

Automobile Insurance Work Group:
UM COVERAGE TO INSUREDS INJURED BY STOLEN CARS

SB 924

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From the Offices of the Executive Director
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I. Introductory Summary

Currently insureds injured by their own car when it is operated by a thief do not receive any compensation for pain and suffering from insurance. This is an anomaly in insurance coverage because individuals injured by other stolen cars do receive compensation for pain and suffering from the Uninsured Motorist (UM) provisions of their own auto insurance policy. The purpose of the bill is to change the terms of mandated UM coverage to provide pain and suffering compensation when an insured is injured by their car while it is operated by a thief.

In addition to expanding UM coverage the bill requires any insured making a UM claim involving theft of the insured vehicle to report the theft to law enforcement and cooperate with prosecution of the thief as a condition of coverage. These reporting and cooperation provisions are intended to discourage collusive or fraudulent claims.

II. History of the Project

This particular legislation is a continuation of the project started by the Oregon Law Commission's Automobile Insurance Study Group that reported to the Commission in early 2004. The original report identified 22 issues for reform that were divided into high, medium and low priority issues. This issue was rated as the 5th highest priority for reform. After the initial report to the Commission, an Automobile Insurance Work Group was formed that included the members of the original Study Group and additional

representatives from the plaintiff bar and insurance industry.¹ The expansion of UM coverage to provide compensation for injuries sustained by the insured vehicle was one of five issues that the work group reached consensus on to recommend legislative action by the Commission for the 2005 Legislative Session.

III. Statement of the Problem Area

As previously mentioned, insureds injured by their own car when it is stolen do not receive compensation for pain and suffering damages. This happens because automobile liability policies only provide coverage if the insured car is operated with the owner's permission. A car thief does not have permission to operate the stolen vehicle and therefore has no liability insurance to compensate anyone injured by operation of the car.

Because there is no liability coverage in this situation the injured party usually collects compensation from their own policy under the Personal Injury Protection (PIP) and Uninsured Motorist (UM) coverages. PIP pays for medical expenses and lost wages and UM coverage compensates for pain and suffering damages; between these two coverages the insured receives full compensation up to the limits of their policy.

The problem arises when the stolen car is also owned by the person the thief injures. In that case, the injured person only receives compensation under PIP for medical bills and lost wages and does not receive any pain and suffering compensation from their UM coverage. The reason that this happens is because the UM statute states that the insured car cannot be an uninsured car by definition. ORS 742.504 (1)(e)(A); Cole v. Farmers Ins. Co., 108 Or App 277 (1991). The result is that an insured, injured by the insured vehicle when it is operated by a thief, receives only compensation for medical expenses and lost wages under PIP and no compensation for pain and suffering.

The proposed bill will allow compensation for pain and suffering from the UM coverage when an insured is injured by a thief operating the insured car. Currently insurers in Oregon have very few claims involving injury of the insured by a thief operating the insured car and this change will allow those individuals sustaining this type of loss to receive the same compensation as individuals injured by cars other than the insured vehicle.

¹ The membership included the following:

Martha Walters, Chair
Justice Edwin Peterson
Senator Charlie Ringo
Dean Heiling
Neal Jackson

John Bachofner
Joel Devore
Stephen Murrell
Tom Mortland
Richard Lane

IV. Objectives of the Proposal

This proposal has two objectives. The first objective is to expand mandated Uninsured Motorist coverage to include pain and suffering compensation for an insured injured by the insured vehicle when it is stolen and operated by a thief. The Work Group was in complete consensus with no issues of concern on this objective.

The second objective is to discourage collusion and fraud by conditioning coverage on the insured reporting the theft to law enforcement and cooperating with prosecution of the thief. While the whole Work Group agreed with this provision conceptually, there was some concern that the condition may be interpreted too strictly in practice and place unreasonable burdens on an insured. The Work Group agrees that this provision is not problematic so long as it is understood that intent of this provision is to impose a duty on the insured to cooperate that is consistent with current Oregon case law on the duty to cooperate under automobile liability coverage. This body of case law is well developed and balances the insurer's need for cooperation while not imposing too great of burden on an insured.

V. Review of Legal Solutions Existing or Proposed Elsewhere

In 2003, HB 2632 and HB 2073 were introduced in the legislature to address this issue. The Work Group draft is similar to and conceptually modeled after language in those bills.

HB 2632 was sponsored by Rep. Max Williams and Sen. Charlie Ringo working with the insurance industry. The bill received a hearing but failed to move forward even though there was no opposition to its passage.

HB 2073 was a bill proposing a number of changes in insurance law including this issue that did not receive a hearing.

VI. The Proposal

The proposal is SB 924 (LC 842) which is attached to this report. SB 924 (LC 842) expands Uninsured Motorist coverage by adding a definition of stolen car in the UM statute on page 4 lines 14-24 and then changing the definition of an uninsured motor vehicle at page 5 line 14 to include a stolen vehicle. Page 5 line 16 clarifies that a stolen vehicle is an exception to the insured vehicle qualifying as an uninsured vehicle.

The provisions that require the insured to report the theft to law enforcement and cooperate with prosecution of the thief as a condition of coverage are included in the definition of a stolen vehicle on page 4 at lines 19-24.

VII. Conclusion

The legislation proposed by SB 924 (LC 842) will expand Uninsured Motorist coverage to include compensating the insured when they are injured by their own vehicle while it is operated by a thief. This change in the law will make coverage more consistent and coherent by providing pain and suffering compensation to insureds whenever they are injured by a car operated by a thief and is an appropriate improvement in law for the Oregon Law Commission to take action on.

VIII. Amendment Note

A technical amendment was made in the House to resolve conflicts with another Law Commission bill, SB 925. Both bills amend ORS 742.504.