

Uninsured and Underinsured Motorist Claims: Leveraging Insurance Stacking

Maximizing Settlement Awards in Auto Accident Cases

THURSDAY, DECEMBER 5, 2013

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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UNINSURED AND UNDERINSURED MOTORIST CLAIMS



LEVERAGING INSURANCE STACKING TO MAXIMIZE RECOVERY

Presented By:
Sidney Wheelan

WHAT IS STACKING?



“Stacking” is an insured’s ability to obtain multiple insurance coverage benefits for an injury:

- **either from more than one policy, as where the insured has two or more separate vehicles under separate policies; or**
- **from multiple coverages provided for within a single policy, as when an insured has one policy which covers more than one vehicle.**

ESTABLISHING THE RIGHT TO STACK



STATE STATUTES

Does your state's statutes regarding Uninsured Motorist or Underinsured Motorist Coverage reflect a legislative purpose which would be furthered by permitting stacking in the circumstances presented?

ESTABLISHING THE RIGHT TO STACK



SEPARATE PREMIUMS

Where separate premiums have been charged, whether in separate policies or on the basis of multiple vehicles under a single policy, the plaintiff may be able to successfully argue that stacking is necessary in order to provide the coverage corresponding to the premium and to prevent illusory coverage.

ESTABLISHING THE RIGHT TO STACK



REASONABLE EXPECTATIONS

Stacking may be permitted if it is within the reasonable expectations of the person purchasing the coverage

*Courts often construe the meaning of the words as would a ***reasonable person in the position of the insured.***

ESTABLISHING THE RIGHT TO STACK



CLASSES OF INSURED

Distinctions between classes of insureds, which may affect the plaintiff's right to stack, may be found in the statutes, in the automobile insurance policy or as a matter of common law.

- **Class I:** Usually the named insured & family members
- **Class II:** Not identified as insureds specifically, but covered only if they occupy an insured vehicle.

ESTABLISHING THE RIGHT TO STACK



SINGLE POLICY OR MULTIPLE POLICIES

Distinctions are sometimes made between stacking of multiple coverages provided by a single policy (intra-policy stacking) and stacking of separate coverages provided by separate policies (inter-policy stacking)

ESTABLISHING THE RIGHT TO STACK



SAME INSURER OR DIFFERENT INSURER

Many automobile insurance policies contain “other insurance” clauses which may operate to preclude or limit stacking of policies issued by different insurers.

ESTABLISHING THE RIGHT TO STACK



UNINSURED OR UNDERINSURED

In some jurisdictions, the stacking of uninsured motorist coverage is governed by different rules than the stacking of underinsured motorist coverage

*Ie. Insurers may be required by statute to offer UM coverage and may not utilize restrictions on stacking to avoid stacking but insurers are not required to issue UIM coverage and thus may use policy language to try to limit stacking

ESTABLISHING THE RIGHT TO STACK



AMBIGUITY

Where there is ambiguity, there is a potential for stacking multiple coverages

- Courts determine ambiguity from the position of a reasonable lay person in the position of the insured
- Policies must be interpreted ***not in isolation but as a whole***
- Policies may be ambiguous if they promise something at one point and take it away at another

DEFENSES TO STACKING



DEFINITION OF UNINSURED OR UNDERINSURED MOTORIST IS NOT MET

- Definition may be tied to whether limits of plaintiff's policy are more than the limits of the underinsured driver rather than whether plaintiff's damages are more than the coverage for the other driver
- Some states allow stacking of coverages first, using the stacked amount to determine whether the definition of underinsured motorist is met

******Even if definition is not met, it may not be the determining factor in establishing coverage******

DEFENSES TO STACKING



LIMIT OF LIABILITY CLAUSES

The limit of liability shown in the Declarations for each person for UIM coverage is our maximum limit of liability for all damages for loss of services or death arising out of “bodily injury” sustained by any one person in any one accident. . . .

The limit of liability shall be reduced by all sums paid because of bodily injury or by or on behalf of persons or organizations who may be legally responsible.

DEFENSES TO STACKING



ANTI-STACKING CLAUSES

If more than one policy we issued to you covers a claim, this policy covers only the proportion of our ultimate liability that its limits bear to the total limits of all our policies that cover the claim . Our total liability under all our policies will not exceed the highest limit of any one policy

DEFENSES TO STACKING



ANTI-STACKING LANGUAGE, cont.

Or more specifically:

If more than one vehicle is insured under this policy or if more than one policy issued to the insured applies to the same accident, the limits applicable to Underinsured Motorist Coverage ***may not be stacked.***

DEFENSES TO STACKING



OTHER INSURANCE CLAUSES

If there is other applicable underinsured motorist insurance available under one or more policies or provisions of coverage . . . :

Any underinsured motorist insurance we provide with respect to a vehicle you do not own shall be excess over any collectible underinsured motorist insurance.

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



LOOK FOR STACKING OPPORTUNITIES

- Serious injuries
- Cases arising out of the use of a non-owned automobile
- Injuries to unrelated passengers

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



UNDERSTAND THE DETAILS OF YOUR CLIENT'S ACCIDENT

- Who was driving the vehicle?
- Who were the passengers?
- Where were they sitting in the vehicle?
- How did the collision happen?

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



GATHER THE INFORMATION

- Obtain **all** of your client's insurance policies
- Ask about any other vehicles your client may own
- Ask about ownership of the vehicle involved in the collision
- Ask about the relationship of any of the passengers in the vehicle
- Ask whether anyone was on company business at the time of the collision

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



READ THE INSURANCE POLICIES CAREFULLY

- **Begin with the Declaration Page**
 - What types of coverage?
 - Limits of coverage
 - How many vehicles are insured?
 - Who are the named insureds

PRACTICAL TIPS FOR MAXIMIZING COVERAGE



READ THE INSURANCE POLICIES CAREFULLY

- Read the definitions carefully
 - Definition of Underinsured or Uninsured Motorist
 - Definition of “you”
 - Definition of “insured”

PRACTICAL TIPS FOR MAXIMIZING COVERAGE



LOOK FOR AMBIGUITY IN THE POLICY LANGUAGE

- Remember: Ambiguities are construed in favor of the insureds

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



AMBIGUITY IS OFTEN FOUND WITHIN THE “OTHER INSURANCE” CLAUSE

- Remember that policies must be read “as a whole”
- If language indicated that coverage is excess in one clause, but not in another, it may be considered ambiguous

PRACTICAL TIPS FOR MAXIMIZING RECOVERY



CASES INVOLVING STACKING ARE ALWAYS FACT DEPENDANT AND DEPENDANT UPON POLICY LANGUAGE

- Expect to see many more cases litigated as more plaintiffs push for stacked limits and insurance companies respond by trying to tighten policy language

LEVERAGING INSURANCE STACKING



THANK YOU

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Presented by:

Charles M. McDaniel, Jr.

December 5, 2013

UNINSURED AND UNDERINSURED MOTORIST CLAIMS

LEVERAGING INSURANCE
STACKING TO MAXIMIZE
RECOVERY

ANALYSIS THROUGH
RECENT CASE LAW

Three Fundamental Principles

Three Fundamental Principles

- Read and understand the terms and conditions of the applicable policies;

Three Fundamental Principles

- Know the applicable statutory scheme, and

Three Fundamental Principles

- Learn the facts of the case

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Uninsured Motorist Coverage

Example of Stacking and Priority of Coverage Determination

Uninsured Motorist Coverage

Tests for Determining Priority of Coverage

- **receipt of premium test;**

Uninsured Motorist Coverage

Tests for Determining Priority of Coverage

- **more closely identified
with;**

Uninsured Motorist Coverage

Tests for Determining Priority of Coverage

- **circumstances of the injury.**

Uninsured Motorist Coverage

Tests for Determining Priority of Coverage

- **receipt of premium test;**
- **more closely identified with;**
- **circumstances of the injury.**

Maximize UM/UIM Coverage

Recent Court Decisions

Maximize UM/UIM Coverage

*Munroe v. Continental
Western Insurance
Company*, -- F. 3d --, 2013
WL 5942625 C.A. 8 (MO)
Nov. 7, 2013

Maximize UM/UIM Coverage

Corrigan v. Progressive Insurance Company, -- S.W. --, 2013 WL 5421978 (E.D. Mo.)

Sept. 10, 2013

Maximize UM/UIM Coverage

*Ratnayake v. Farmers
Insurance Exchange*, 2013
WL 5603583 (D. Nev.)
Oct. 11, 2013

Maximize UM/UIM Coverage

Horace Mann Insurance Company v. Chase, 121 So. 3d 1191, 38 Fla. L. Weekly D2064
Sept. 26, 2013

Maximize UM/UIM Coverage

*State Farm Mutual Automobile
Insurance Company v. McFadden,*
2012 IL App (2d) 120272, 979 N.E.2d
551, 365 Ill. Dec. 947
Oct. 31, 2012

Maximize UM/UIM Coverage

*Westveer v. Garrison Property
& Casualty Insurance Company,*

526 Fed.Appx. 224, 2013 WL
1174014 (C.A.4 (Va.))

March 22, 2013

Maximize UM/UIM Coverage

*Saladin v. Progressive Northern
Insurance Company*

349 Wis.2d 526, 2013 WL
2401033 (Wis.App.)

June 4, 2013

Maximize UM/UIM Coverage

*Westra v. State Farm Mutual
Automobile Insurance Company*
349 Wis.2d 409, 835 N.W.2d 280

June 18, 2013

Uninsured Motorist Coverage

Hall v. Allstate Insurance Company
407 S.W. 3d 603 (Dec. 11, 2012)

Uninsured Motorist Coverage

*Fussell v. AMCO Insurance
Company*
2013 WL 127675 (E.D. Cal.)

Jan. 9, 2013

Thank You

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