

Automobile Insurance Work Group:
MATCHING MINIMUM LIMITS AND MULTIPLE CLAIMANTS
UNDER UM/UIM INSURANCE STATUTES

SB 923

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Report Approved at
Oregon Law Commission Meeting on
November 19, 2004

I. Introductory Summary

The proposal would finish an amendment that may have been done incompletely by the 1997 legislature. This bill would assure that when multiple claimants divide the wrongdoer's "per accident" liability insurance limit into small amounts, that an injured claimant may rely on the claimant's own underinsured motorist (UIM) coverage for the balance of their "per person" limit.

II. History of the Project

At the prompting of several sources, the Oregon Law Commission's Program Committee identified Oregon's auto insurance statutes, particularly the uninsured and underinsured motorist provisions, as a subject for inquiry. *See* ORS 173.338(1) (Commission to discover defects and anachronisms and recommend law reform).

In 2003, an Auto Insurance Study Group considered 22 issues and prioritized the topics for remedial legislation.¹ Nine issues were deemed the highest priority. On February 27, 2004, the Oregon Law Commission approved the creation of a Work Group.² On April 29, 2004, the work group found consensus on five particular problem

¹ The Study Group was chaired by Commission member, Martha Walters, and was comprised of Justice Edwin Peterson, Senator Charlie Ringo, Dean Heiling, John Bachofner, and Joel DeVore.

² The Work Group consisted of the Study Group with the addition of four members: Stephen Murrell, Tom Mortland, Neal Jackson, and Richard Lane.

areas to address for the 2005 Legislative Session.³ The Work Group agreed that any remedial legislation should be segregated into separate bills to promote passage and to avoid “gut and stuff” changes. On October 27, 2004, five bills were recommended by the Work Group for consideration by the full Oregon Law Commission. This proposal involves finishing a statutory repair begun in 1997.

III. Statement of the Problem

A problem with matching liability and UM/UIM limits occurs when three or more claimants divide the liability limits into amounts smaller than the per person UM/UIM limit. Traditionally, there was deemed to be no UM or UIM coverage when limits of a liability policy matched the limits of a UM/UIM policy, because the law blindly declared the at-fault car not to be uninsured or underinsured. See, e.g., Shisler v. Fireman’s Fund Ins. Co., 87 Or App 109, 741 P2d 529 (1987).

For example, an injured person might recover only \$10,000, because other injured people recovered the \$40,000 balance of the wrong-doer’s “per accident” limit (\$50,000). It would seem logical to turn to the injured person’s own UM/UIM coverage for the unpaid damages. Historically, however, the injured person would have been denied the person’s own UM/UIM coverage for the \$15,000 balance of the \$25,000 “per person” UM/UIM limit.

In 1997, the legislature revised ORS 742.502, intending to fix this problem. 1997 Or Laws Ch 808. Rather than defining underinsurance by comparing the UIM policy limit with the liability limit that an offending vehicle “is insured for,” the 1997 amendment changed the frame of reference to a comparison of the UIM policy with the amount that is recovered from the liability policy. See DeVore, Vega v. SB 645: Underinsured Motorist Coverage & the Exhaustion Clause, 34 Willamette L Rev 327 (Spring 1998). It was a change made as a concession to injured people in return for the legislative override of the Vega decision, a decision involving a different and larger UM/UIM issue. *Id.*

Recently, the Court of Appeals confirmed that the 1997 fix did fix the problem B at least with regard to matching underinsured motorist coverage when the coverage is *above* the statutory minimum \$25,000 per person / \$50,000 per accident. Takano v. Farmers Ins. Co., 184 Or App 479, 56 P3d 491 (2002). The case happened to involve matching higher limits.

Doubts, however, have been raised whether the 1997 amendment to ORS 742.502 accomplished the task when the UM/UIM policy is for an amount of \$25,000 per person.

³ Of the Study Group’s “highest priority” issues, the Work Group tabled four issues with the following numeric rankings: (1) the reported conflict between PIP offsets under ORS 742.542 and PIP reimbursement under ORS 742.544; (2) the denial of underinsurance coverage when government negligence causes injury; (8) adding a statutory authorization for medical exams to the PIP statute; and (9) revising or clarifying the UM/UIM time limit in ORS 742.504(12).

Key counsel for insurers have pointed out that the problem language in ORS 742.502(2) was not fixed in 1997. Only subsection (3) was changed. The language in the two subsections is parallel. As a result, the matching limits / multiple claimants problem could occur when a *minimum* limits liability policy (\$25,000 / \$50,000) collides with a minimum limits UM/UIM policy (\$25,000 / \$50,000).

Surprisingly, the multiple claimants problem recurs with regularity. Assuming more people buy cheaper insurance, people colliding with matching minimum limits may be more common than people colliding with matching higher limits. To avoid short-changing injured Oregonians, the 1997 fix needs to be finished.

IV. Objective of the Proposal

The objective of the proposal is to simply extend the same changes of phrase in ORS 742.502(3) to subsection (2). To be doubly certain that the slight changes of phrase do not depend upon a casual reader's appreciation of nuances, a new subsection (5) would be added to say in plain English that underinsurance coverage is available when the limits of UM coverage equal the limits of a liability policy and the amount recovered is less than the limits of the UM coverage.

Nothing in these changes is intended to eliminate the existing requirement that a claimant must first exhaust the underlying liability limits by judgment or settlement in one of the ways provided in ORS 742.504(4)(d).

V. The Proposal

The proposal is SB 923.

VI. Conclusion

The substantive change, which underlies this proposal, already occurred in 1997. The earlier amendment may have been incomplete. If left unattended, this statute could short-change injured claimants in matching minimum limits situations. This proposal will finish the drafting job and avoid unnecessary litigation.

VII. Amendment Note

An amendment was adopted in the Senate. The objective of this bill was achieved on page 2 at lines 18-23 of the introduced bill. The amendment made in the Senate was not to this section. The technical amendment was made to restore the word "benefits" where it had been deleted because case law has given meaning to that word and no unintended consequences were desired. Legislative Counsel had made the word style changes when drafting the original bill.