



A brush with death

UIM may be the best insurance anyone can buy; but pay attention to the details



Cooper

BY MILES B. COOPER

The cyclist pedaled along the rural road. From behind, the cyclist heard a diesel engine rumble. The heavy-duty pick-up roared toward the cyclist. The driver, letting the cyclist know that roads are for engines, brought the truck as close as possible to the cyclist for a punishment pass. The cyclist went flying off into a ditch. The driver sped off.

A few months later, the seriously injured cyclist called a lawyer. The cyclist told the lawyer that the truck had brushed the cyclist. The cyclist did not have a camera running during the ride, and there did not appear to be any way to identify the driver. “You have car insurance?” the lawyer confirmed, “And when you say brushed, you mean part of the truck made contact with you?”

Underinsured motorist coverage basics

Underinsured motorist coverage is an unsung collectability hero. In auto collisions, it fills in when the defendant driver’s insurance policy is insufficient (or nonexistent). In California, one in three drivers carries the \$15,000/\$30,000 minimum policy or drives without insurance.

The injured person then looks to one’s own insurance policy and the underinsured motorist policy limits. Whether one calls it uninsured or underinsured, it is the same coverage, known as UIM. The auto UIM limit typically tracks the policy’s liability limits, meaning a \$100,000/\$300,000 policy is likely to have \$100,000 in UIM coverage. That is not guaranteed, however. Motorcycle UIM coverage is much more expensive than auto UIM. Motorcyclists sometimes therefore decline UIM coverage.

No UIM stacking – usually

Defendant driver has a \$15,000 policy and the injured party has \$100,000 UIM coverage. That means \$115,000 in available coverage, right? Not if they are both California policies. In California, UIM does not stack. That means the injured party’s \$100,000 UIM policy will pay a maximum of \$100,000. In the example given, the driver would pay \$15,000 with \$85,000 available UIM, for a total of \$100,000. But rare exceptions occur. We had a client who had recently moved from Texas, where policies stack. Since she was still operating under the Texas-issued policy when her incident occurred, the policies stacked.

For UIM coverage, there must be physical contact

Underinsured motorist insurance means the defendant driver is an underinsured motorist. It does not mean the victim needs to be motoring. As long as there is a vehicle strike, UIM coverage exists. That includes a pedestrian or a cyclist getting hit by a car. *But there has to be physical contact.* In the story at the beginning of this column, the cyclist would have coverage if the truck’s rearview mirror (or any other part of the truck) made some contact with the cyclist. If the wind blew the cyclist over, or the cyclist lost control

from the intimidation, UIM would not attach. That means a punishment-pass driver can violate California’s relatively new law requiring that motorists give at least three feet of space when passing a cyclist. But without physical contact, the cyclist cannot use the cyclist’s own UIM coverage.

Given the broad application for UIM coverage, however, we counsel everyone to carry high UIM limits. That includes car-free households, which are becoming more common with the expansion of car share and ride share companies, and with millennial disinterest in car ownership. A high limit, non-owner operator policy is inexpensive and is great protection for those walking and biking around busy urban environments.

Excess and umbrella riders

As one investigates all the available coverage, ask the client about umbrella or excess insurance. Some carriers – USAA is one – will sell a UIM rider for umbrella insurance. But one has to ask for it. It is surprisingly affordable. The last time I priced it, the UIM rider was roughly \$50 per year per \$1 million. Checking the policy to see if there is a UIM rider can locate more coverage. It is another area to counsel people on as far as appropriate coverage (as well as checking one’s own coverage).

Corporate policies

If a client was working at the time of a collision where there is insufficient insurance, one should also check to see if there is a corporate auto policy available. We have come across \$1 million corporate UIM policies. While there is some complexity in the civil/workers compensation overlap, a corporate UIM policy provides an additional opportunity for the client.

UIM and health insurance liens

Take special care negotiating liens when UIM is in play. While the lien world is incredibly nuanced, many health insurance policies do not have a right to recover from UIM proceeds. Thus, a low defendant-driver policy (with a higher UIM policy) may provide a much better net result for a client.

Outro

Back to our lawyer and the conversation with the cyclist. The lawyer learned that there was a tiny black scuff on the side of the cyclist’s helmet where the truck’s rearview mirror brushed the cyclist. Physical contact. And grounds for a viable UIM claim.

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