Uninsured, Hit-and-Run, and Underinsured Motorist Coverage in Illinois

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Am I Covered?

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Introduction

You've been in an accident through no fault of your own and find out the other driver is uninsured or underinsured. Where do you go next, what do you do? If you have uninsured or underinsured motorist coverage on your insurance, you may receive valuable proceeds from your own policy. If you were injured, you may have questions about whether you are covered or not. Is your insurance company delaying or denying your claim? This book is intended to help you with your questions about uninsured and underinsured motorist coverage.

Uninsured motorist coverage is sometimes referred to as "UM." Hit-and-run claims are paid through uninsured motorist coverage. Underinsured motorist insurance coverage is sometimes referred to as "UIM." Uninsured, hit-and-run, and underinsured motorist insurance protection is included automatically, unless you decline it, in most auto liability policies.

UM and UIM coverage may be available to you in many circumstances. UM and UIM coverage can cover you if you are a driver, a passenger, a pedestrian, a bicyclist, or a motorcyclist. The coverage can be available to you from another person's policy. For example, UM and UIM coverage from another person's policy can apply to you if you are in their car when hurt by an uninsured or underinsured driver.

The law, and common sense, requires drivers to have insurance. You likely have car insurance and it has UM and UIM coverage. Unfortunately, many drivers are not insured, or they are underinsured. 12.6 percent of motorists, or about one in eight drivers, are uninsured according to a 2014 study by the Insurance Research Council (IRC).[i] Uninsured drivers increase the risk of injury from car crashes for everyone. Uninsured drivers are 72% more likely to be in accidents than the general driving population.[ii] Research shows that uninsured drivers drive less safely and

responsibly than insured drivers.[iii] Uninsured drivers are likely uninsured because their unsafe driving habits have driven up their insurance premiums.

Uninsured motorists are a major cause of collisions causing injury, damage, and death on the roadways. And, because of their uninsured status, uninsured drivers are highly likely to hit-and-run. Fleeing the scene is a common for uninsured motorists. It is not fair that the person responsible for the accident is not required to pay related costs. However, the only reasonable action to take is to ensure that you and your family are covered by sufficient uninsured and underinsured motorist coverage. $100,000 is the minimum coverage limit that people should carry. Hospital and medical costs can be astronomical. Many insurance and legal professionals have policy limits of $250,000 or more because they have seen the economic loss caused by an uninsured or underinsured driver.

Fortunately, a victim of a collision with an uninsured or underinsured driver can have a remedy. By carrying sufficient UM and UIM coverage, you are protected because your policy will pay you if you are injured by an uninsured, hit-and-run or underinsured driver. Uninsured motorist coverage is the primary means of compensating people injured by uninsured, hit-and-run or underinsured motorists.[iv]

Drivers, passengers, pedestrians, and bicyclists can be paid through UM or UIM coverage when struck by an uninsured or underinsured motorist. Uninsured and underinsured motorist coverage can apply to people with automobile insurance who are struck while walking or riding a bicycle.

This e-book helps to explain the insurance and legal remedies available after a driver, passenger, cyclist, motorcyclist, or pedestrian is injured in a collision with an uninsured, hit-and-run or underinsured motorist. The book answers common questions about uninsured and underinsured motorists' coverage. This book breaks down legal and insurance jargon into easily understandable concepts. The book attempts to provide the best answers to the common question, "Am I covered?" It also provides answers to specific questions about insurance policy exclusion and limitations on UM and UIM coverage.

I. When Am I Covered by Uninsured or Underinsured Motorist Insurance?

1. Driver or passenger

You are covered by UM or UIM insurance when you are an "occupant" of a car and injured by an uninsured or underinsured driver. If you are driving your own car, your policy covers you. If you are driving another person's car, you are covered by the car owner's policy, and maybe your own policy. Passengers injured by an uninsured driver are covered by UM insurance. You may be covered by both the policy covering the car you were in, and your own policy.

2. Pedestrian

You are covered by UM or UIM insurance if you are a pedestrian injured by an uninsured, hit-and-run or underinsured driver. Your UM or UIM coverage is available to you if you are struck and injured by an uninsured driver while you are walking on a street, sidewalk, parking lot, or driveway.

3. Bicyclist

You are covered by your UM or UIM insurance if you are injured by an uninsured, hit-and-run, or underinsured motorist while you are biking.

4. Motorcyclist

You are covered by your UM or UIM insurance if injured by an uninsured, hit-and-run or underinsured motorist while you are on a motorcycle.

II. Definitions and Abbreviations

Covered: insured; protected; policy beneficiary.

Coverage: A type of insurance policy benefit. For example, "Medical Payments Coverage" pays for medical bills, "Collision Coverage" pays for car damage, and "Uninsured motorist coverage" pays for losses including bills, pain, disability, and income loss caused by a driver without liability insurance.

Hit-and-Run motorist: A driver, who causes a crash, leaves the scene and cannot be identified.

Uninsured motorist: a driver who is not covered by liability insurance. A driver who hits and runs and cannot be identified is an uninsured motorist.

Uninsured motorist coverage: insurance for injury or death caused by an uninsured or a hit-and-run motorist.

UM: uninsured motorist insurance coverage.

Underinsured motorist: a driver who is covered by liability insurance with a policy limit that is too low to fully compensate the injured person.

Underinsured motorist coverage: insurance coverage for injury or death caused by a motorist that has liability insurance limit that is too low to compensate the injury or death.

UIM: underinsured motorist insurance coverage.

Insurer or Carrier: an insurance company.

Insured: a person covered under an insurance policy. It can be either the named insured who owns the policy, household family members, or even passengers in the insured vehicle.

Claimant: person making the claim.

III. Uninsured and Hit-and-Run Motorist Coverage

1. History and Purpose of Uninsured and Hit-and-Run Motorist Coverage

No insurance remedy existed for victims of uninsured, underinsured or hit-and-run collisions before 1963 in Illinois. The legislature amended the Illinois Insurance Code to require every car insurance policy to contain uninsured motorist coverage. At that time, insurance protection for injuries caused by uninsured motorists became the law. Today, this means that if you have auto liability insurance coverage in Illinois, you can turn to your own insurance policy for coverage if an uninsured motorist injures you.

The uninsured motorist coverage law is designed to shift the risk of loss caused by uninsured motorists from the injured victim to the insurance risk pool. The insurance industry, in turn, spreads the risk across the insurance buying public. Insurance companies collect premiums to pay potential claims.[v] By enacting the uninsured motorist law, Illinois ensured that persons injured by uninsured motorists are protected. UM coverage applies due to another driver's negligence for both causing injury and not having automobile insurance.[vi]

The public policy behind the uninsured motorist law is to put people injured by an uninsured driver in "substantially the same position" they would have been in if the other driver had been insured.[vii] Public policy requires contracts to meet the reasonable expectations of the insurance consumer.[viii] The public policy goals behind a law play an important role in the courts. Judges must consider the societal interests behind the law when deciding insurance coverage disputes. Courts are responsible for enforcing public policy when applying the law. The public policy behind the uninsured motorist statute is clear that the coverage is there to protect you if the other driver is uninsured.

IV. The Uninsured and Hit-and-Run Motorist Coverage Statute

Illinois' uninsured and hit-and-run motorist coverage law is in the Illinois Insurance Code.[ix] The statutory language is difficult legalese - choppy, complex, and often hard to comprehend. Because of its technical nature, even experts, lawyers, judges, and insurers struggle with the laws' meaning. Its purpose in protecting victims of uninsured motorists, however, is certain. Some case law sheds a light on the meaning of the statute.

1. Insurance Policy Language

The Insurance Code requires uninsured motorist coverage to be in every auto policy. The law does not specify the exact policy language that insurers must use. The Code does not require insurance companies to use a "standard" language or a "form" policy. Therefore, the language describing uninsured motorist coverage varies between companies and policies. Policy language can cause confusion to the insured consumer. Policy language is one means through which an insurance company may deny or delay payment of a claim. Insurance companies, however, may not write nor interpret uninsured motorist policy language in a way that violates the law.

Insurance policies are notoriously hard to read. Many cases have said that insurance policies are not considered to be light reading material. More importantly, insurance policies can be nearly impossible to understand: "Some cases…emphasize the…point that the policies are rarely understood by the insured and that under such circumstances he should be protected from his own ignorance..."[x] Insurance companies must submit their policies to the Department of Insurance for review and approval. This ensures that auto policies meet the minimum requirements of the law, including the uninsured motorist coverage statute.

Approval of a policy by the Insurance Commissioner does not ensure approval by the courts.[xi] Thus, insured claimants should not be discouraged from pursuing a claim just because the insurance company says that the Department of Insurance approved the

policy. Nor should a claim denial deter an insurance customer who believes the insurance company is wrong. An uninsured motorist claim or lawsuit may require the professional services of an aggressive and capable attorney at the outset of the claim.

2. Invalid Policy Language

The Insurance Code, not insurance companies, control whether insurance policy terms are valid. Insurance Code Section 442 addresses insurance policy terms that are issued in violation of the Code. It provides that a policy with an invalid provision must be interpreted to meet Code requirements. Provisions in an insurance policy that violate the public policy of a statute are unenforceable.[xii]

The Illinois Supreme Court has ruled that, "insurance companies have the capacity to draft intelligible contracts."[xiii] Our courts recognize that insurers have the information and resources to create valid policy language. Thus, a policy provision that purports to exclude or limit coverage will be read narrowly and will be applied only where its terms comply with the law. Policy exclusions or limits must be clear, definite, and specific.

If your insurance company attempts to limit or to deny uninsured motorist coverage based on policy terms, the policy language must be read narrowly by the court. Vague or ambiguous policy language is unenforceable because it is against the public policy of restoring insured drivers to their pre-collision state. An insurance policy with an invalid clause will not be deemed entirely void, but terms that unfairly limit or deny uninsured motorist coverage will be stricken. Injured claimants should not give up just because their insurer denies their claim. The law is designed to enforce the rights of the insurance customer.

A. How Illinois Courts Have Interpreted the Uninsured (Hit-and-Run) Motorist Coverage Statute

An insurance policy is a contract, and the basic rules governing the interpretation of other types of contracts govern the interpretation of insurance policies.[xiv] The court's primary objective when construing an insurance policy is to determine and give effect to the intention of the parties, as expressed in the policy language.[xv] If the policy language is unambiguous, the policy will be applied as written, unless it violates public policy.[xvi] Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation.[xvii] If the policy language is susceptible to more than one reasonable meaning, it is considered ambiguous and will be construed against the insurance company, and in favor of the insured consumer.[xviii] In other words, insurance companies cannot benefit from the confusion they cause by their policy language.

Policy language must be considered in light of the policyholder's reasonable expectations and the public policy behind the statute.[xix] In light of Illinois law and public policy purposes, uninsured motorist coverage policy limitations are strictly scrutinized. UM policies are interpreted liberally in favor of coverage.[xx] Illinois courts favor a broad interpretation of UM coverage as a way to ensure compensation of victims injured as a result of collisions caused by uninsured drivers. [xxi]

When a court interprets an insurance policy, there are only two sources upon which it may base its analysis: the language of the policy and the plain language of the Insurance Code as it existed at the time the policy was written.[xxii] Only where an ambiguity exists should the court look to other materials.[xxiii] Statutes that are in force at the time a policy is issued are controlling.[xxiv] Where a statute provides for uninsured motorist coverage, the statute becomes a part of each policy to which the statute applies to the same effect as if the statutory language were written in the policy.[xxv]

> The uninsured motorist provision is intended to place insured drivers in substantially the same position as if the wrongful uninsured driver had been minimally insured.[xxvi]
>
> > "Uninsured motorist coverage in a policy must be construed in light of the strong public policy that those injured by an uninsured motorist be afforded sufficient coverage to allow compensation to at least the same extent as if the injured claimant had been injured by a motorist insured with the minimum coverage required by law."[xxvii]

The purpose of a statute cannot be avoided by the insertion of a contrary or restricting provision in an insurance policy.[xxviii]

Illinois courts define "uninsured vehicle" broadly, even when an insurance company has attempted to limit coverage by including a restrictive definition in the policy.[xxix] "It is clear from [prior case law] and from the language of the statute itself that the legislative intent was to provide extensive uninsured-motorist protection for those who are 'insureds' under an automobile liability policy."[xxx] Courts recognize that the law's purpose is to provide "extensive" uninsured motorist coverage.[xxxi] After the Uninsured Motorist Coverage Act became effective, the question ceased to be what each insurance company might decide to include within its definition of the terms "uninsured motor vehicle" and "hit-and-run motor vehicle." The rule is that the "statutory coverage is mandatory, and it may not be whittled away by an unduly restrictive definition."[xxxii]

Liberal interpretation of the terms "uninsured vehicle" or "uninsured motorist" is important to the insured. Insurance companies may try to deny insured claimants their uninsured motorist coverage by arguing that the at-fault driver or car was not "uninsured."

B. Insurers May Not Require the Insured to Prove That the Other Driver's Insurer Improperly Denied Coverage

You may have a claim for UM coverage where the other driver had insurance, but the insurer for the other driver denies that the policy applies. You are covered by your uninsured motorist policy if the other driver's insurer denies coverage to its driver. Your company cannot require you to prove that the other company's denial is valid.

One case provides an example of an insurance company improperly attempting to deny UM coverage to its customer.[xxxiii] In that case, two drivers were in a collision. Both cars had insurance, but the at-fault driver's insurer denied coverage. It said that the at-fault driver's insurance policy was not in effect at the time of the crash.

Because the other driver's insurer denied coverage, the other driver was "uninsured." The injured person then asked his own insurance company for uninsured motorist coverage. However, the injured person's insurance company, however, denied UM coverage to its insured. The victim's insurer said that the at-fault driver's insurance company wrongfully denied coverage, and that he was thus not an "uninsured motorist." The injured insured was then stuck between the two insurance companies. The court rejected the UM insurance company's argument.

The court found that the at-fault motorist was "uninsured", and that the victim's uninsured motorist coverage applied. This important case shows that an insurance company cannot require its insured customer to prove the validity of the at-fault insurer's coverage denial. This rule makes sense because the insured had no role in the decision to deny coverage made by other insurance company. Insurers cannot put the innocent injured party in the middle of a dispute.

The court explained why Illinois courts seek to find that UM coverage exists. The court stated:

> "In view of the requirement of mandatory coverage, our supreme court [has] determined that…, *a motorist who is not covered by insurance is an 'uninsured motorist,' and it is immaterial whether insurance coverage never existed or whether it once existed but has since been removed.*
>
> Similarly, it is immaterial whether the insurance coverage has been removed by the voluntary act of the insurance company or by its involuntary insolvency…*the insured should not have to bear the burden of establishing the validity of the disclaimer*. To impose such a burden on the insured, who pays the premiums and who most often is the innocent party in the situation, would circumvent the legislative intent behind the enactment of mandatory uninsured motorist coverage, to provide the maximum coverage possible consonant with fairness to the insurer."[xxxiv]

Case law confirms the rule that an injured insured does not bear the burden of proving the validity of a coverage denial made by the other driver's insurer. If the at-fault driver had liability insurance, but the driver's insurer says that the coverage is inapplicable, then the injured person is entitled to uninsured motorist coverage from his own insurer.

C. Insurance Companies Have Tremendous Knowledge and Power

Insurance companies have vast resources including money, experience, lobbyists, claims personnel and attorneys. Consumers do not have such resources. Former Illinois Supreme Court Justice Clark explained the need for fair judicial interpretation of uninsured motorist coverage:

> **"Insurance companies have a tremendous fund of knowledge**, rightfully gained, regarding insurance practices, the nature of claims, the types of disputes and the number of private ordering arrangements that can be made. **The insurance consumer cannot match this information. Nor can the insurance consumer match the bargaining power of the insurance companies.** The power of insurance companies was enhanced by the legislature's command to provide uninsured motorist coverage of a specified amount in each policy written**. No freedom of contract exists in this situation, since one cannot be a self-insurer with respect to injuries caused by uninsured motorists. Thus, the insured must purchase the coverage on terms drafted by the insurance company."**[xxxv]

The Illinois courts' rejection of restrictive uninsured motorist coverage policy terms is consistent with other states. Professor Alan Widiss of the University of Iowa wrote:

> "The courts have been disposed to favor the interests of the insured to a greater degree than was previously true in regard to any other insurance coverage. The explanation and justification for this judicial treatment rests in part on a generally recognized societal goal of providing indemnification for innocent accident victims. When this general objective was specifically recognized by

> legislation that established either mandatory "offering" requirements or specified inclusion of the insurance as an additional coverage in all motor vehicle policies, uninsured motorist insurance has acquired a unique status. No other insurance coverage has ever been the subject of comparable statutory mandates throughout the nation. Thus, it is not surprising that the judicial responses to coverage disputes involving uninsured motorist insurance have resulted in a substantial body of decisions which have held that the rights of insureds were not to be limited by the coverage terms. The volume of such decisions in regard to the terms of this coverage has no comparable counterpart in the entire field of insurance litigation."[xxxvi]

Illinois courts have issued scores of decisions on uninsured and underinsured motorist coverage disputes. The number of cases arises because of Illinois' large population and the correspondingly large number of auto collisions in the state. Additional factors contributing to the litigation include the statutory origin of the coverage, regular amendments to the statute, and lack of uniformity in policy language. The courts have thus been frequently called upon to interpret the statute in light of legislative changes, varying fact patterns and individual policy language.

D. Exclusions and Limitations Disfavored

The Insurance Code mandates uninsured motorist coverage, so it cannot be diluted by unduly restrictive insurance policy terms and definitions.[xxxvii] The purpose of the statute is to provide a solution to the financially irresponsible motorist by compensating the innocent crash victim who was injured by an uninsured motorist's negligence.[xxxviii] In determining the obligations and rights of insurers, any limitation placed on the uninsured motorist coverage by the insurance should be liberally construed in favor of the policyholder.[xxxix]

V. Underinsured Motorist Coverage

A. Defining Underinsured: When the At-fault driver's Liability Coverage is Not Enough.

A driver is "underinsured" if he has liability insurance, but his liability coverage limits are too low to fully compensate an injury victim.

You are covered by your own policy's underinsured motorist coverage if you are injured by a motorist who has liability insurance coverage, but his or her limits are insufficient to cover your losses. To drive legally in Illinois, a driver must have an insurance policy with at least $20,000 in liability coverage. $20,000 is the minimum liability limits you may carry. Many drivers have minimum liability limit policies. A few auto insurers dominate the minimum liability limit policy market. Minimum liability limit insurers are referred to in the industry as "nonstandard, "substandard" or "high risk" insurers. Substandard auto insurers in Illinois write tens of millions of dollars in premiums.[xl] In the Cook County area, the percentage of drivers carrying minimum liability limits issued by substandard insurers is significant.

Filling the Gap: Can I File an Underinsured Motorist Claim?

A person is injured in an auto collision and suffers a broken arm. She is taken to the emergency room; she follows up with an orthopedic surgeon who must operate on her arm. She misses two weeks of work. Her medical expenses are in excess of $30,000.00. Her wage is $20,000. She has had pain and limitations in her activities. She has scarring. If the other driver has the quite common liability limits of $20,000.00, she is underinsured. Thus, the injured victim can make an underinsured motorist claim on her own policy. If her policy carries $100,000.00, she may make a claim for the $80,000.00 difference between the at-fault party's liability coverage of $20,000.00 and her $100,000.00 underinsured motorist policy.

Aggressive marketing by substandard insurance policy brokers show the demand for minimum limit policies. Advertisements for quick and cheap automotive insurance can be seen and heard on billboards, television and radio. Drivers with these low limit policies are "underinsured." Underinsured

motorists are a recurring cause of loss to drivers and passengers. Underinsured motorist coverage is one of the most important financial purchases you can make.

The prevalence of underinsured drivers causing injuries or death often requires victims to call upon their own insurance companies to cover the full cost of their injuries. Many, if not most, of the auto insurance buying public is unaware that their own policy covers them while driving, biking, or even walking. The following section describes how underinsured coverage became the law, and why it is important for everyone to purchase adequate underinsured motorist coverage.

B. "Filling the Gap" - History and Intent of Underinsured Motorist Coverage

Illinois law did not require insurance companies to include underinsured motorist coverage in auto policies before 1983. The absence of underinsured coverage caused many people to be only partially compensated when injured by a person with low liability limits. Known as the "underinsured loophole," injured insureds could only recover from the liability coverage amounts of the other driver's insurance policy.

With recovery capped at the other driver's liability limits, many crash victims were left with unpaid medical bills and income loss and uncompensated-for pain and disability. They had no option to turn to their own insurance policy to "fill the gap" in coverage between their damages and the other driver's low liability insurance limits. This gap in coverage violated the public policy of placing an injured insured in substantially the same position as he was before the accident.

C. The Need for Underinsured Motorist Coverage

The lack of an underinsured motorist insurance remedy led to the absurd result where an injured insured would receive more compensation if struck by an uninsured motorist as opposed to being struck by an insufficiently insured motorist. Consider, as an example, our hypothetical - the injured insured with $100,000 in uninsured motorist coverage. If the injured insured was hit by a driver with $20,000 in liability coverage, her maximum recovery would be $20,000. If the injured party were struck by an uninsured driver, she would recover $100,000!

The underinsured loophole was unacceptable because it led to different results based on the arbitrary circumstance of being struck by either an uninsured or underinsured motorist. If hit

by an uninsured motorist - full recovery. If hit by and underinsured motorist - partial recovery. This was an unacceptably random circumstance.

With the passage of Insurance Code section 143a-2, the Illinois legislature addressed the "underinsured loophole." The new Insurance Code provision required insurance companies to provide underinsured motorist coverage. The purpose of the underinsured motorist statute was to place the insured in the same position he or she would have occupied if injured by a motorist who carried liability insurance in the same amount as the policyholder.[xli]

The public policy behind the underinsured motorist statute was to place the insured in the same position as if the underinsured and at-fault motorist carried adequate liability insurance.[xlii] The statute also ensured that an injured insured could recover the same amount of money from his own auto insurer if he was hit by an uninsured driver or an underinsured driver. On June 20, 1980, Representative Telcser described his reasons for advocating mandatory underinsured motorist coverage:

> "The Amendment deals with technical problems that came up regarding an underinsured motorist. As an example: If a loss occurs, the motorist is underinsured, we wanted to be sure that the language set forth that the difference between the claim and the underinsured would be taken care of by your own insurance policy to fill the gap between the claim and the amount available from the underinsured and that there would not be any excessive claim that could be made."[xliii]

The legislature recognized that soaring medical costs often left injured parties only partially compensated for their injuries. The legislature was concerned with adequately compensating injured parties. Representative Epton said the underinsured motorist law was "a Bill proposed on behalf of the consumer."[xliv]

Judicial decisions have accordingly ruled that the underinsured motorist coverage law (Insurance Code Section 5/143a-2) must be construed to allow an insured to "fill the gap" between the amount paid by the other driver's insurer and the limits of underinsurance coverage in the insured's policy.[xlv]

D. The Underinsured Motorist Statute

The Illinois legislature required that all auto insurance policies include underinsured motorist coverage in 1983. The law says that underinsured motorist coverage must be in every auto liability policy. The statute states that the Illinois Insurance Commissioner would not approve or renew a motor vehicle insurance policy "unless underinsured motorist coverage [was] included in [the] policy in an amount equal to the total amount of uninsured motorist coverage provided in that policy…"[xlvi] Looking at our previous hypothetical case, the underinsured coverage requirement means that the insured can recover the $80,000 "gap" between her uninsured motorist coverage of $100,000 and the underinsured driver's liability limit of $20,000.

The underinsured motorist coverage statute allows your insurance company to include an "exhaustion of liability coverage" clause in your policy. This means that an insurer can require you - the injured insured - to show that you recovered from the at-fault driver's liability coverage.[xlvii] This is commonly referred to as requiring that an insured "exhaust the limits of liability" carried by the at-fault underinsured motorist.[xlviii] However, an insurer may not deny payment to its insured for accepting a settlement less than the maximum amount of liability coverage from the other insurer. In other words, if you are injured by a driver with $20,000 in liability coverage, if you settle with the other driver's liability insurer for just $17,000, you can still pursue underinsured motorist coverage.

E. Judicial Interpretations of Underinsured Motorist Coverage

1. "Exhausting" Liability Limits - *Hathaway* case

The Illinois Supreme Court examined the concept of "exhausting liability limits" in the case *Hathaway v. Standard Mutual Insurance Company*.[xlix] In *Hathaway*, the court considered whether partial exhaustion of liability coverage limited an insured's right to get underinsured motorist coverage.[l]

Standard Mutual Insurance denied underinsured benefits to its insureds in *Hathaway*.[li] The insurance company argued that the at-fault driver was not an "underinsured motorist" unless his liability limits were fully paid.[lii] The court concluded that policy definitions could not be used to deprive the insureds of the underinsured motorist coverage.[liii] The court stated that underinsured motorist coverage was a valuable policy benefit that insurers cannot unreasonably withhold.[liv]

Accepting a Settlement Does Not Limit an Underinsured Motorist Claim

Let's refer back to our first hypothetical. Say the underinsured motorist and the insured victim settle outside of court, and the insured victim accepts a sum less than the $20,000.00 maximum provided for by the underinsured motorist's policy. In this case, let's say the insured victim settles his claim against the underinsured motorist for $15,000.00. The underinsured motorist coverage statute provides that the insured motorist cannot be denied payment from his own insurance policy under the underinsured motorist clause merely because he accepted a settlement less than the full amount of $20,000.00 available under the opposing driver's policy. Despite accepting $15,000.00, instead of $20,000.00, the insured victim can appeal to his insurance company for underinsured coverage, up to his $100,000.00 policy limit, to compensate him for costs incurred because of the accident with the underinsured motorist (loss of $20,000.00, in this example). This aspect of underinsured motorist statute is sound public policy.

The court ruled that insurance companies may not require full exhaustion of the at-fault driver's limit limits as a condition to pursuing underinsured motorist coverage.[lv] Thus, partial exhaustion of liability coverage makes underinsured motorist coverage available to insured victims. In practice, *Hathaway* provided an analysis for courts to use when determining whether an insured victim is entitled to underinsured motorist benefits under his own policy.

The analysis is to compare the underinsured motorist coverage limits with the amount of the claimant *actually recovers* from the underinsured driver's liability coverage in order to determine the amount of underinsured motorist benefits available. The *Hathaway* decision has been cited with approval and followed in subsequent court decisions.[lvi] Justice Sheila M. O'Brien, in a special concurrence noted, "[t]he analysis of the legislative intent of this statute in *Hathaway* is definitive [and] persuasive ... reasonable and fair."[lvii] The law is clear that

claimants seeking underinsured motorist benefits from their insurance provider cannot be denied coverage if they accept a settlement for less than the full amount of liability coverage.

2. Protecting Against the Risk of Inadequate Liability Insurance

The Illinois Supreme Court analyzed the legislative history behind the underinsured motorist statute in *State Farm Mutual Auto Insurance Company v. Villicana*.[lviii] The court noted that the statute defines an "underinsured motor vehicle" as one whose "total amounts of applicable liability coverage are less than the underinsured coverage maintained by the insured at the time of the accident."[lix]

The court pointed out that legislators specifically sought to protect consumers from the risk of inadequate compensation for their injuries. The risk was injuries caused by a negligent driver, with insufficient liability limits. The court's review of the statute's legislative history confirmed that the law was intended to protect against a driver with low liability limits.

A member of the Illinois Insurance Laws Study Commission explained underinsured motorist coverage thus:

> "The purpose of underinsured motorist insurance is to put an injured insured in the same position after an accident with a financially responsible individual [but one who is carrying relatively low limits] as he or she would be with a financially responsible motorist...An insured with high limit uninsured motorist coverage is in a better position if injured by an uninsured motorist than if injured by an at-fault driver carrying minimum injury liability limits...The reason you have underinsured motorists coverage is once you agree that there ought to be high limit uninsured, you and I are better off being injured by an uninsured driver than we are by an insured driver. And so we have to make up this gap so that in the event of an injury by an at-fault driver we are in the same position regardless of whether he carries any insurance or minimum limits... [W]e are talking about putting our

> policyholder in the same position if he is struck by an insured low-limit driver as he is by an uninsured motorist. That is the purpose of underinsured motorist coverage."[lx]

The Supreme Court fortunately interpreted the underinsured motorist statute in a way to favor the insurance consumer. The desire to interpret the coverage in a way that protected insureds was expressed on the floor of the General Assembly during legislative debate. One legislator stated, "underinsured-motorist insurance is necessary so that consumers may have the opportunity to protect [themselves] from at-fault drivers who carry only minimal amounts of liability insurance."[lxi] The Senate sponsor of underinsured motor vehicle coverage declared that it was a "new concept" which allowed "a person to insure over and above what the person who is at-fault is insured against."[lxii]

VI. Requirements for Collecting UM or UIM Coverage

Uninsured and underinsured coverage must be in every auto liability policy.[lxiii] However, collecting UM or UIM motorist coverage is still subject to limitations set out in the policy. For example, insurance policies require that the injured claimant to be an "insured," as defined by the policy, and that the other driver be "uninsured" or "underinsured."

Illinois law allows auto insurance policies to define who is an "insured" for uninsured and underinsured motorist coverage. In addition, policies usually require contact between the insured vehicle and the other vehicle. Illinois law permits insurers to require contact. The following section discusses how insureds, their families, and their passengers are subject to the "persons insured" and "contact" requirements found in the majority of auto insurance policies.

A. Other Driver Uninsured

Collecting uninsured motorist coverage first requires that the other driver is uninsured. The other driver must either have no insurance coverage, be hit-and-run, or to have insurance that is expired, void or bankrupt.

B. Persons Insured

Whether you are an "insured" is the first question. The insurance policy defines who is an insured. An "insured" for uninsured and underinsured motorist coverage is typically:

1. You, the driver named in the policy ("Named insured");
2. Any family member with whom you share a home ("Resident relative");
3. Any other person occupying your covered automobile ("Occupant of insured vehicle"); and
4. Any other person legally entitled to recover damages due to injury to you, the insured, such as a spouse, parent, guardian, executor or administrator of your estate ("Representative claimants").

1. Named Insured

The individuals named in the policy declarations are "named" insureds. The named insured is readily apparent by reading the insurance policy declarations. If a person is an insured for the purpose of liability protection, he is deemed an insured for the purpose of uninsured motorist protection.[lxiv]

2. Resident Relative

"Resident relative" status requires both a family relationship and living in the same home. Residence has been interpreted as "facts reflecting an intention to permanently live in the insured's home." An easy example of an insured resident relative is a minor child living with his parents. The policy would cover the child even though he is not specifically named as an insured in the policy. A grandchild living with his insured grandfather is entitled to uninsured motorist coverage for injuries the grandchild sustained when struck by an uninsured motorist.[lxv] The grandchild is both a resident and a relative.

A friend living with an insured, however, is not a relative and therefore not an "insured." An adult grandchild living on a military base was relative of the grandparent, but not a resident because not living with the insured and thus not eligible for uninsured motorist coverage.[lxvi] A mother not living with her son was not entitled to uninsured motorist coverage under her son's policy.[lxvii] A relative living in a nursing home is not a resident family member under a corporate auto liability policy for purposes of uninsured motorist claim.[lxviii]

3. Occupant of Insured Vehicle

The typical uninsured motorist provision insures any person while such person is "occupying an insured automobile." Occupying is often defined in a policy as "in or upon, entering into or alighting from" the automobile.

The two requirements for a claimant to be deemed an "occupant" were established in the case of *Greer v. Kenilworth Insurance Company*.[lxix] The first element is the existence of some relationship between the insured and the covered automobile. The second element is either actual or virtual physical contact with the insured vehicle.

The passenger in *Greer* was a passenger in a car that stopped on a highway shoulder. The passenger exited the vehicle.[lxx] When the passenger was ten to fifteen feet from the vehicle, she was struck and injured by an uninsured motorist.[lxxi] The insurance company denied uninsured motorist coverage to the passenger, and the Illinois appellate court upheld this decision.[lxxii] The court concluded that the passenger was "not in, upon, entering into or alighting from" the insured car because no actual or virtual physical contact existed between the insured vehicle and the passenger.[lxxiii]

A more expansive view of "occupant" is found in *Mathey v. Country Mutual Insurance Compan*y.[lxxiv] In this case, a group of public school students, teachers and parents were transported to an airport by bus.[lxxv] The bus parked on the street next to the terminal, activated its warning lights, and opened its doors.[lxxvi] The students, parents and teachers exited the bus.[lxxvii] Just after the last person exited the bus, a car drove up on the sidewalk and struck several of the people, who had just got out of the bus.[lxxviii]

The bus' insurance policy provided underinsured motorists coverage to persons injured while "occupying" a school district vehicle.[lxxix] The policy stated that, "occupying means in, upon, getting in, on, out or off."[lxxx] The insurer denied coverage, and the injured passengers had to file suit to get compensation.[lxxxi] The court rejected the insurance company denial.[lxxxii] The court found that the passengers were "occupants" of the bus and thus entitled to uninsured motorist coverage benefits.[lxxxiii] In support of this conclusion, the court stated that the passengers had a "a nexus or relationship to the bus as they had been passengers on the bus and had just gotten out of the bus."[lxxxiv] The court also found sufficient physical contact between the passengers and the bus.[lxxxv] The court declared that,

> "[B]ased on the totality of the circumstances, including the fact that the warning lights of the buses were activated, the plaintiffs were in close proximity to the buses when the vehicle drove onto the sidewalk, the nature of the relationship between the plaintiffs and the buses, and the plaintiffs actual or virtual contact with the buses, we conclude the necessary elements for imposition of liability on defendant have been met."[lxxxvi]

The court found that the passengers were "occupants" of the bus and thus entitled to uninsured motorist coverage benefits.[lxxxvii]

4. Representative Claimants

"Representative claimants" are individuals legally entitled to file a claim on behalf of the insured. Representative claimant's examples are a parent, guardian, executor or administrator. Insurance policies typically include the phrase "any other person legally entitled to recover damages due to injury to an insured" in the policy's definition of "insured," in order to provide coverage for representative claimants. For example, a mother making a claim for her minor son's injuries (in her capacity as legal guardian) is a person "legally entitled to recover damages due to injury to an insured."[lxxxviii]

C. Contact

Insurance policies typically require contact between the insured vehicle and the uninsured or underinsured vehicle. The Insurance Code does not require contact with the uninsured or underinsured motorist, but insurance companies may put the contact requirement in the insurance policy. Illinois courts generally enforce policy provisions requiring physical contact between the insured person and the uninsured or underinsured vehicle.[lxxxix]

The purpose of the physical contact requirement is to prevent fraudulent claims.[xc] If contact is proven, that validates the claim, according to insurers. Unfortunately, many legitimate claims are denied because no contact occurred. However, the courts have approved policy language requiring physical contact. The justification is that it does not dilute the statutorily required uninsured and underinsured coverage according case law.[xci] Therefore, where no physical contact occurs, the courts will uphold an insurance company's denial of coverage.

1. Indirect Contact is Sufficient

UM and UIM claims may be denied if the "contact" requirement in the policy terms is not met. Indirect contact between vehicles, however, may be sufficient to meet the contact requirement.

In *Illinois National Insurance Company v. Palmer*, a lug nut came off an unidentified vehicle, smashed through the windshield of the insured car, and caused the insured driver to lose control and be injured.[xcii] The insurance company denied coverage by arguing no physical contact occurred.[xciii] The Illinois Supreme Court ruled that the insured was entitled to coverage because indirect contact with the uninsured driver caused his injury.[xciv] In the court's opinion, this indirect contact was enough to fulfill the physical contact requirement found in his insurance policy.[xcv]

The court stated that a *"continuous and contemporaneous transmitted force"* from the hit-and-run vehicle was all that was required.[xcvi] The court said that, "in every accident, it is always a part of the vehicle [coming] in contact with another vehicle, never the whole vehicle."[xcvii] The court noted that the purpose of the contact requirement is to reduce the potential for fraud, such

that an insured might simply lose control of his automobile and blame it on a non-existent driver.[xcviii] In Illinois, where a continuous and contemporaneously transmitted force from the hit-and-run vehicle causes injury, the contact requirement is met and recovery is allowed.[xcix]

2. What is "Contact:" the *Bourbon* Decision.

Illinois courts construing "contact" in a way that helps injured drivers or passengers of insured vehicles, who need coverage under their insurance policies.[c] *Country Companies v. Bourbon by Bourbon* is a 1984 case that provides a unique fact pattern that similarly demonstrates this truism.[ci] In this case, a motorcyclist began chasing a truck filled with eleven people after threatening them in a public park.[cii] The group in the truck was frightened, and the driver of the truck began traveling at high speeds, at times up to 80 miles per hour, in an attempt to evade the motorcyclist.[ciii] Armed with a baseball bat, the motorcyclist pulled alongside the truck and attempted to hit the driver of the truck.[civ] In one such attempt, the motorcyclist missed the driver and hit and smashed the outside rearview mirror of the truck.[cv] All this occurred at a high rate of speed.[cvi]

Immediately after the mirror-smashing incident, the motorcyclist pulled a distance ahead of the truck, turned around and drove directly at the truck in the truck's lane of travel.[cvii] The headlight of the motorcycle completely blinded the driver of the truck's vision.[cviii] In making an attempt to evade the motorcycle, the truck driver swerved off of the highway, causing the truck to flip three times.[cix]

Injured bodies were "scattered everywhere," and the motorcyclist rode away.[cx] The injured party in *Bourbon* was in the back of the truck and was thrown out when the truck overturned, receiving the injuries that led to the lawsuit.[cxi]

The truck driver's insurance company denied the UM claim.[cxii] It argued that the driver did not overturn because of any physical contact between the truck and the motorcycle.[cxiii] The court rejected the insurance company's interpretation of events as "too narrow and constricted."[cxiv] The court expressed its view of the incident as, "but one episode rather than a series of unrelated, separable incidents."[cxv] The court reasoned that the contact requirement was met by these facts because "a direct line of causal events, occurring over a short span of space

and time that were directly involved, interrelated and ongoing without interruption, which culminated with the overturning of the truck."[cxvi] The court concluded that the smashing of the mirror by the motorcyclist furnished the physical contact necessary for the injured passenger to recover under the driver's uninsured motorist coverage.[cxvii]

A "narrow and constricted" interpretation of UM coverage is impermissible.[cxviii] Viewing the facts in the larger sequence of events, the court found coverage in *Bourbon*.[cxix] The opinion stated that its determination that the collision arose out of physical contact between the vehicles is "within the letter, the spirit and the purpose of the uninsured motorist act."[cxx] If the purpose of the contact requirement is to avoid fraudulent claims, the decision upheld that purpose. The opinion takes a commonsense view of the facts and finds coverage consistent with the insured's reasonable expectations of coverage when he entered into the insurance contract. *Bourbon* should, therefore, encourage insured drivers to challenge insurance company decisions to deny coverage on the grounds of no "contact." If some physical contact occurred, the contact requirement may be met.

VII. Exclusions

An insurance policy is an agreement between the insurance company and the insured customer. As with any agreement, a policy can contain any terms, so long as the terms are consistent with the Insurance Code and public policy. One term that is commonly included in an insurance policy is an exclusion. An exclusion is an insurance policy provision that excludes insurance coverage under certain conditions.[cxxi] An insurer however, may not interpret coverage to deprive insureds of "substantial economic value for which they paid premiums." If you think of insurance coverage like a block of cheese, an exclusion is like the hole in a block of Swiss cheese. The following section discusses common exclusions that have led to insurance disputes and court cases between insureds and their insurers.

A. Specific Named Driver Exclusion

Family members who reside with an insured driver are "insureds" under the policy. The resident relative insured is discussed above. However, sometimes car owners choose to exclude certain resident relatives from coverage. Think teenager. Excluding drivers from a policy is a way to keep premium costs down. In an insurance contract, an insurance policy owner can list a resident relative and expressly exclude them from coverage.

Under Illinois law, a specific named driver exclusion is valid. In other words, Jim Johnson, Sr. can expressly remove Jim Johnson, Jr. from his policy. Excluding a specifically named driver from the policy as a whole means that he or she is also excluded from the uninsured and underinsured motorist coverage portion of the policy. Illinois courts will enforce specifically named driver exclusions, and thus, have upheld an insurer's decisions to deny UM and UIM coverage when such an excluded person is injured by an uninsured or underinsured driver.[cxxii]

B. Settlement without Consent Exclusion

Another common policy provision is the "settlement without consent" exclusion. The exclusion states that if the insured driver settles their claim against the other driver without the written consent of the insurance company, the insurer can deny UM or UIM coverage. This exclusion is valid, but Illinois courts will not allow arbitrary or unreasonable denial of coverage.[cxxiii]

Insurers can waive exclusions voluntarily or by their actions.[cxxiv] In *Tuthill v. State Farm Insurance Company*, the court reviewed State Farm's denial of uninsured motorist coverage. State Farm denied coverage based on the insured driver's settlement of his claim against the at-fault driver.[cxxv] The court determined that the "settlement without consent" exclusion in State Farm's policy was valid, but refused to enforce the clause because State Farm failed to show prejudice by the settlement.[cxxvi]

Requiring insurers to show prejudice is a hurdle insurers must jump when denying coverage based on the settlement without consent clause. Prejudice means a compromise of the legal rights of the insurer. The insurer must show how its rights were harmed or limited by the

insured's settlement with the other driver. If no prejudice results from settlement without consent, denial is invalid. State Farm was not prejudiced because its legal rights were not harmed by the insured's settlement with the at-fault driver. Certainly, it is the best course to not settle with an uninsured or underinsured driver without informing your UM or UIM insurer. Insureds can challenge denials of coverage on the settlement without consent clause, because their insurer may not be able to prove the settlement caused damage or detriment to the insurer.

C. Non-owned Vehicle Exclusion

The uninsured motorist statute requires that uninsured motorist coverage be provided to an insured in any vehicle he or she may occupy.[cxxvii] As such, insurers and insureds cannot validly agree to a "non-owned vehicle exclusion" when entering into an insurance policy contract.[cxxviii] Even if such an exclusion is included in the policy, an Illinois court will deem it unenforceable and require coverage.[cxxix] The non-owned vehicle exclusion is unenforceable because it contradicts the public policy embodied in the Illinois insurance statute.

As an Illinois court put it, "[i]t is well settled that [the uninsured and underinsured motorist statute] requires coverage of insured persons regardless...of the motor vehicle in which the injured person is located...."[cxxx] What this means is that if you carry automobile coverage and are injured while riding as a passenger in a car you do not own, you are entitled to coverage.[cxxxi]

D. Regular Use Exclusion

Insurance companies may include "regular use" exclusions in their policies. A regular use exclusion will generally state that coverage does not apply if the insured is injured while in a vehicle owned by a resident relative, or one available for regular use by the insured, if that motor vehicle is not described in the policy under which a claim is made.[cxxxii] Insureds can ensure they are covered by listing all vehicles available for their regular use in the policy.[cxxxiii] An insured can successfully challenge a denial of coverage under this exclusion if the vehicle was a replacement or newly acquired.[cxxxiv]

VIII. Stacking

Where the injured party has purchased more than one auto insurance policy, or multiple insurance policies exist, the injured insured may claim uninsured or underinsured motorist benefits from each policy. The insured claimant seeks to "stack" the policies. In the typical scenario, the insured has more than one vehicle in the household. The stacking concept envisions that the policies are placed on top of one another together to compile a larger recovery source. As an example, a wife and husband each have their own car. They each have their own auto policy providing $100,000 in uninsured motorist coverage. If they are seriously injured in an uninsured motorist case, they may seek a $200,000 recovery - $100,000 from each policy.

From the insured's perspective, she has paid a separate premium for the policies and they should be available in their time of need. Insurers, however, seek to limit their exposure and insert anti-stacking, limit of liability and other insurance clauses. The Insurance Code permits anti-stacking or other insurance clauses. The courts have often upheld unambiguous anti-stacking provisions.[cxxxv] Where the court determines, however, that an anti-stacking policy is ambiguous, it will construe the policy against the insurance company, and the insured will likely be allowed to stack policies.[cxxxvi]

IX. Set-Offs

A set-off is a policy provision stating that the insurer can deduct, from a settlement or award, amounts previously paid by the insurer or others.

Set Offs for Medical Payments

Injured insured Joe makes a claim against his insurer under Medical Payments and Uninsured Motorist coverage. XYZ Insurance Company pays Joe $10,000.00 in Medical Payments coverage for his bills from the ambulance, the emergency room, and his initial visit with an orthopedic doctor. When the Uninsured Motorist Claim is settled for $60,000.00, XYZ only has to pay $80,000.00. The insurer has a "set-off" on the settlement for the prior payments made to Joe for his medical bills.

A set-off occurs when the insurer deducts, from a settlement or award, amounts previously paid to the insured. The result of a set-off is that the insurer receives credit for payments the insurer or others previously made to or for the insured. Think of a set-off like a credit or deduction that the insurance company makes.

Auto policies typically contain set-off provisions that reduce the amounts payable under uninsured and underinsured motorist coverage. Set-off provisions usually provide for reduction of payments because of:

1) Amounts paid by or on behalf of the other driver;

2) Amounts paid or payable under workers compensation law, disability benefits law, automobile medical payments or other similar coverage.

A. Setoff Only Permissible to Prevent Double Recovery

An insurer may enforce a set-off only to prevent a double recovery or "windfall" to the insured.[cxxxvii] Public policy disfavors duplication of compensation. So, where the insured's damages exceed the uninsured motorist or underinsured policy limits, the set off cannot be applied such that no windfall occurs.[cxxxviii]

If more than one party is at-fault, the injured party cannot collect 100% of her losses from each party.[cxxxix] She can only collect from each party for their percentage of fault. Payments made by one of the at-fault parties reduce the claim that an injured person has against all others responsible for the same harm.[cxl] Without such a reduction, the claimant would improperly receive compensation in excess of injuries sustained.[cxli] The purpose of compensatory tort damages is to compensate. The purpose of compensatory damages is not to punish defendants or give a "windfall" to claimants.[cxlii] Therefore, double recovery for the same injury is to be avoided.[cxliii]

B. A Set-off Clause must be "Clear, Definite and Specific."[cxliv]

The Illinois Supreme Court has emphatically declared that a set-off clause must be "clear, definite and specific."[cxlv] A vague, ambiguous, unclear set-off clause is unenforceable. So, if your

insurer asserts that it is entitled to reduce a payment to you, review the clause to see if it is clear, definite, and specific.

C. Set-offs May Not be Stacked

An insurance policy may have several set-off provisions. An insurer however may not pile them on top of one another. Set-offs may not be stacked.[cxlvi]

D. Evidence of the Set-off must be presented at Arbitration

The insurer must present evidence of a set-off to the arbitrator, or the arbitrator will conclude that the insurer has waived the set-off.[cxlvii] In *Zimmerman v. Illinois Farmers Insurance Company*, the reviewing court held that because the parties agreed to submit to arbitration the "amount of payment which may be owing under this coverage," the insurer was required to submit to the arbitrators all matters, including any setoff issue, pertaining to the amount payable.[cxlviii]

Arbitration provides an insurer ample means to avoid double recovery, and an insurer who fails to make and support its contention of a set-off during arbitration may not question the award on that basis.[cxlix] Moreover, an arbitration award that determines an insured's damages, but does not determine the amount of payment required by the insurance contract, is not final and is unenforceable.[cl]

A federal court has upheld an insurer's right to set-off prior payments where the policy gave the arbitrators authority to decide "the amount of damages."[cli] The court in *Mullaney v. St. Paul Fire & Marine Ins. Co.*[clii] distinguished the Illinois decisions involving policies giving arbitrators authority to decide the amount of payment due. The "amount of damages" due language, according to the federal court, allowed the insurer to apply contractual set-offs even though not provided for in the arbitration award.

E. Medical Payments Coverage

The courts generally enforce an insurer's right to claim a set-off for medical payments coverage it has paid when it settles an uninsured or underinsured claim.[cliii] A set-off may be applied only where necessary to avoid double recovery.[cliv] An exception to the insurer's right to claim a credit arises where the claimant's damages exceed the uninsured motorist policy limits. An insurer is not entitled to set off medical payments made against payments for uninsured motorist coverage if the insured's damages, as determined by arbitration, exceed the total of limits for medical payments and uninsured motorist coverage.[clv]

The limitation on an insurer's right to assert a set-off in an excess policy limits case advances the purpose of providing full uninsured and underinsured motorist coverage.[clvi] In *Hoglund v. State Farm Mutual Auto Insurance Company*, the injured claimant was able to collect from both the at-fault driver's coverage and uninsured motorist coverage as she was severely injured.

Excess Damages & Medical Payment Coverage

If XYZ pays Joe $10,000.00 towards his medical bills under his Medical Payment coverage, and his total damages are in excess of $100,000.00, XYZ cannot deduct the $10,000.00 from the settlement.

F. Workers' Compensation

The courts have generally upheld workers compensation benefits set-off provisions.[clvii] Most uninsured and underinsured motorist coverage policies claim a set-off for workers compensation benefits "paid or payable" to the claimant.

> "Where the tortfeasor is insured, the employee reimburses his employer in full from the recovery from the tortfeasor. Where the tortfeasor is uninsured, the benefits paid by the employer are deducted from the recovery...In neither instance does the employee

> retain both compensation from the employer and identical damages from the tortfeasor. The deduction provision [in the policy] does not cause the employee with uninsured motorist's coverage to have less financial protection than he would have had if the tortfeasor had carried insurance in the minimal amount. Were we to hold it is contrary to public policy, it would mean that an injured employee's extent of recovery ... would hinge on the fortuitous circumstance that the tortfeasor was uninsured and was not otherwise financially responsible. We do not consider that a policy limitation which precludes this result is offensive to public policy."[clviii]

An underinsured motorist carrier is entitled to a set-off for worker's compensation benefits.[clix] A workers compensation carrier's lien, however, cannot attach to an uninsured or underinsured motorist coverage recovery.[clx] An employer thus may not receive reimbursement for workers' compensation benefits it paid for the employee UM/UIM coverage.

G. Disability Insurance Coverage

An insurer cannot claim a set-off for temporary total disability salary benefits received by an insured police officer when injured in an auto collision. The reason is that the insured would not be in substantially the same position he would have occupied had the other driver been insured.[clxi] The Insurance Code and public policy prohibit this result and the disability insurance set-off.[clxii]

In *Pearson v. State Farm Mutual Auto Insurance Company*, the insurer set-off disability payments made to a disabled police officer against his uninsured motorist coverage.[clxiii] The setoff was made pursuant to a policy provision claiming a reduction in benefits for payments the insured received under a "disability benefits law."[clxiv] The appellate court concluded that the set-off was void as against public policy.[clxv] That is, the set-off clause placed the officer in a worse position than the officer would have occupied had the wrongful driver maintained the minimum liability coverage.[clxvi]

H. Pension Benefits

An insurer may not set-off pension benefits unless stated in the auto policy.[clxvii] In *Gillen v. State Farm Mutual Auto Insurance Company*, an on-duty City of Chicago paramedic sustained fatal injuries from a car collision with an uninsured motorist.[clxviii] The City paid his medical expenses in accordance with the Pension Code.[clxix] The paramedic's wife later submitted a claim under the family's uninsured motorist coverage.[clxx] State Farm denied the claim, pointing to a set-off clause in their policy that purportedly reduced the uninsured motorist coverage available based on pension benefits received.[clxxi] The clause stated that, "[a]ny amount payable under this coverage shall be reduced by any amount paid or payable to or for the insured under any worker's compensation, disability benefits, or similar law."[clxxii]

The Court ruled that it could not allow State Farm to avoid its obligation under the policy.[clxxiii] The Court compelled State Farm to honor the wife's claim for uninsured-motorist coverage, with no off-set for the medical benefits paid by the City of Chicago.[clxxiv] In reaching its conclusion, the Court provided helpful instruction to claimants and attorneys alike, stating:

> **"**The issue is...**whether the average person,** for whom the policy is written, **would reasonably understand** that State Farm's liability for uninsured-motorist coverage would be limited for payments made pursuant to section 22-306 of the Pension Code...In other words, is the setoff clause 'clear, definite and specific?' We believe the answer is 'no.' The phrase 'worker's compensation, disability benefits or similar law,' would not convey to the average, ordinary, normal, reasonable person an intention to include our pension statute within the setoff clause of the policy...[C]onstruing the set-off clause to include benefits authorized by the Pension Code would compete with the equally reasonable construction excluding such benefits. Where competing reasonable interpretations of a policy exist, a court is not permitted to choose which interpretation it will follow...Rather, in such circumstances;

> the court must construe the policy in favor of the insured and against the insurer that drafted the policy."[clxxv]

I. Liability Coverage

A liability set-off provision in uninsured motorist coverage is valid and enforceable.[clxxvi] It is well established that amounts paid by an at-fault driver are to be applied to remaining payments in the suit. Without such a reduction, the injured person would improperly receive damages in excess of injuries sustained. Again, the purpose of compensatory damages is to compensate; it is not to punish others or to bestow a "windfall" upon injured insureds. Double recovery for the same injury is to be avoided.

J. Dram Shop (Bar or Tavern) Recovery

A "dram shop" is a bar or tavern. Dram shops are held to particular standards under the law, namely, the law makes liquor servers responsible for patrons who harm others as a result of their inebriation.[clxxvii]

In one case, a woman was struck by a drunk driver, who carried no automobile insurance.[clxxviii] Her husband sought coverage for her medical expenses and other costs associated with the collision under three separate uninsured motorist policies he carried for the same vehicle, purchased from the same insurance company.[clxxix] Given the law's position on dram shops, the husband also had a valid negligence claim against the establishment that over-served the uninsured driver, who caused his wife's death.[clxxx] Ultimately, the Illinois Supreme Court ruled that the insurance company could not reduce the money owed to the husband under his policies by the amount he sought to collect from the at-fault dram shop.[clxxxi] Rather, the insurance company was entitled to subrogation rights.[clxxxii] Subrogation occurs when one party pays for a debt for which a second party is primarily liable. In this case, the insurance company was paying a debt for which the dram shop was primarily liable. Therefore, the Illinois Supreme Court ruled that the insurance company could stand in the place of the husband, and file a negligence action against the dram shop to recovery money.[clxxxiii] For insured drivers, *Glidden* demonstrates that insurance companies are entitled to subrogation rights against wrongdoers, not to denial of coverage under a policy based on the involvement of a third-party wrongdoer.[clxxxiv]

K. Joint Tortfeasors

A policy provision which purports to reduce uninsured motorist benefits by amounts recovered from a joint tortfeasor is unenforceable.[clxxxv] In *Wilhelm v. Universal Underwriters Insurance Company*, a passenger on a motorcycle insured by uninsured motorist coverage was injured.[clxxxvi] The UM liability coverage excluded claims by passengers. The injured passenger thus turned to his own uninsured motorist policy for coverage.[clxxxvii] The passenger was also pursuing a liability claim against the at-fault driver.[clxxxviii] The passenger's insurer denied his UM claim, citing that a set-off applied to any money he received in the liability claim against the at-fault driver.[clxxxix] The court rejected this position.[cxc] The court held that the uninsured motorist coverage provision purporting to allow a set-off for sums received from the at-fault driver was invalid because it would reduce the uninsured motorist coverage that is required by the uninsured motorist statute.[cxci]

In *Hoglund*, the Supreme Court rejected State Farm's attempt to deny uninsured motorist coverage. A passenger on an uninsured motorcycle that collided with an insured vehicle was insured.[cxcii] Both motorists were at-fault.[cxciii] The motorcycle passenger made claims against the liability coverage of the insured vehicle, and her own uninsured motorist coverage.[cxciv] State Farm denied uninsured motorist coverage by citing its set-off clause within the limits of liability provision.[cxcv]

The court looked beyond the literal policy language:

> "We cannot ignore that a premium was paid for uninsured motorist protection. If that protection is not there, the policyholder has been denied substantial economic value in return for the premiums which have been paid…While the collection of insurance premiums is an important part of the insurance industry, it is not the only part. Insurers are expected to honor claims under their policies for which premiums have been paid in good faith. We believe the exculpatory language on which State Farm relies cannot be read in isolation. Rather, it must be read in conjunction with the policyholder's reasonable expectations and it must also be read in conjunction with

> the public policy behind the uninsured motorist statute and the coverage intended by the insurance policy itself."[cxcvi]

The court found an ambiguity in the policy and ruled that coverage applied for the insured claimant.[cxcvii] The opinion is notable for the court's focus on the reasonable expectations of the insured. The decision saw the fundamental unfairness of enforcing the set-off provision, when the insured paid good money and expected to be covered in her time of need.

X. Conclusion

Uninsured and underinsured motorist coverage's are valuable. You will do yourself and your family a favor by having at least $100,000 in UM and UIM coverage. You are likely covered by uninsured motorist coverage when you are injured by a driver with no insurance. You are likely covered by underinsured motorist coverage if you are injured by a driver with insufficient liability coverage.

If you are having problems with getting your uninsured or underinsured motorist claim paid by your insurer, my hope is that this book will be of assistance. If you have any questions about coverage, this book should provide some answers. If you are at a stalemate with your insurer, do not hesitate to promptly contact experienced, capable, and reputable legal counsel. Do not delay in taking action, because policy limitations terms may bar your claim if not filed in time. I wish you success with your claim.

About The Authors

Scott Blumenshine has practiced law for 27 years. A focus of his work has been in uninsured and underinsured motorist coverage claims. He has drafted and worked for passage of laws that help insurance policyholders. Scott has written and spoken on the subject of insurance claims. He believes that the courts must protect the weak against the strong. He is the father of two adult children who are sources of great pride and joy. He enjoys the company of friends in golfing, biking and hiking. To find more information: http://www.mbpersonalinjurylaw.com/

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[v] *Illinois Farmers Ins. Co. v. Cisco*, 687 N.E.2d 807 (Ill. 1997).

[vi] *Severs v. Country Mut. Ins. Co.*, 434 N.E.2d 290 (Ill. 1982).

[vii] *State Farm Mut. Auto. Ins. Co. v. George*, 762 N.E.2d 1163 (Ill. App. Ct. 2002).

[viii] *Hoglund v. State Farm Mut. Auto. Ins. Co.*, 592 N.E.2d 1031-1035 (Ill. 1992).

[ix] 215 Ill. Comp. Stat. Ann. 5/143a, 143a-2 (West 2000).

[x] *DeGrand v. Motors Ins. Corp.*, 588 N.E.2d 1074 (1992); R. Lee et al., *Couch on Insurance*, §15:79 (Sweet & Maxwell Ltd. 3ed., 1984).

[xi] *Bertini v. State Farm Mut. Auto. Ins. Co.*, 362 N.E.2d 1355 (Ill. App. Ct. 1977).

[xii] *State Farm Mut. Auto. Ins. Co. v. Villicana*, 692 N.E.2d 1196-1207 (1998); *Cisco*, 687 N.E.2d at 807; *Severs*, 434 N.E.2d at 291 ("The purpose underlying a statute cannot be circumvented by the insertion of a contrary or restricting provision in an insurance policy."); *Cummins v. Country Mut. Ins. Co.*, 687 N.E.2d 1021, 1026 (1997) ("Any conflict between statutory and insurance policy provisions will be resolved in favor of the statutory provisions . . . . Therefore, we resolve any conflict between the underinsured-motorist statute and Country Mutual's policy in favor of the statute. As stated, the statutory language permits plaintiff to recover underinsured-motorist benefits up to the policy limits.)

[xiii] *Gillen v. State Farm Mut. Automobile Ins. Co.*, 830 N.E.2d 575, 583 (Ill. 2005) (citing *Goetze v. Franklin Life Ins. Co.*, 324 N.E.2d 437 (Ill. App. Ct. 1975)).

[xiv] *Hobbs v. Hartford Ins. Co. of the Midwest*, 823 N.E.2d 561 (2005).

[xv] *Gillen*, 830 N.E.2d at 575.

[xvi] *Hobbs*, 823 N.E.2d at 564.

[xvii] *Id*.

[xviii] *Gillen*, 830 N.E.2d at 582.

[xix] *Cummins v. Country Mut. Ins. Co.*, 687 N.E.2d at 1027.

[xx] *Squire v. Economy Fire & Cas. Co.*, 370 N.E.2d 1044 (Ill. 1977).

[xxi] *Thomas v. Aetna Casualty & Surety Co.*, 328 N.E.2d 374 (Ill. 1975).

[xxii] *Cincinnati Ins. Co. v. Miller*, 546 N.E.2d 700-706 (Ill. 1989).

[xxiii] *Harrington v. American Family Insurance Company*, 773 N.E. 2d 98 (Ill. App. Ct. 2002).

[xxiv] *Brooks v. Cigna Prop. & Cas. Cos.* 700 N.E.2d 1052-1057 (Ill. App. Ct. 1998).

[xxv] *Id*. at 1055 (citing *Family Mut. Ins. Co. v. Baaske*, 572 N.E.2d 308 (1991)).

[xxvi] *Hoglund*, 592 N.E.2d at 1031.

[xxvii] *Bruno v. State Farm Mut. Auto. Ins. Co.*, 581 N.E.2d 16, 17 (Ill. App. Ct. 1991).

[xxviii] *Severs*, 434 N.E.2d at 291.

[xxix] *Heritage Ins. Co. of America v. Phelan*, 321 N.E.2d 257, 260 (Ill. 1974).

[xxx] *Id*. at 260.

[xxxi] *Id*.

[xxxii] *Pellegrini v. Jankoveck*, 614 N.E.2d 319, 321 (Ill. App. Ct. 1993).

[xxxiii] *Zurich v. Country Mut. Ins. Co.*, 382 N.E.2d 131-135 (Ill. 1978).

[xxxiv] *Id*. at 132 (emphasis added).

[xxxv] *Menke v. Country Mut. Ins. Co.*, 401 N.E.2d 539, 546 (Ill. 1980) (emphasis added).

[xxxvi] Alan Widiss, *Uninsured and Underinsured Motorist Insurance*, 56-57 (1998).

[xxxvii] *Smiley v. Toney's Estate*, 254 N.E.2d 440 (1970); *Kaszeski v. Fidelity & Cas. Co. of New York*, 296 N.E.2d 743 (1973).

[xxxviii] *Country Mut. Ins. Co. v. Nat'l Bank of Decatur*, 248 N.E.2d 299 (Ill. App. Ct. 1969).

[xxxix] *Barnes v. Powell*, 275 N.E.2d 377 (1971)

[xl] Illinois Department of Insurance, *Annual Report to the Governor*, (2012) http://insurance.illinois.gov/Reports/AnnRept/2012AnnualRptToGovernor.pdf.

[xli] *Smith v. Allstate Ins. Co.*, 726 N.E.2d 1 (Ill. App. Ct. 2000) (citing 215/143a-2(4)).

[xlii] *Susler v. Country Mut. Ins. Co.*, 591 N.E.2d 427-431 (Ill. 1992).

[xliii] *Cummins*, 687 N.E.2d at 1030 (citing H.R., 81st Gen. Assemb., Reg. Sess., 44-48 (Ill. 1980)).

[xliv] *Id*.

[xlv] *Koperski v. Amica Mut. Ins. Co.*, 678 N.E.2d 734 (1997)

[xlvi] 215 ILCS 143a-2.

[xlvii] Id. ("A policy which provides underinsured motor vehicle coverage may include a clause which denies payment until the limits of liability or portion thereof under all bodily injury liability insurance policies applicable to the underinsured motor vehicle and its operators have been partially or fully exhausted by payment of judgment or settlement.")

[xlviii] *Id*.

[xlix] 725-731 (Ill. App. Ct. 1996).

[l] *Id*. at 725-726.

[li] *Id*.

[lii] *Id*. at 726-727.

[liii] *Id*. at 729.

[liv] *Hathaway*, 673 N.E.2d at 725.

[lv] *Id*.

[lvi] *Koperski*, 678 N.E.2d at 734 ("However, we find the better-reasoned approach is that expressed in *Hathaway*…"); *Acuity v. Curry*, No. 1:11-CV-00722-TWP-DKL, 2013 WL 3243134, at *5 (S.D. Ind. L.R. 2013); *Smith v. Allstate Ins. Co.*, 686 N.E.2d 74, 76 (Ill. App. Ct., 1997).

[lvii] *Smith*, 686 N.E.2d at 78.

[lviii] *Villicana*, 692 N.E.2d at 1196.

[lix] *Id*. at 1200.

[lx] *Hathaway*, 673 N.E.2d at 728.

[lxi] *Id*. (citing H.R., 81st Gen. Assemb., Reg. Sess. at 48) (statement of Representative Epton)).

[lxii] *Villicana*, 692 N.E.2d at 1200 (citing H.R., 81st Gen. Assemb., Reg. Sess., 327 (Ill. 1979) (statement of Senator D'Arco)).

[lxiii] 215 ILCS 5/143a2-(3).

[lxiv] *Bertini v. State Farm Mut. Auto. Ins. Co*., 362 N.E.2d 1355 (Ill App. Ct. 1977).

[lxv] *Jacobs v. Cent. Security Mut. Ins. Co*., 551 N.E. 2d 1059 (Ill. App. Ct. 1990).

[lxvi] *Coley v. State Farm Mut. Auto. Ins. Co., Automobile Insurance Co.*, 534 N.E.2d 220 (Ill. App. Ct. 1989).

[lxvii] *Yarbert v. Industrial Fire and Cas. Ins. Co., Insurance Co.*, 372 N.E.2d 886 (Ill. App. Ct. 1978).

[lxviii] *Rosenberg v. Zurich Am. Ins. Co.*, 726 N.E.2d 29 (Ill. App. Ct. 2000).

[lxix] *Greer v. Kenilworth Ins. Co.*, 376 N.E.2d 346-349 (Ill. App. Ct. 1978).

[lxx] *Id*. at 347.

[lxxi] *Id*.

[lxxii] *Id*.

[lxxiii] *Id*.

[lxxiv] *Mathey v. Country Mut. Ins Co.*, 748 N.E.2d 303-312 (Ill. App. Ct. 2001)

[lxxv] *Id*. at 305.

[lxxvi] *Id*.

[lxxvii] *Id*.

[lxxviii] *Id*.

[lxxix] *Mathey*, 748 N.E.2d at 306.

[lxxx] *Id*.

[lxxxi] *Id*.

[lxxxii] *Id*. at 307.

[lxxxiii] *Mathey,* 748 N.E.2d at 311.

[lxxxiv] *Id*. at 310.

[lxxxv] *Id*. at 311.

[lxxxvi] *Id*.

[lxxxvii] *Id*.

[lxxxviii] *United Sec. Ins. Co. v. Mason*, 376 N.E.2d 653 (Ill. App. Ct. 1978).

[lxxxix] *Finch v. Cent. Nat'l Ins. Group*, 319 N.E. 2d 468 (Ill. 1974); *Ferega v. State Farm Mut. Auto. Ins. Co.*, 303 N.E. 2d 459 (Ill. App. Ct. 1973), *aff'd* 317 N.E.2d 550-552 (Ill. 1974); *Cole*

v. Pekin Ins. Co., 453 N.E.2d 876-877 (Ill. App. Ct. 1983); *Gibson v. State Farm Mut. Auto. Ins. Co.*, 465 N.E.2d 689-696 (Ill. App. Ct. 1984).

[xc] *Illinois Nat. Ins. Co. v. Palmer*, 452 N.E.2d 707-710, 708 (Ill. App. Ct. 1983)

[xci] *Id*. at 708.

[xcii] *Id*. at 707-708.

[xciii] *Id*. at 708.

[xciv] *Id*. at 710-711.

[xcv] *Palmer*, 452 N.E.2d at 709.

[xcvi] *Id*. at 708 (emphasis added).

[xcvii] *Id*. at 709.

[xcviii] *Id*. at 708.

[xcix] *Id*. at 708-711.

[c] *Country Cos. v. Bourbon by Bourbon*, 462 N.E.2d 546-530 (Ill. App. Ct. 1984)

[ci] *Id*.

[cii] *Id*. at 527.

[ciii] *Id*.

[civ] *Id*.

[cv] *Bourbon*, 462 N.E.2d at 527.

[cvi] *Id*.

[cvii] *Id*.

[cviii] *Id*.

[cix] *Id*.

[cx] *Bourbon*, 462 N.E.2d at 527.

[cxi] *Id*.

[cxii] *Id*. at 526.

[cxiii] *Id*. at 528.

[cxiv] *Id*.

[cxv] *Bourbon*, 462 N.E.2d at 528.

[cxvi] *Id*.

[cxvii] *Id*. at 530.

[cxviii] *Id*. at 528.

[cxix] *Id*. at 530.

[cxx] *Bourbon*, 462 N.E.2d at 528.

[cxxi] *Black's Law Dictionary* 263 (3rd. 2006).

[cxxii] *Rockford Mut. Ins. Co. v. Economy Fire & Cas. Co.*, 576 N.E.2d 1141-1146 (Ill. App. Ct. 1991).

[cxxiii] *Tuthill v. State Farm Ins. Co.*, 311 N.E.2d 770-779 (Ill. App. Ct. 1974).

[cxxiv] *Andeen v. Cnty. Mut. Ins. Co.*, 217 N.E.2d 814-818 (Ill. App. Ct. 1966).

[cxxv] *Tuthill*, 311 N.E.2d at 777-778.

[cxxvi] *Id*. at 778.

[cxxvii] *Harrington v. American Family Mut. Ins. Co.*, 773 N.E.2d 98-105 (Ill. App. Ct. 2002).

[cxxviii] *Id*. at 103; *see also* 215 ILCS 5/143a-2(1), 143a(4).

[cxxix] *Harrington*, 773 N.E.2d at 103.

[cxxx] *Squire*, 370 N.E.2d at 1049.

[cxxxi] *See id*.

[cxxxii] *Villicana*, 692 N.E.2d at 1109-1207; *see also* 215 ILCS 5/143a.

[cxxxiii] *See id*.

[cxxxiv] *Id*.

[cxxxv] *Georgantas v. Country Mut. Ins. Co.*, 570 N.E.2d 870-872 (Ill. App. Ct. 1991); Hobbs, 823 N.E.2d at 564; Menke, 401 N.E.2d at 546.

[cxxxvi] *Bowers v. Gen. Cas. Ins. Co.*, No. 3-13-0655, 2014 WL 130655, at *4-*5 (Ill. App. Ct. Nov. 5, 2014).

[cxxxvii] *Georgantas*, 570 N.E.2d at 873.

[cxxxviii] *Id*.; *see also Melson v. Illinois Nat. Ins. Co.*, 274 N.E.2d 664-666 (Ill. App. Ct. 1971).

[cxxxix] *Schutt v. Allstate Ins. Co.*, 478 N.E.2d 644 (Ill. App. Ct. 1985).

[cxl] *Restatement (Second) of Torts* § 885 cmt. e (1979).

[cxli] *Schutt v. Allstate Ins. Co.*, 478 N.E.2d 644-651 (Ill. App. Ct. 1985).

[cxlii] *Id*.

[cxliii] *Id*.

[cxliv] *Gillen v. State Farm Mut. Auto. Ins. Co.*, 830 N.E.2d 575-584, 582 (Ill. 2005); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Glenview Park Dist.*, 632 N.E.2d 1039-1046, 1042 (Ill. 1994)(" "Exclusionary provisions are applied only where the terms are clear, definite, and explicit.")

[cxlv] *Gillen*, 830 N.E.2d at 582.

[cxlvi] *Columbia Mut. Ins. Co. v. Herrin*, 965 N.E.2d 422-429 (Ill. App. Ct. 2012).

[cxlvii] *Zimmerman v. Illinois Farmers Ins. Co.*, 739 N.E.2d 990 (Ill. App. Ct. 2000).

[cxlviii] *Id*.

[cxlix] *Id*.

[cl] *Harris v. Allied American Insurance Co.*, 504 N.E.2d 151-153 (Ill. App. Ct. 1987)

[cli] *Mullaney v. St. Paul Fire & Marine Ins. Co.*, 184 Fed. Appx. 577 (7th Cir. 2006).

[clii] *Id*.

[cliii] *Glidden v. Farmers Auto. Ins. Assoc.*, 312 N.E.2d 247-252 (Ill. 1974).

[cliv] *Id*.; *Melson*, 274 N.E.2d at 666.

[clv] *Roberts v. Country Mut. Ins. Co.*, 596 N.E.2d 185-187 (Ill. App. Ct. 1992).

[clvi] *Hoglund*, 592 N.E.2d at 1033.

[clvii] *Scudella v. Illinois Farmers Ins. Co*., 528 N.E.2d 218-223 (Ill. App. Ct. 1988); *Ullman v. Wolverine Ins. Co.*, 200 N.E.2d 295-299 (1992)

[clviii] *Ullman*, 200 N.E.2d at 298.

[clix] *Sulser v. Country Mut. Ins. Co.*, 591 N.E.2d 427-431 (Ill. 1992); *State Farm Mut. Auto. Ins. Co. v. Coe*, 855 N.E.2d 173-184 (Ill. App. Ct. 2006).

[clx] *Terry v. State Farm Mut. Auto. Ins. Co*., 677 N.E.2d 1019-1024 (Ill. App. Ct. 1997).

[clxi] *Pearson v. State Farm Mut. Auto Ins. Co.*, 440 N.E.2d 1070-1073 (Ill. App. Ct. 1982).

[clxii] *Id*. at 1072.

[clxiii] *Id*. at 1071.

[clxiv] *Id*.

[clxv] *Id*. at 1072.

[clxvi] *Pearson*, 440 N.E.2d at 1072.

[clxvii] *Gillen*, 830 N.E.2d at 576.

[clxviii] *Id*.

[clxix] *Id*.

[clxx] *Id*. at 577.

[clxxi] *Id*.

[clxxii] *Gillen*, 830 N.E.2d at 577.

[clxxiii] *Id*. at 584.

[clxxiv] *Id*.

[clxxv] *Id*. at 582; *Canadian Radium & Uranium Corp. v. Indem. Insur. Co. of North America*, 104 N.E.2d 250 (1952) ("Courts should not adopt gossamer distinctions which the average [person]

for whom the policy is written cannot possibly be expected to understand"); *Goetze v. Franklin Life Ins. Co.*, 324 N.E.2d 437 (1975) (premium receipt for temporary coverage must be "sufficiently clear for a layman to understand"); *Manchester Ins. & Indem. Cov. Universal Underwriters Ins. Co.*, 285 N.E.2d 185 (1972) ("inexpert layperson" will not be charged with "the responsibility of making or procuring independent technical legal opinions regarding what coverage they are buying" and "are entitled to rely on language which purports to cover").

[clxxvi] *Schutt*, 478 N.E.2d at 646.

[clxxvii] *Id*.

[clxxviii] *Glidden*, 312 N.E.2d at 249.

[clxxix] *Id*.

[clxxx] *Id*. at 251-252.

[clxxxi] *See id*.

[clxxxii] *Glidden*, 312 N.E.2d at 251-252.

[clxxxiii] *Id*.

[clxxxiv] *See id*.

[clxxxv] *Wilhelm v. Universal Underwriters Ins. Co.*, 377 N.E.2d 62-67, 63 (Ill. App. Ct. 1978); *Hoglund*, 592 N.E.2d at 1034.

[clxxxvi] *Wilhelm*, 377 N.E.2d at 63.

[clxxxvii] *Id*.

[clxxxviii] *Id*.

[clxxxix] *Id*.

[cxc] *Id*. at 66.

[cxci] *Id*. at 67.

[cxcii] *Hoglund*, 592 N.E.2d at 1032.

[cxciii] *Id*.

[cxciv] *Id*.

[cxcv] *Id*. at 1033.

[cxcvi] *Id*. at 1034.

[cxcvii] *Hoglund*, 592 N.E.2d at 1035.