

March 25, 2015

Hon. Richard D. Roth (Chair)
Senate Insurance Committee
State Capitol, Room 2195
Sacramento, CA 95814

Informational/Oversight Hearing on Uninsured and Underinsured Motorist Insurance Coverage: Testimony of Dan Wade on behalf United Policyholders

Good afternoon Chairman Roth and Members of the Committee:

My name is Dan Wade and I am an attorney with United Policyholders. For those of you that are unfamiliar with United Policyholders, or “UP” as we are commonly known, we are a non-profit organization that serves as a voice and information resource for insurance consumers in all 50 states. We were founded here in Northern California in 1991. Our first project was helping solve recovery obstacles related to property insurance that impeded repairs and rebuilding after the Oakland/Berkeley Hills Firestorm. During our 23 years in business, UP has engaged in education and consumer assistance activities in virtually every line of insurance, including automobile policies and claims. Our most recent tip of the month, a monthly email we send to subscribers, advised consumers on getting fair value on a totalled car.

Thank you for this opportunity to present consumer perspectives at this important hearing on the timely topic of whether California’s Uninsured/Underinsured (UM/UIM) laws need updating. In short, they do. To begin, with the staggering number of un or underinsured drivers on the road today in California, more than 4 million drivers by some estimates (*See Insurance Research Council, Uninsured Motorists, 2014 Edition, August 2014*) and with more drivers entering the insurance market after the passage of AB60, it is crucial that insured drivers and accident victims get a reasonable amount of protection from UM/UIM coverage. It is critical that in the event of an accident involving an uninsured or underinsured motorist, an insured driver with minimum or higher UM/UIM limits get the full benefits they have paid for. For purposes of this hearing, there are a four key reasons current law fails consumers:

The first being that under the current UIM regime, the injured policyholder is not always made whole. The set-off provision is problematic in situations where the injuries exceed both the driver’s liability and the injured party’s UIM coverage. The “credit” that the driver’s insurance carrier receives leaves policyholders to pick up the remaining damages out of pocket (Cal. Ins. Code § 11580.2(p)(4)(A)). The set-off provision can be further problematic where it requires a determination of a worker’s compensation claim. (Cal. Ins. Code § 11580.2(f)); *See Briggs v. GEICO, California Ct. of Appeal, 1st Dist., Div. 4, Case No.: A121594, Case No.: N080136*.

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Second, the definition of an “underinsured vehicle” should be revised to mean anything less than the injured driver’s damages. Current law provides that an uninsured vehicle is any vehicle where the liability coverage is less than the UIM limits carried on the motor vehicle of the injured person. (Cal. Ins. Code §11580.2 (p)(2)). This is too limited. In the scenario where the injured driver’s UIM limits are the same as the injuring driver’s liability limits, and the injuries exceed either independently, the policyholder pays the difference out of pocket because of the way the statute is written. UIM coverage in this factual scenario becomes illusory.

Third, the exhaustion requirement as currently written can lead to unnecessary litigation between insureds and insurers and costly arbitration. Current law provides that UIM coverage does not apply until all liability policies applicable have been exhausted (Cal. Ins. Code § 11580.2(p)(3)). Proposition 51 presents another problem by eliminating joint and several liability in favor of a pro-rata approach (Civ. Code § 1431.2). In other types of liability insurance coverage disputes, where more than one policy can provide coverage for a loss or injury, most courts will apply an “all sums” or joint and several liability approach to reduce unnecessary litigation and achieve the goal of the insurance system: indemnity in case of loss. UIM coverage should not be any different. And because UM/UIM arbitrations are procedurally complicated and the costs have escalated in recent years, UM/UIM arbitration costs and fees should be recoverable by the policyholder.

Fourth, UIM coverage should not be strictly tied to liability limits. While it is theoretically possible for consumers to buy UIM limits in excess of their liability, evidence suggests that insurers routinely refuse to offer coverage in this way. Then there is the issue of whether mandatory minimums are too low. Perhaps they are considering inflation, rising medical costs, and the types of judgments that can realistically be enforced against a responsible driver in this day and age. (For a more complete analysis, see United Policyholders and Dave Fiol, “More than the Minimum,” available at <http://www.uphelp.org/blog/more-minimum-0>).

In summary, our collective goal should be to make reforms that will increase the value of UM/UIM protection for drivers and accident victims without significantly increasing premiums or the number of uninsured drivers on the road. Keeping policies affordable is clearly a critical objective. We don't want reform efforts to drive up the number of uninsured drivers. But the fact is - the cost of UM/UIM coverage accounts for a relatively small percentage of the total premium for a typical auto policy. In states that don't allow insurers to apply set-offs to reduce UM/UIM payouts (Nevada, for example), it is not necessarily the case that auto premiums are higher than they are in California. Nor is the uninsured driver rate. By some estimates, Nevada’s uninsured driver rate is approximately 13% while California’s uninsured driver rate is approximately 15%.

Again, thank you for your time and consideration of this important issue and for inviting UP and other stakeholders to the share their unique and important perspectives on the issue of UM/UIM coverage.

Sincerely,

Dan Wade, Esq.
Staff Attorney
United Policyholders