

Automobile Insurance Work Group

OVERLAPPING INSURANCE IN UM/UIM STATUTE

House Bill 2384

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From the Offices of the Executive Director
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I. Introductory Statement

The proposed legislation is intended to be a house-keeping fix to address a portion of last session's SB 925 (2005) that was mistakenly omitted. The purpose of SB 925 (2005) was to clarify the confusing provisions of ORS 742.504(9)(b) dealing with model uninsured (UM) and underinsured (UIM) motorists policies. The model provision is of the sort included in policies that declare what happens when the policy covers (overlaps) the same injury that is covered by a similar UM or UIM policy. The clarification provided by SB 925 (2005) last year served to expedite claims and avoid disputes. The version of SB 925 (2005) that passed last session omitted the necessary words "this insurance or" after the present phrase "applicable limits of liability of." See ORS 742.504(9)(b).

II. History of the Project

The initial project was discussed extensively by the Oregon Law Commission's Program Committee, which identified the auto insurance statutes as an area of law in need of reform. In 2004, the Automobile Insurance Work Group identified five problematic areas to address for the 2005 Legislative Session. SB 925 (2005) dealt with the problem of the overlapping insurance provisions in ORS 742.504(9). The problem was that the statute was difficult to read and failed to clearly state that UM/UIM coverage under a policy is primary while the insured is occupying a vehicle owned by the named insured under the policy's coverage. SB 925 (2005) clarified the language of the statute in order to reduce the number of disputes between insurers and between insurers and insureds. SB 925 (2005) easily passed both the Senate and the House, and was signed into law by the Governor on June 14, 2005.¹

III. Statement of the Problem

The problem with the version of SB 925 (2005) that was passed in 2005 is that it omitted three words meant to be included in ORS 742.504(9)(b) when the final version was passed. The statutory provision creates a presumption that the insurer's liability will not exceed the maximum limits for liability on the individual policies, whether they be primary or excess. The omission of these words creates a situation where the limits of the insured's damages are deemed not to exceed the liability limits of the additional primary or excess insurance, but not of the UM/UIM

¹ Appointed members of the work group included Commissioner Martha Walters, Walters, Romm Chanti & Dickens PC (Chair) (resigned when she was appointed to the Oregon Supreme Court); John Bachofner, Bullivant Houser Bailey PC; Joel Devore, Luvaas Cobb Richards & Fraser PC; Dean Heiling, Dean Heiling & Assoc.; Neal Jackson, Neil Jackson & Partners; Richard Lane, L. Wobbrock Trial Lawyer PC; Tom Mortland, Liberty Northwest (left Oregon during the interim); Stephen Murrell, State Farm Insurance; Justice Edwin Peterson, Willamette University, College of Law; and Senator Charlie Ringo. Several other persons participated in the process including the following: Dave Barrows, Lana Butterfield, Toni Chodrick, Paul Cosgrove, Jeff Eberhard, Al Elkins, Darrell Fuller, James Gardner, Susan Grabe, Kristin Leonard, Brian Miller, Shawn Miller, Kevin Neary, George Okulitch, Michel Morter, Jack Munro, Joyce Patton, John Powell, Greg Remensperger, and Lou Savage.

insurance in question. The problem with the present language is that the insurer's liability can exceed that of the UM/UIM policy, but not that of the additional primary or excess insurance policy. The addition of "this insurance or" after "applicable limits of liability of" will allow the limit to apply to both insurance policies, thereby resolving the conflict. SB 925 (2005) was meant to have passed with the proposed language, but the three words were unintentionally omitted.

IV. Objectives of the Proposal

Amend ORS 742.504(9)(b) by inserting "this insurance or" after the present phrase "applicable limits of liability of."

The provision is a house-keeping fix to insert the language that was mistakenly omitted in SB 925 from last session.

V. The Proposal

The proposal is identified as House Bill 2384. See page 5 at line 39.

VI. Conclusion

Amending ORS 742.504(9)(b) will further clarify the meaning of the statute's overlapping UM/UIM coverage and will fix the mistaken omission from last session.