

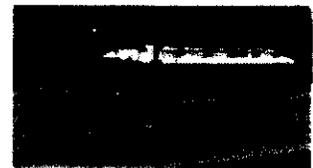
TRANSNEWS

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Trans-News is a newsletter for our customers dedicated to bringing you useful and timely information about safety, loss control, insurance and industry issues.



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Please contact us with any questions, comments and ideas!

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"The Driver's Seat"

.....Uninsured Motorist...UMmmmmm!

The older I get, the more cynical I become. I used to get angry watching Andy Rooney on 60 Minutes because all he did was complain about everything; and the producers of that show couched his cynicism by referring to the old coot as a "curmudgeon." For those who don't have their Funk and Wagnell's handy, a curmudgeon is a person who is considered surly or miserly.

By the time you read this I will have turned six decades and therefore feel entitled to claim the title of "curmudgeon-in-chief." Not because I'm miserly but because I am surly. But it's not my fault. You see, I grew up in a different era; the post war generation when we accepted personal responsibility and respect for the law. When our politicians under our republican form of government passed legislation it was done with the support of the governed.

A politician's constituency gave him the authority to cast a vote on our behalf which then became the law of the land. The people had spoken.

Well, that doesn't hold true any longer. Over the past dozen years or so it seems* that our courts have taken our right as the governed and usurped that right by making law from the bench.

It doesn't matter what the majority thinks or says, it's a court that tells us we're too stupid to know better and therefore only they are smart enough to determine what's right or wrong.

When I was in school I was always taught that the people make the laws and the courts enforce them. That is no longer the case. It's like the weather; if you don't like

it just wait awhile and it will change.

So what has any of this to do with Uninsured Motorist coverage?

Just ask the lucky folks in the state of Montana.

Before I go into this nightmare let me define in layman terms what Uninsured Motorist coverage is. If you are a victim in an accident with another vehicle that does not carry insurance or carries insufficient insurance to compensate you for your injuries, Uninsured/Underinsured Motorist coverage under your policy will pay for your damages/injuries.

UM/UIM becomes a direct payment to you under your insurance even though someone else was responsible for the loss. This places the cost of the accident and all medical bills clearly on your loss record. You will be penalized for obeying the financial responsibility laws of your state against someone who was in violation of those laws.

Uninsured Motorist...UMmmmmm! (cont'd.)

Some will tell you that you cannot be held responsible for a not-at fault accident; that it doesn't go against your experience. You heard it hear folks, if an insurance company pays a claim, that claim or a portion thereof, regardless of who's at fault goes into the experience rating.

There is one additional quirk to UM/UM that needs to be vetted and that's the principle of "stacking limits."

Let's say you own three vehicles and for argument sake let's assume they were all insured under the same policy. The limit of liability for UM/UM was \$50,000 per occurrence and there was a specific premium charge for UM/UM applied to each vehicle. If one vehicle was involved in an accident with an uninsured driver, that amount of protection (\$50,000 per occurrence) would be afforded to you under the UM/UM portion of the policy. In some states there is a provision called "stacking" which says that if you own more than one vehicle you may add

the UM/UM limits for each vehicle as an amount available. I know it's complicated but as we go along and I vent my spleen it will become clearer—I think. So, with the basic understanding of UM/UM let's revisit our brethren in Big Sky country and find out what's cookin' round the old campfire.

Back in 1996 I believe it was, the Montana legislature recognized the negative financial impact stacking of UM/UM limits was having on the insurance community in their state and passed an anti-stacking measure that stood for a whole 7 years. The anti-stacking measure was very simple; in the event of an accident the most a company was obligated to pay was the highest limit per occurrence and regardless of the number of vehicles insured or policies issued they were not combinable (this is me speaking and not the legaleze of the statute).

On December 26, 2000, plaintiff Ned Hardy was injured in a motor vehicle accident. His vehicle was negligently struck

by another driver who carried Montana minimum liability insurance limits of \$50,000. Mr. Hardy also carried minimum UM/UM limits of \$50,000. Mr. Hardy's injuries were such that the available limit from the other driver and Mr. Hardy's UM coverage were insufficient to pay for his injuries. The insurance company, Progressive Insurance Company, dutifully paid Mr. Hardy's medical bills under the UM/UM portion of the policy.

Mr. Hardy had two other vehicles insured under his policy and made the case that he didn't have \$50,000 in limits but rather \$150,000 combining the three UM/UM limits applicable to each vehicle. Progressive relied on the policy conditions that followed the Montana statute that capped the available limit to the highest limit per occurrence or \$50,000. The case was tried before the Supreme Court of the State of Montana and the majority opinion of the court was that the anti stacking legislation voted by

Uninsured Motorist...UMmmmmm! (cont'd.)

the representatives of the people of Montana was unconstitutional. The arguments on either side of the issue were quite persuasive but personally I thought the arguments presented in an amicus curiae brief on behalf of the insurance industry were the most concise and thought provoking.

The case is titled Hardy v. Progressive Insurance Company No. 02-448 for those who might want some light reading.

- **What is the result of this ruling?**
- **How will insurance companies address the stacking of UM/UIM limits?**

This could be the beginning of an insurance crisis in Montana; particularly for commercial auto policies.

- **And why do I say this?**

Let's assume you are an operator with 100 buses and your policy contains the minimum UM/UIM limit of \$50,000 per occurrence. And let's say one of your buses fully loaded with passengers

is involved in an accident which was not your driver's fault. And let's say that all of your passengers sustained injuries and some are severely injured or have been killed. The potential exposure to your insurance company in this scenario is \$50,000 times the number of vehicles you own (100) or \$5 million.

Why would you expose your loss ratio and your insurance company to that exposure?

My gut feeling is that until the Montana legislature meets and addresses this issue, insurance companies will either limit their exposure based upon the number of vehicles owned so as not to exceed a specified aggregate limit or they will not write UM/UIM at all. The jury's out (no pun intended) on the effects of this ruling but until there is a definitive resolution, the advice from the curmudgeon-in-chief is to reject UM/UIM altogether or if you are a small

operator, only accept minimum limits.

Having said that the next logical question is why should I carry UM at all?

And the answer is, I don't know!

The true answer lies in the law of each state. Some states require UM others do not; some states grant the option of rejecting UM or accepting various limits. The key is to find out what's mandatory within your state and wherever possible, reject UM for commercial auto; if UM is mandatory, always opt for the minimum limits.

So until next time, this is the curmudgeon-in-chief reminding you that while we all have to carry insurance, we don't have to like it.