



# Uninsured Motorist and Underinsured Motorist Coverage

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## Uninsured Motorist and Underinsured Motorist Coverage<sup>1</sup>

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### Introduction

Large national and multinational organizations manage insurance risk by utilizing a variety of insurance programs and they spend significant time and resources deciding whether and how to retain or transfer their potential liabilities. They often consider guaranteed cost, self-insured retention, deductible and captive programs. Frequently, organizations utilize a combination of some or all of these options. Sophisticated risk managers strive to protect the organization and manage risk as cost effectively as possible given the organization's appetite for risk and, for many larger organizations, this means managing their primary casualty risks through loss-sensitive insurance programs.

Certain loss-sensitive insurance programs require the insured to reimburse its insurer for losses within the applicable deductible. By purchasing insurance that is subject to a large deductible, the insured gets the benefit of lower premiums. Additionally, more flexible coverage terms may be available with insurance programs that have large deductibles. These programs often provide an overall financial benefit to insureds that successfully manage their liabilities within the applicable deductible.

State laws in the United States generally require that motor vehicle owners maintain liability insurance coverage, or in some instances, an alternative source of financial responsibility to fund personal injuries and property damage resulting from the operation of their vehicles. These requirements extend to businesses and other entities. Organizations must maintain insurance that meets the various state requirements for motor vehicle financial responsibility, which may include (depending upon the state) compulsory liability insurance, no-fault/personal injury protection (PIP) coverage and uninsured and underinsured motorists coverage. However, because most large commercial insureds purchase insurance programs with large deductibles, purchasing uninsured motorist and underinsured motorist coverage under these programs presents several important issues that should be considered.

### Uninsured and Underinsured Motorist Insurance (UM/UIM)

Auto liability insurance, in one form or another, is required in virtually all 50 states and the District of Columbia for individuals and entities that own and operate motor vehicles. However, even though coverage is legally required, many vehicle owners do not carry insurance. Uninsured Motorist (UM) coverage is intended to provide compensation to an "insured" person<sup>2</sup> for personal injuries and in some states, property damage suffered in an accident involving a motor vehicle operated by another person who is at fault, and who does not have auto liability insurance.<sup>3</sup> If an insured has UM coverage and an individual covered under the policy is injured or, in some states, has property damage stemming from an accident caused by another person with no motor vehicle insurance, the injured person and the insured can look to this UM coverage to pay for the injuries and in some instances the property damage caused by the uninsured motorist, subject to the applicable limits. Underinsured Motorist (UIM) coverage is similar to UM coverage, except that instead of being uninsured, the insurance held by the person causing the accident is insufficient to fully compensate the injured party(ies) for their losses. If an insured has UIM coverage and an individual covered under the insured's policy is injured or the insured or, in some states, a covered individual has property damaged in an accident caused by someone who is underinsured, the injured person and the insured can look to this UIM insurance to cover the shortfall, subject to the applicable limits.

All 50 states and the District of Columbia have their own rules and requirements for the offer and sale of UM/UIM coverage. These rules are complicated and can be difficult to interpret. While most states require an insurance company to offer this type of coverage, many states allow insureds to reject this coverage<sup>4</sup> or select UM or UIM coverage of a kind and in an amount that may be different than the applicable policy liability coverage limits.<sup>5</sup>

Generally, an insured can select between two different types of UM/UIM coverage, based on the

application of the limits of coverage: a Combined Single Limit and Split Limits. A Combined Single Limit provides one limit that is applicable to damages for both bodily injury and property damage arising out of an accident regardless of the number of people injured. Split Limits provide separate limits for bodily injury per person and in total for the accident as well as property damage arising out of an accident. For example, assume an insured suffers property damage losses of \$50,000 and bodily injury expenses of \$50,000 from a single accident with an uninsured motorist, for a total of \$100,000 in damages. If the insured has purchased a UM Combined Single Limit of \$75,000, the limit will be exhausted for this accident and the policy will not pay for the \$25,000 in damages that are in excess of this limit. If the insured has purchased UM Split Limits of \$50,000/\$50,000, meaning that a limit of \$50,000 applies separately to damages from Bodily Injury and damages from Property Damage, the insured will fully recover their losses under the policy.

### UM/UIM Rejection

Many commercial insureds with loss sensitive insurance programs reject UM/UIM coverage where they are permitted to do so, or purchase the minimum required coverage limits where rejection is not permitted, in order to avoid the increased exposure to losses from UM/UIM coverage. Every state has its own rules and requirements for making such coverage elections and rejections.<sup>6</sup> Many state statutes specify that any rejection must be in writing.<sup>7</sup> In addition, some states have different rules for the rejection of UM coverage than for the rejection of UIM coverage.<sup>8</sup>

Generally, an insured is required to elect or reject UM/UIM coverage prior to the inception of the policy. Typically, the insured's elections are documented by means of a form that the insured is required to complete and sign. Some states mandate the use of a particular UM/UIM election form that must be used by the insured to signify its decisions. These forms can serve as part of the evidence of the coverage purchased in the event of a claim involving uninsured or underinsured losses. Risk managers of large commercial insureds with exposures in many states may receive a package containing hundreds of forms to be completed and signed to document their UM/UIM elections. Correctly and fully completing this documentation can take a significant amount of time and resources and can be confusing due to the disparity among the various state forms.



In order to validly and properly document an insured's UM/UIM elections, all applicable state requirements must be contemplated and satisfied. There are many concerns that must be considered, including:

*Will the insured's coverage elections and rejections be upheld after a loss has occurred? If the insured's rejection of coverage is not upheld, in what amount will coverage be provided? Will there be stacking of limits?<sup>9</sup> Is the individual that made the coverage election or rejection properly authorized to do so on behalf of the insured? What about UIM – has the insured elected or rejected coverage? If coverage is accepted (or invalidly rejected), in what amount will coverage be provided? Is PIP mandatory? Can it be accepted or rejected?*

For a large commercial insured, an improper or invalid election or rejection can mean hundreds of thousands of dollars in additional liabilities which the insured had not intended to cover. Without a valid rejection, the policy may be deemed to provide UM/UIM coverage in amounts that may be equal to policy limits.<sup>10</sup>

Therefore, it is vitally important that the insured correctly reject or accept UM/UIM coverage and make clear and valid elections prior to the effective date of the policy. Failure to do so may have significant economic consequences. Courts have liberally construed UM/UIM statutes to favor coverage and some have strictly interpreted statutory UM/UIM requirements for rejection resulting in their invalidating an insured's rejection of coverage based on technical deficiencies. For example, the Superior Court of Pennsylvania found that the UM/UIM rejection language deviated from the

statutorily required language by one word – and even though the insured had indicated on this form that the coverage was rejected, the Court concluded that the rejection was invalid because of this deviation and therefore UM/UIM coverage had to be afforded in an amount equal to the liability limits of the policy.<sup>11</sup> If UM/UIM coverage is not rejected properly, the attorney for the injured person will often try to establish coverage and may receive recoveries that would not be available if the insured had validly rejected coverage. Thus, commercial insureds and insurers must be diligent in executing UM/UIM forms in order to have and effectuate the intended coverage.

When determining whether an insured's election or rejection of this coverage is valid, in the context of a claim under the policy, state legislatures and courts frequently have focused on the impact of UM/UIM coverage and elections on claimants and insureds under personal automobile policies. Unfortunately, these decision makers have not fully considered many important distinctions between personal auto insurance and commercial auto insurance in the context of UM/UIM coverage. Personal automobile policies cover individuals and their family members, who typically only have vehicles garaged in one state. Commercial auto policies, on the other hand, may cover large corporate conglomerates which can have thousands of employees and large fleets of vehicles, garaged and operating throughout the country. When the named insured is a company, the universe of potential insureds is much greater and the risk of loss is correspondingly much greater as well. This increased exposure is one reason why large commercial insureds may decide to reject UM/UIM coverage where permitted to do so.

In addition, a personal automobile policy may have a deductible that is a small fraction of the policy limit. Conversely, commercial insurance policies for large organizations nearly always have deductibles in the hundreds of thousands or millions of dollars, which can be a high percentage of the available limits, and in some states, can even have a deductible amount that matches the limits of the policy.

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These deductibles are another reason why large commercial insureds may decide to reject UM/UIM coverage under a commercial auto policy. Any amounts payable under UM/UIM coverage will generally be subject to the same high deductible as the rest of the coverage under that policy. This is a significant difference between commercial insurance policies and personal automobile insurance policies. A large commercial insured is responsible for a much greater amount of losses within a high deductible as compared with a deductible under a personal automobile policy (which are typically extremely small dollar amounts). Assume an employer has a commercial auto policy with a \$500,000 deductible and has elected to purchase UM coverage. If an employee is using the employer's vehicle and is involved in a car accident caused by an uninsured motorist, the UM coverage would respond – and the employer would be fully responsible for all amounts payable within the deductible. By purchasing UM coverage, the employer has assumed responsibility to pay losses that were caused by an uninsured third person. The employer could have avoided responsibility<sup>12</sup> for injuries caused by the third party by rejecting UM/UIM coverage. This is why this coverage is frequently rejected by most large commercial insureds with loss-sensitive insurance programs. Purchasing UM/UIM coverage can increase the amount of losses for which an insured will be responsible under a loss-sensitive insurance program.

Large commercial insureds also purchase many different kinds of insurance for their operations, and have to consider the interaction between their UM/UIM coverage and their other insurance programs. For example, all large commercial insureds are required by state law to provide workers' compensation coverage for their employees, whether by purchasing a policy from an insurance carrier or self-insuring where permitted by state law. Workers' compensation insurance provides wage and medical benefits to the insured's employees when they sustain employment-related injuries. This coverage is intended to be the primary source of recovery for such injuries. Commercial automobile coverage must be structured to avoid duplicating the workers' compensation coverage. Assume a large commercial insured provides an automobile to an employee to be used for company business. While on company business, the employee is injured in a car accident caused by an uninsured motorist. The employee's injury would be covered by the employer's workers' compensation program, and the employer and employee would look to this coverage to pay for any injuries caused by the uninsured motorist. For this reason, commercial auto policies have an exclusion for amounts covered under a workers' compensation policy.

In this instance, the UM/UIIM coverage may be unnecessary because the injuries and damage may be fully covered elsewhere. If this large commercial insured had elected to purchase UM/UIIM coverage, it may have paid for coverage that is unlikely to be triggered. This is another reason why many large commercial insureds reject UM/UIIM coverage wherever possible.

Large commercial insureds also have to consider the potential stacking of limits under commercial auto insurance policies. Stacking of available limits can occur when determining the limits available if more than one vehicle is covered under the same policy. Assume a large commercial insured has UM/UIIM limits of \$50,000 and has three autos covered under their policy. If there is an accident caused by an uninsured motorist, the stacked UM coverage could provide up to \$150,000 of coverage (three autos x \$50,000 limit). In the commercial setting, the UM/UIIM portion of an auto policy that covers a fleet of vehicles could provide a significant amount of coverage for exposure to risk outside the control of the employer.

### Personal Injury Protection (PIP)

Similarly to UM/UIIM, many states have rules regarding Personal Injury Protection or “PIP” insurance. Under PIP (also sometimes referred to as “no-fault” insurance), insureds may recover damages resulting from auto accidents from their own insurer rather than from another party’s insurer. PIP insurance typically covers actual economic damages (i.e., personal injury) and generally does not provide coverage for non-economic losses such as pain and suffering. PIP benefits normally include reimbursement for medical expenses, rehabilitation expenses, loss of income, loss of household services that the injured person can no longer provide, death benefits, and funeral expenses. Most PIP plans provide reimbursement, for bodily injury only and not for property damage. A handful of states make PIP coverage mandatory, while other states make it optional. In states with mandatory PIP coverage, insureds receive compensation for economic losses due to injury from their own insurer regardless of who is at fault for the

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accident. Often, a state’s PIP rules contain tort thresholds – a requirement that the injury sustained meets a minimum severity threshold above which the insured can sue for noneconomic damages. Thus, PIP coverage typically would respond to smaller claims (i.e., frequency) while UM/UIIM coverage would respond to larger claims (i.e., severity). Unsurprisingly, losses for UM/UIIM coverage in states where PIP is mandatory tend to be higher. Again, large commercial insureds may decide to reject PIP where possible to avoid this increased exposure to losses that would be subject to a deductible.

### The ACE Solution

As described above, the ability to validly elect or reject UM/UIIM/PIP coverage can have a significant economic impact on the insured as well as the insurer. Important evidence of the insured’s intent typically includes the stack of hundreds of forms manually completed by the risk manager or other authorized corporate officer (usually with help from their broker or insurer). In order to assist clients in effectively managing the burden of completing these forms, ACE Risk Management, ACE’s industry-leading U.S. based primary casualty insurance division, has developed ACE Accelerator<sup>SM</sup>, a web-based solution for UM/UIIM/PIP form completion. Risk managers log on to ACE Accelerator and answer an estimated 19 questions regarding their UM/UIIM/PIP decisions. Based on the answers given, the system populates the insured’s elections on the forms for all 50 states and the District of Columbia. These completed forms will be mailed to the risk manager to verify, execute and then mail back to ACE. ACE Accelerator will effectively streamline the UM/UIIM/PIP election process to make it less time-consuming, more accurate and more efficient.

## Conclusion

Large national and multinational organizations face various challenges managing their insurance risk. With respect to UM/UIM/PIP insurance, these organizations often seek to reject this coverage or purchase the minimum amount allowable by state. However, each state has differing rules and requirements to document these coverage elections. Risk managers currently spend a significant amount of time and resources documenting and executing their UM/UIM/PIP coverage elections. In order to streamline this process, ACE has developed an online web-based portal that allows a risk manager to answer a number of questions regarding their coverage elections. This system will then insert that information into the various forms for executions, thus making what is now a cumbersome process more efficient.

### About the Authors:

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**Gary Kramer** is Vice President for ACE Risk Management, and has more than ten years of insurance industry experience, with particular emphasis in accounting and operations. Since joining ACE in 2004, he has held various management positions in ACE Financial Solutions and ACE Risk Management. Prior to his tenure with ACE, Mr. Kramer held accounting and operations management positions with several global insurance companies as well as other non-insurance-focused companies. He holds a Bachelor of Science degree in Finance from Rowan University in N.J., and an M.B.A in Accounting from Drexel University, located in Philadelphia, PA.

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