



COMMON PENNSYLVANIA UM/UIM QUESTIONS

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Is UIM mandatory or discretionary?

Although UM and UIM coverages are no longer mandatory, carriers are required to offer such coverage on all policies. 75 Pa. C.S.A. Section 1731(a). Unless coverage is waived by the first named insured on the policy by signing and dating an approved form, the insured is deemed to have elected UM/UIM coverage in amounts equal to the bodily injury liability coverage. 75 Pa. C.S.A. Section 1371(c.1).

Must liability limits match UM coverage?

UM and UIM coverages may be equal to, less than, but never more than the BI liability limits on the policy. 75 Pa. C.S.A. Section 1734 and 75 Pa. C.S.A. Section 1736. An insured may request lower UM or UIM limits in writing. Lewis v. Erie Insurance Company, 568 Pa. 105, 793 A.2d 143 (2002).

Are there offsets for payments from third-parties (i.e., liability insureds)?

Yes. Generally, an insurer paying UIM or UM benefits has subrogation rights not only against the UIM or UM tortfeasor, but also against any tortfeasor. See, e.g., Walls v. City of Pittsburgh, 436 A.2d 698 (Pa. Super. 1981); Kester v. Erie Insurance Exchange, 582 A.2d 17 (Pa. Super. 1990).

Is the offset taken from the UM/UIM limit or the total damages?

The offset is taken from total damages. UM and UIM coverage in Pennsylvania is excess, not gap. Allwein v. Donegal Mutual, 671 A.2d 744 (Pa. Super. 1996).

Are there offsets for med-pay, Workers' Compensation, and/or no-fault?

Generally, claimant may not collect for amounts covered by any first party benefits or other health/disability benefits paid or payable. 75 Pa. C.S.A. Section 1722. Claimant can recover amounts paid by a self-funded ERISA plan, FMC Corp. v. Holliday, 498 U.S. 52 (1990), or amounts paid by an HMO. Wirth v. Aenta US Healthcare, 588 Pa. 313, 904 A.2d 858 (2006). Generally, amounts paid or payable by Workers' Compensation can be collected again in UM/UIM claims. Ricks v. Nationwide Insurance Company, 879 A.2d 796 (Pa. Super. 2005).

Is stacking allowed?

Absent a waiver of stacking on the policy in return for a reduced premium, an "insured" may stack UM or UIM claims based on the sum of the limits of coverage on vehicles on applicable policies. 75 Pa. C.S.A. Section 1738. The statute contemplates both interpolicy stacking and intrapolicy stacking, both of which can be waived by use of the statutory form. Generette v. Donegal, 884 A.2d 266 (Pa. Super. 2005).

Is there is a procedure for substitution of liability insurer settlement offer?

The “consent to settle” clause in a UIM endorsement is limited by Daley-Sand v. West American Insurance Company, 564 A.2d 965 (Pa. Super. 1989) which requires the UIM carrier to “purchase” subrogation rights by matching the BI policy limit offer. The insured must provide the carrier with written notice of the policy limit offer together with reasonable time in which to match the offer. The Motor Vehicle Financial Responsibility Law does not define “exhaustion.” Claimant is merely required to provide a credit for (not an exhaustion of) liability limits before seeking UIM benefits. Chambers v. Aetna, 658 A.2d 1346 (Pa. Super. 1995).

Particular UM/UIM issues unique and/or specific to state.

Carriers in Pennsylvania are no longer required to include an arbitration clause in their UM and UIM endorsements. Insurance Federation v. Koken, 585 Pa. 630, 889 A.2d 550 (2005).