," rather than a claim against his employer. *Id.*

¶9 After hearing the parties' arguments, the court observed that federal district judges in Colorado have "recently been struggling" with the question of whether an employee injured in the course of their employment by an underinsured third-party tortfeasor and who receives workers' compensation benefits can nonetheless

recover benefits from their employer's UM/UIM carrier.[2] Faced with conflicting precedent interpreting and applying the language of the WCA's immunity and exclusivity provisions, and recognizing the significant public policy implications for Colorado workers' compensation beneficiaries and their employers, the United States Magistrate Judge certified the question of whether an employee injured in the course of their employment by the acts of a third-party tortfeasor, and who receives benefits under the WCA, is barred from bringing suit against their employer's UM/UIM carrier.

¶10 We accepted review of the certified question. After considering the Order Certifying Question to Colorado Supreme Court, the parties' briefing before the District Court and this court, and the oral arguments of the parties in this court, we now proceed to decide that question.[3]

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[2] *Compare Ward v. Acuity*, 591 F. Supp. 3d 1003, 1008 (D. Colo. 2022) (holding that the WCA's exclusivity provisions barred a plaintiff injured by a third-party tortfeasor from recovering benefits under the employer's UM/UIM policy), *vacated*, No. 22-1117, 2023 WL 4117502, at *7 (10th Cir. June 22, 2023), *with Laurienti v. Am. Alt. Ins. Corp.*, No. 19-cv-01725-DDD-KLM, 2020 WL 9424250, at *2 (D. Colo. Jan. 3, 2020) (holding that the WCA's immunity provision did not bar an employee injured by a third-party tortfeasor from recovering benefits under his employer's UM/UIM policy).

[3] After oral argument, we requested and received supplemental briefing from the parties on the issue of the applicability of section 8-41-104, C.R.S. (2024), to this case.

II. Analysis

¶11 We begin by setting forth the applicable standard of review and our rules of statutory construction. We turn next to consider the language of both the WCA and Colorado's UM/UIM statute because they are the statutory schemes guiding our decision in this case. After that, we address the certified question head-on, determining, as an initial matter, that section 8-41-102, C.R.S. (2024), rather than section 8-41-104 C.R.S., (2024), governs our decision in this case and holding that an employee injured in the course of their employment by the acts of an uninsured or underinsured third-party tortfeasor is not barred from suing their employer's UM/UIM carrier for benefits, even when they have received workers' compensation benefits as a result of that injury. This, we explain, is because the plain language of section 8-41-102 immunizes Pinnacol, CMI's workers' compensation insurance carrier, not Travelers, CMI's UM/UIM carrier. We further conclude that when an employee is injured by the negligence of a third party, rather than by an employer or a co-employee, a suit to recover UM/UIM benefits does not constitute a suit against the employer and, therefore, is not barred by the WCA as an employee's exclusive remedy.

A. Standard of Review and Canons of Statutory Construction

¶12 This court has discretion under C.A.R. 21.1(a) to resolve questions of law certified by a federal court. We exercise that discretion when a question "may be

determinative of the cause then pending in the certifying court and as to which it appears to the certifying court that there is no controlling precedent in the decisions of the supreme court." *Skillett v. Allstate Fire & Cas. Ins. Co.*, 2022 CO 12, ¶ 8, 505 P.3d 664, 666 (quoting C.A.R. 21.1(a)). We review such questions de novo. *Id.* Likewise, we review de novo the issues of statutory interpretation. *Godinez v. Williams*, 2024 CO 14, ¶ 19, 544 P.3d 1233, 1237.

¶13 When interpreting statutes, our aim is to effectuate the intent of the General Assembly by turning first to the statutory text and giving words their plain and ordinary meanings. *Id.* at ¶ 20, 544 P.3d at 1237. Additionally, we read a statute "in context and in its entirety; giv[ing] 'consistent, harmonious, and sensible effect to all of its parts[] and avoid[ing] constructions that would render any words or phrases superfluous or lead to illogical or absurd results.'" *Skillett*, ¶ 9, 505 P.3d at 666 (quoting *Pineda-Liberato v. People*, 2017 CO 95, ¶ 22, 403 P.3d 160, 164). If the statute's language is clear, we look no further. *Id.* Next, we examine the two statutes that guide our consideration of the question certified: the WCA and the UM/UIM statute.

B. The WCA

¶14 The General Assembly enacted the WCA to protect employees who sustain work-related injuries. *Am. Fam. Mut. Ins. Co. v. Ashour*, 2017 COA 67, ¶ 66, 410 P.3d 753, 764. Specifically, the WCA's purpose is to "assure the quick and

efficient delivery of disability and medical benefits to injured workers . . . without the necessity of any litigation." § 8-40-102(1), C.R.S. (2024). To that end, the WCA sets forth statutorily mandated coverage that certain employers must provide to employees injured on the job, including coverage of "medical expenses, lost wages, disability benefits, compensation for disfigurement, and death and burial benefits." *Delta Air Lines, Inc. v. Scholle*, 2021 CO 20, ¶ 14, 484 P.3d 695, 699; *see also* § 8-42-101 to -125, C.R.S. (2024).

¶15 The WCA was designed to be the "exclusive remed[y] for employees suffering work-related injuries." *Horodyskyj v. Karanian*, 32 P.3d 470, 474 (Colo. 2001). Its exclusive remedy provisions, sections 8-41-102 and 8-41-104, bar an employee from bringing a civil action in tort against their employer for injuries that the employee sustained while performing services arising during the course of their employment. *Ryser v. Shelter Mut. Ins. Co.*, 2021 CO 11, ¶ 21, 480 P.3d 1286, 1290. Thus, in exchange for an employer securing insurance to cover its employees' work-related injuries, *Ashour*, ¶ 18, 410 P.3d at 757, those employees forego common law remedies otherwise available to them. *Kandt v. Evans*, 645 P.2d 1300, 1302 (Colo. 1982); *see also* § 8-40-102(1) (declaring that "the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike"). And if an employee is injured in the course of their employment by a co-employee, under the "co-

employee immunity rule," the co-employee is also immunized from common law liability. *Ryser*, ¶ 23, 480 P.3d at 1290.

¶16 As noted, two provisions of the WCA serve as the Act's exclusive remedy provisions: sections 8-41-102 and 8-41-104. Section 8-41-102 provides:

> An employer who has complied with the provisions of articles 40 to 47 of this title, including the provisions relating to insurance, shall not be subject to the provisions of section 8-41-101[, C.R.S. (2024),] [concerning the unavailability of certain defenses]; *nor shall such employer or the insurance carrier, if any, insuring the employer's liability under said articles be subject to any other liability for the death of or personal injury to any employee*, except as provided in said articles; *and all causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished* except as provided in said articles.

(Emphases added.) Section 8-41-104 provides:

> An election under the provisions of section 8-40-302(5)[, C.R.S. (2024),] and in compliance with the provisions of articles 40 to 47 of this title, including the provisions for insurance, shall be construed to be a surrender by the employer, such employer's insurance carrier, and the employee of their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding for or on account of such personal injuries or death of such employee other than as provided in said articles, and shall be an acceptance of all the provisions of said articles, and shall bind the employee personally, and, for compensation for such employee's death, the employee's personal representatives, surviving spouse, and next of kin, as well as the employer, such employer's insurance carrier, and those conducting their business during bankruptcy or insolvency.

¶17 Section 8-41-102 thus immunizes a WCA-compliant employer—and its workers' compensation insurance carrier—from suit by an employee injured in the course of their employment. § 8-41-102 (an employer compliant with the provisions of the WCA "*or the insurance carrier . . . insuring the employer's liability under* [the WCA]" shall not "be subject to any other liability for the death of or personal injury to any employee" (emphasis added)). It also extinguishes all common law causes of action arising from an employee's injury, rendering the WCA an employee's exclusive remedy for on-the-job injuries. *Id.* ("[A]ll causes of action . . . on account of such death of or personal injury to any such employee . . . are abolished . . . .").

¶18 Section 8-41-104 contains similar limiting language. Under that section, "upon participating in the workers' compensation system, all employees 'surrender . . . their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding'" for on-the-job injuries. *Ryser*, ¶ 26, 480 P.3d at 1291 (omission in original) (quoting § 8-41-104).

¶19 While traditionally cited together as the WCA's "exclusivity provisions," *see, e.g.*, *Ashour*, ¶ 17, 410 P.3d at 757, sections 8-41-102 and -104 apply to different categories of employers. Section 8-41-104 is applicable only to employers who are statutorily excluded pursuant to section 8-40-302(2) to (4) of the WCA from

providing workers' compensation to their employees, but who nonetheless elect to do so under the provisions of section 8-40-302(5).[4]

¶20 Section 8-41-102, conversely, applies to all employers who are statutorily required to provide WCA benefits in the first instance. *See Ashour*, ¶ 13, 410 P.3d at 756 ("Employers subject to the [WCA] . . . are required to secure insurance to cover their employees' claims for work-related injury." (citing § 8-44-101(1), C.R.S. (2024) ("Any employer subject to the [WCA] shall secure compensation for all employees . . . .")).

¶21 While sections 8-41-102 and -104 apply to different categories of employers, taken together they constitute the WCA's "exclusivity provisions," limiting injured employees' common law remedies and immunizing employers and co-employees from tort claims. *Ashour*, ¶¶ 17–18, 410 P.3d at 757. These provisions do not bar injured employees from asserting *all* tort claims. Notably, the WCA expressly permits an employee to receive workers' compensation benefits *and* pursue a remedy against a third-party tortfeasor. That is, while an employee cannot pursue a remedy for an injury against an employer or a co-employee, an employee can pursue a remedy when the employee is injured by the negligence of

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[4] Exempt employers under section 8-40-302 include employers of specifically identified categories of employees, like farm and ranch workers and employees of religious employers, who receive limited wages or who work less than full-time hours. § 8-40-302(2)–(4).

a *third party*. *See* § 8-41-203(1)(a), C.R.S. (2024) (providing that employees who are "injured or killed by the negligence or wrong of another not in the same employ" may obtain workers' compensation benefits "and may also pursue a remedy against the other person to recover any damages in excess of the compensation available under [the WCA]").

C. The UM/UIM Statute

¶22 The General Assembly enacted the UM/UIM statute for a very different purpose. It serves to "protect the public from the devastating financial loss that a traffic accident victim can incur" and to "provide a mechanism through which an insured could purchase insurance coverage against loss caused by the negligent conduct of a financially irresponsible motorist." *McMichael*, 906 P.2d at 98; *see also DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167, 174 (Colo. 2001) (observing that "the important policy behind UM/UIM insurance [is] to protect persons from the often-devastating consequences of motor vehicle accidents"). The statute provides, in pertinent part:

> Except as described in subsection (1)(a)(II) of this section, an automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury . . . suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, which policy is delivered or issued for delivery in this state with respect to any motor vehicle licensed for highway use in this state, must provide coverage or supplemental coverage . . . for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily

> injury, sickness, or disease, including death, resulting from a motor vehicle accident.

§ 10-4-609(1)(a)(I), C.R.S. (2024).

¶23 To effectuate the General Assembly's goal, the statute requires auto insurance liability policies to also include optional UM/UIM coverage. This coverage, as the name suggests, provides benefits when a tortfeasor lacks liability insurance or is underinsured. *See DeHerrera*, 30 P.3d at 173. Specifically, a UM/UIM policy "functions as a bridge that spans the gap between a tortfeasor's insurance liability limits and the amount of damages sustained by an insured, up to the amount of the UM/UIM coverage purchased." *Essentia Ins. Co. v. Hughes*, 2024 CO 17, ¶ 26, 545 P.3d 494, 500.

¶24 To be entitled to coverage, an insured must establish that they are "legally entitled to recover damages," that is, "that the fault of the uninsured [or underinsured] motorist gave rise to damages and the extent of those damages." *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.3d 1265, 1269 (Colo. App. 2001). Additionally, an employee is not "legally entitled to recover" UM/UIM benefits from an employer or a co-employee under the WCA. *Ryser*, ¶ 36, 480 P.3d at 1293–94 (holding that the WCA's exclusivity and co-employee immunity principles bar an employee from bringing a UM/UIM benefits claim against an employer or co-employee).

¶25 With the WCA and the UM/UIM statute in mind, we turn now to their application in this case.

D. An Employer's UM/UIM Carrier Is Not an Immunized Insurer Under Section 8-41-102

¶26 Section 8-41-102 governs our initial consideration of this case because it covers all employers statutorily required to provide workers' compensation insurance under the WCA. *See* § 8-44-101(1) (requiring subject employers to secure workers' compensation coverage for their employees). Here, there is no dispute that CMI falls within the scope of section 8-41-102. Thus, we look to that section, rather than to section 8-41-104, to determine whether its immunity and exclusivity language bars Klabon's suit to recover UM/UIM benefits.

¶27 Recall that, under the immunizing language in section 8-41-102, neither the "employer or the insurance carrier, if any, insuring the employer's liability under said articles" shall "be subject to any other liability for the death of or personal injury to any employee." The phrase "under said articles" as used in this section refers to "articles 40 to 47" of the WCA. § 8-41-102 (governing "employer[s] who ha[ve] complied with the provisions of articles 40 to 47 of this title"). Thus, in this case, the carrier "insuring the employer's liability" under the WCA is Pinnacol, CMI's workers' compensation insurance carrier—not Travelers, CMI's separate auto liability insurance carrier. *See Ashour*, ¶¶ 14–15, 410 P.3d at 756–57 (quoting

sections 8-41-102 and -104 and concluding that the employer "and its workers' compensation insurance carrier are immune from suit").

¶28 Further, reading section 8-41-102 to immunize an insurance carrier that does not insure the employer's workers' compensation liability would conflict with the plain language of the statute and undermine the basis of immunity provided by the WCA, which is built upon an exchange between an employee and employer. *Id.* at ¶ 18, 410 P.3d at 757 ("[T]he workers' compensation system is an agreement by employers to provide benefits to employees, regardless of fault, and in exchange for assuming that burden, the employer is immunized from tort claims for injuries to its employees."); *see also Froid v. Knowles*, 36 P.2d 156, 158 (Colo. 1934) ("An outsider does not share the burdens of the [WCA] imposed upon the employer, and he is entitled to none of its benefits." (quoting *Hotel Equip. Co. v. Liddell*, 124 S.E. 92, 94–95 (Ga. Ct. App. 1924))); *Frohlick Crane Serv., Inc. v. Mack*, 510 P.2d 891, 893 (Colo. 1973) ("The employer is immunized from claims for tortious injuries only because he assumes the burden of compensating a workman for all job-related injuries.").

¶29 Unlike Pinnacol, Travelers does not bear the burden of providing workers' compensation benefits or of ensuring its compliance with any of the WCA's insurance requirements. *See* § 8-44-101(1) (describing, for employers subject to the WCA, what constitutes "compliance with the [WCA's] insurance requirements");

see also § 8-44-102(1), C.R.S. (2024) ("Every contract for the insurance of compensation and benefits . . . is subject to articles 40 to 47 of this title, and all provisions in the contract for insurance inconsistent with those articles are void."). Consequently, section 8-41-102 does not immunize Travelers from liability.

E. A Suit to Recover UM/UIM Benefits for a Third Party's Negligence Does Not Constitute a Suit Against an Employer or a Co-Employee

¶30 Our inquiry does not, however, stop there. Although we have determined that Travelers is not shielded by section 8-41-102's immunity clause, we are still left with the question of whether Klabon's suit to recover UM/UIM benefits is nonetheless precluded by the section's exclusivity clause. *See* § 8-41-102 ("[A]ll causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished except as provided in said articles."); *Kandt*, 645 P.2d at 1302 (observing that, under section 8-41-102, "[r]ecovery under the [WCA] is meant to be exclusive and to preclude employee tort actions against an employer").

¶31 Travelers urges us to answer this question "yes." It asserts that allowing an employee to recover benefits from an employer's UM/UIM carrier would ignore the WCA's purpose as an employee's exclusive remedy and allow duplicate claims for recovery. We are unpersuaded.

¶32 Recall that when an employee is injured in the course of their employment by a third-party tortfeasor, the WCA's exclusivity provisions do not foreclose the employee's recovery from that third party. Rather, the WCA expressly permits an injured employee to recover both workers' compensation benefits *and* to sue the third-party tortfeasor for damages. § 8-41-203(1)(a). When the third-party tortfeasor is uninsured or underinsured, a suit to recover UM/UIM benefits—even from an employer's UM/UIM carrier—is not a suit against the employer or a co-employee, and, accordingly, does not implicate, let alone violate, the WCA's exclusivity rule.

¶33 We said as much in *McMichael*. 906 P.2d at 100. In that case, McMichael was working on a highway near his parked company-owned truck when he was struck and seriously injured by another driver. *Id.* at 94. The driver who hit McMichael had inadequate auto insurance to compensate him for his injuries, so McMichael filed an underinsured motorist claim with Aetna, his employer's auto insurance carrier. *Id.* Aetna argued that McMichael's UM/UIM claim was precluded by an exclusion in the policy for "[a]ny obligation for which the 'insured' or the 'insured's' insurer may be held liable under any workers' compensation . . . law." *Id.* at 99–100. We rejected Aetna's claim, explaining that the WCA "does not bar McMichael from bringing a tort action against the driver who caused the accident," *id.* at 100 n.7 (citing § 8-41-203), and that the UM/UIM benefits

McMichael sought through his suit against Aetna "substitute for benefits that [he] would have received from the motorist who caused his injuries," *id.* at 100. Indeed, we emphasized that the UM/UIM benefits "do not constitute workers' compensation benefits and do not result because of a suit brought by McMichael against" his employer. *Id.*

¶34 The principle we set forth in *McMichael*, which we reiterate today, is that an employee's suit to recover UM/UIM benefits predicated on the liability of an uninsured or underinsured third party is not an action prohibited by the exclusivity clause of section 8-41-102.

¶35 We drew this distinction in *Ryser* as well. There, an employee injured by his co-employee's negligence recovered workers' compensation benefits and also sought to recover UM/UIM benefits from his co-employee's auto insurer. *Ryser*, ¶¶ 4–7, 480 P.3d at 1287–88. We held that the WCA's co-employee immunity rule barred the employee's suit to recover UM/UIM benefits, explaining that the WCA's immunity for co-employees extends to a co-employee's insurance carrier. *Id.* at ¶ 29, 480 P.3d at 1291. In so holding, we explicitly distinguished *McMichael* on the basis that it dealt with an employee injured by a third party: "Because the plaintiff in *McMichael* was injured by the negligence of an unrelated tortfeasor (i.e., a tortfeasor who was not a co-employee), we had no occasion to consider either

the WCA, its exclusivity or co-employee immunity principles, or the interplay between the UM/UIM statute and the WCA." *Id.* at ¶ 34, 480 P.3d at 1292.

¶36 Here, in contrast, Klabon was injured in the course of his employment, not by CMI or by a co-employee, but rather by Canchola-Rodriguez, a third-party tortfeasor. By contracting to provide CMI—and, by virtue of his employment, Klabon—with UM/UIM benefits, Travelers agreed to assume liability for injuries caused by an uninsured or underinsured driver. And because Klabon's UIM claim arises from a third-party tortfeasor's liability, it does not violate the exclusivity principle as set forth in section 8-41-102. *See Ward v. Acuity*, No. 22-1117, 2023 WL 4117502, at *6 (10th Cir. June 22, 2023) (rejecting the UM/UIM carrier's argument that an employee who sues to recover benefits under their employer's UM/UIM policy for injuries caused by a third party would violate section 8-41-102, observing that the argument "mistakenly assumes that any impact on an employer constitutes a *liability*"); *Colo. Ins. Guar. Ass'n v. Menor*, 166 P.3d 205, 213 (Colo. App. 2007) (observing that "[t]he liability of a UM/UIM insurer to the injured party is contractual" and concluding that an employee injured by a third-party tortfeasor "was entitled to recover benefits under both workers' compensation and the [employer's] UM/UIM policy").

¶37 This reading is consistent with the legislative intent behind the UM/UIM statute, which was enacted to put victims in the same position as if the driver who

injured them was adequately insured in the first place. *DeHerrera*, 30 P.3d at 174 ("UM/UIM coverage replaces the benefits an innocent injured insured would have recovered . . . if the tortfeasor had been [adequately] insured for liability coverage . . . ."). It also aligns with the well-established public policy of "preventing the dilution of UM[/UIM] coverage," including by, for example, prohibiting UM/UIM carriers from reducing their liability by the amount of any workers' compensation award. *State Farm Mut. Auto. Ins. Co. v. Brekke*, 105 P.3d 177, 184 (Colo. 2004); *see also* § 10-4-609(1)(c) ("The amount of the coverage available . . . shall not be reduced by a setoff from any other coverage, including, but not limited to, legal liability insurance, medical payments coverage, health insurance, or other uninsured or underinsured motor vehicle insurance."); *see also Nationwide Mut. Ins. Co. v. Hillyer*, 509 P.2d 810, 811 (Colo. App. 1973) (voiding an insurance policy provision that reduced UM/UIM benefits by the amount of the employee's workers' compensation award).

¶38 Travelers argues that this construction of the WCA, permitting employees to recover both workers' compensation and UM/UIM benefits from employers, allows "duplicative claims and . . . erodes the [WCA's] system of compensation." But this policy argument ignores the fact that the WCA and the UM/UIM statute serve different purposes and offer different benefits. The intent of the WCA is to assure the quick and efficient delivery of disability and medical benefits to

employees injured in the course of employment, at a reasonable cost to employers, without the need for litigation. *See* § 8-40-102(1). But its benefits are not all-encompassing. The WCA compensates only an employee's economic damages, such as medical expenses and lost wages; it does not provide compensation for noneconomic damages, such as pain and suffering. *Reliance Ins. Co. v. Blackford*, 100 P.3d 578, 580 (Colo. App. 2004).

¶39 The UM/UIM statute, conversely, requires a claimant to first establish "that the uninsured motorist's fault, normally negligence, caused the collision," and compensates an insured only up to policy limits. *Newton v. Nationwide Mut. Fire Ins. Co.*, 594 P.2d 1042, 1043–44 (Colo. 1979). While the benefits received under these separate types of coverage may overlap, they are not co-extensive. *See Calderon v. Am. Fam. Mut. Ins. Co.*, 2016 CO 72, ¶ 13, 383 P.3d 676, 679 (observing a similar distinction between UM/UIM coverage and MedPay coverage and noting that "benefits received under separate coverages can substantially overlap without constituting a double recovery").

¶40 And, in any event, the possibility of overlapping benefits does not allow us to disregard the General Assembly's intent in passing these statutes. Travelers's policy argument is best left to the legislature.

III. Conclusion

¶41 For these reasons, we answer the certified question by concluding that an employee who is injured in the course of their employment by the acts of an uninsured or underinsured third-party tortfeasor, and who receives workers' compensation benefits because of that injury, is not barred under section 8-41-102 from also bringing a suit to recover damages against their employer's UM/UIM insurance carrier.