April 21, 2004

To: Economic Affairs Interim Committee
From: Bart Campbell, staff attorney
Re: State Supreme Court decision permitting stacking of multiple policies providing
underinsured motorist coverage.

Dear Committee Members:

Our state Supreme Court in Hardy v. Progressive Specialty Insurance Co., 2003 MT 85, 315
Mont. 107 (2003), held that Hardy was entitled to recover $150,000 by stacking three $50,000
underinsured motorist coverages for which he had paid three separate premiums. The Court
stated that section 33-23-203, MCA (specifically 33-23-203(1)(c)), is not rationally related to the
stated objective of maintaining affordable insurance in Montana nor any other "permissible
legislative objective" and therefore constitutes an arbitrary and capricious action.

In light of the Hardy decision, the committee may want to consider proposing legislation to
make section 33-23-203, MCA, conform to the Supreme Court's holding that a portion of the
statute's language is unconstitutional. I am enclosing two potential bill drafts that address the
Court's decision. The first, LCxxxx, deletes the language the Court held was unconstitutional.
The second bill draft, LCyyyy, adds language that clarifies that stacking is allowed if separate
premiums are charged for uninsured motorist coverage.

At this point in time, since no bill draft is on the table, this office has received no input from the
State Auditor's office, the insurance industry, or consumer groups as to what might be the best
approach to dealing with the Hardy decision. However, it is likely that if the committee decides
to request a bill draft addressing this issue that the matter will be fully debated during the 2005
session.

Bart Campbell
Staff Attorney