
ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

UM/UIM: What's your agency position?

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Consider the fact that a 2015 study, the most recent year for which data was available, indicated that 1 of every 8 cars on the road is not insured. That's correct – 13% of drivers nationwide are driving without coverage. In some states, that number is 1 in 5. This is despite the fact that in virtually all states, with possibly one or two exceptions, drivers are required to maintain some type of auto insurance. In that 2015 study, this correlated to 29.7 million uninsured people.

What does this mean? If you or one of your clients is involved in an accident, there is a 1 in 8 chance that the other driver does not have insurance. Without the proper insurance, this can result in your customer paying for his or her own injuries or vehicle's damages – or you paying if you are involved in such an accident. While going to court is an option, there is a better way which involves using one's own automobile policy and the uninsured motorist coverage portion.

The more common types of protection are:

Uninsured Motorist (UM) Insurance — This coverage will pay the medical bills (for the driver and passengers) if one is involved in an accident with an uninsured at-fault motorist. UM insurance will reimburse for lost wages and also provide coverage if one is hit as a pedestrian by an uninsured driver or is the victim of a hit-and-run accident.

Underinsured Motorist (UIM) Protection — This coverage applies when the at-fault driver has insufficient insurance to fully compensate the other party. It is generally defined as anyone who is at-fault and has bodily injury liability limits that are less than the UIM limits of the party not at fault, and the limits are not enough to cover the losses of those injured.

With the significant potential that your agency could have a client involved in an accident with someone that either does not have insurance or does not have sufficient insurance, how is your agency handling this important issue?

It should be clearly understood that this is, as noted, an important issue. The agency should ensure that the staff is educated on the topic, an official position is taken, and the appropriate procedures are developed. Without that education and established procedures, the following actual E&O claim could happen in any agency.

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The underlying claim involved a drunk driver who struck the rear of the agency customer's vehicle, injuring the husband and wife who were in the front seats, and killing the daughter in the back seat. The insurance settlement from the at-fault party was insufficient and the plaintiff (agency client) brought legal action against the agency they were insured with. They took the position that with respect to their own coverage, if the UIM limits are lower than the BI limits, the agency owed a duty to explain the coverage afforded by UIM and the agency was required to secure a rejection in writing of this coverage if the UIM limits were less than the BI limits. The client had recently raised their limits to \$500,000, but there was apparently no discussion of the UIM issue. In fact, it appears the agency did not have a specific procedure addressing UIM coverage in relation to BI coverage, and thus, there was no signed rejection of coverage required or completed.

There are many lessons to be learned from this claim:

- **Undertake an initiative to educate your clients and prospects on the value and purpose of UM/UIM coverage.** This education could involve a newsletter, blog, or some type of social media platform. If you would like an actual claim to help make the point, one of your carriers can possibly provide that. On those occasions where you are personally meeting with the client, ensure that this topic gets more than just a cursory overview and mention. It would be prudent to see if your agency system can identify those clients who have UM/UIM limits less than their BI limits, so you can send them a letter encouraging them to consider increasing the UM/UIM limit.
- **The agency should have had a stated procedure that the UM/UIM limits should be equal to the BI/PD limits.** Some agents may contend that this coverage is expensive and it is likely the client is not going to buy it. The appropriate response to that line of thinking is "this is not the agency's decision to make."
- **It is always highly suggested to provide the client with limit options.** When an agency does that, it forces the client to choose which option they want.
- **In many states, there is a requirement the client "officially" rejects the higher limits through a carrier rejection form.** Agencies should ensure they are aware of what the requirement is in their states. In addition, the rejection form typically needs to be signed by all insureds, not just the first Named Insured.
- **If your carriers allow the umbrella to provide excess coverage over the underlying UM/UIM coverage limits and the client is carrying the proper underlying limits,** advise the client of this option.

UM/UIM is a serious issue which agencies should be sure to treat as such.

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