

# **RHODE ISLAND UNINSURED/UNDERINSURED MOTORIST LAW**

By:

John B. Reilly, Esquire

© 2008

JOHN REILLY & ASSOCIATES

100 North Main Street, 4<sup>th</sup> Floor

Providence, Rhode Island 02903

(401) 272-2800

FAX: (401) 272-2811

Email: [jreilly@lawyers-online.us](mailto:jreilly@lawyers-online.us)

## **INTRODUCTION AND SCOPE**

This paper is updated from presentations made to several insurance companies by John B. Reilly and is intended to provide an updated outline which will identify and explain certain principles and procedures of uninsured and underinsured motorist law in the State of Rhode Island. Mr. Reilly and his firm are now sharing this information with and representing the public. All readers are cautioned, however, that both legislation and judicial interpretation continue to evolve, so that with the passage of time it is important to update the material. There are also related areas of the law which are not included in this overview.

## **STATUTORY PROVISIONS**

The legislation which defines uninsured motorist law in the state of Rhode Island is found at § 27-7--2.1 of the current General Laws of Rhode Island.

As have so many states, Rhode Island has prescribed the minimal required coverage limits for uninsured (“UM”) and underinsured (“UIM”) protection by reference to and requiring that minimal limits be the same as those established by the state’s financial responsibility law. General Laws sections 31-31-7 and 31-32-24 establish these thresholds.

### **I. UNINSURED MOTORIST (“UM”) COVERAGE**

#### **A. Identifying and Defining the Uninsured Motorist:**

Generally, it is considered that at fault motorists are uninsured when they have:

- (1) No automobile liability insurance coverage;
- (2) Automobile liability coverage in an amount which is less than amount required by the financial responsibility law of the state.
- (3) No coverage of their own and are using someone else’s vehicle without permission.  
See Fielder v. Amica Mut. Ins. Co., 119 R.I. 416 (1977);
- (4) An insolvent automobile liability insurance carrier;
- (5) An automobile liability insurer which has declined to give or provide coverage for the accident (regardless of whether that denial was right or wrong, proper or improper); or
- (6) In an accident involving a hit-and-run or miss-and-run vehicle.  
See Pin Pin N. Su v. Kemper Ins. Co., 431 A. 2d 416 (R.I. 1981).

## **II. UNDERINSURED MOTORIST (“UIM”) COVERAGE**

A. Statutory Definition: Since 1987, § 27-7-2.1 has provided that an underinsured motorist is defined as the owner or operator of a motor vehicle having automobile liability coverage in an amount *less than the “limits or damages” that persons insured for this type coverage are legally entitled to recover because of bodily injury.*

B. Judicial Interpretation: The Rhode Island Supreme Court has ruled that to satisfy the statutory definition necessary to invoke UIM (or UM) coverage, the insured must “present proof of damages” so as to demonstrate that the other, at fault party’s automobile liability limit is “less than the actual damages sustained”. General Acc. Ins. Co. of America v. Cuddy, 658 A. 2d 13 (R.I. 1995). Furthermore, in Altieri v. Liberty Mut. Ins. Co., 697 A. 2d 1104 (R.I., 1997), a \$45,000 payment by the City of Warwick was added to payments under its policy and the policy of another person, resulting in Warwick’s payment being considered part of the other person’s “coverage” for this purpose. In other words, moneys from any and all sources are considered when determining whether or not the coverage available to at fault parties is less than the actual damages suffered.

C. Practical Application: In Cuddy, the insurer had \$500,000.00 limits and was told by its insured’s attorney that the UIM claim(s) could be settled for \$80,000.00. The tortfeasor had limits of \$300,000.00 with Nationwide. The insured wanted to utilize UIM arbitration and thus potentially avoid spending several years litigating the matter with Nationwide’s insured. General Accident chose to seek declaratory relief so as to avoid arbitration and prevailed since by his own admission the insured’s claim did not exceed the UIM limits of his policy with General Accident. But this was an unusual case as actual damages sustained are often unclear when compared to policy coverage available.

### **III. ADDITIONAL COVERAGE ISSUES**

A. Effect of “Stacking”: The automobile liability policy limits of at fault motorists may be “stacked” for the purpose of determining underinsured thresholds. Pennsylvania General Ins. Co. v. Cantley, 615 A.2d 477 (R.I. 1992). Medical payments coverages cannot be used in such calculations. Balian v. Allstate Ins. Co., 610 A. 2d 546 ( R.I. 1992).

B. Excess or Umbrella Policies: These, too, must be used in assessing the total amount of liability coverage of the at fault party or parties.

C. Subrogation Rights of Company: The contractual ten (10) year contract period or Statute of Limitations is applicable to UM and UIM coverage in Rhode Island, but does not serve to extend the time in which subrogation rights must be asserted for bodily injury. Subrogation in this context refers to the right of the insurance company to seek to recoup or recover any damages it pays under its policy from the responsible party or parties. Actions for subrogation involving UM and UIM claims must be commenced within three (3) years of the accident date. Pennsylvania General Ins. Co. v. Becton, 475 A 2.d 1032 (R.I. 1984). Subrogation actions cannot generally be begun until payment has been made, so that to preserve its rights in those cases which cannot seemingly be resolved within the appropriate time to begin subrogation activity, an insurer may direct its insured to commence an action against the responsible party (sometimes referred to as a “tortfeasor”). Since this cannot be done by the insurer until it has paid the insured’s claim, the company is required to reimburse the insured and his/her attorney for their costs in filing such litigation. Aetna Cas. & Sur. Co. v. Sullivan, 607 A. 2d 879 (R.I. 1992); Pennsylvania Ins. Co. v. Morris, 610 A.2d 546 (R.I. 1992).

D. Prejudgment Interest: Interest may be an important consideration when considering settlement, but cannot be considered as “damages” for the purpose of

determining whether an appropriate UM or UIM claim is being made. Balian v. Allstate Ins. Co., 610 A.2d 546 (R.I. 1992).

E. Consent to Settle: Rhode Island has required compliance with “consent to settle” clauses. This means that you must obtain the insurance company’s permission to settle before accepting payment from the at fault party (tortfeasor) and if you do not do so, you may be unable to obtain any UM or UIM benefits. Stanko v. Hartford Acc. and Indemnity Co., 121 R.I. 331, 397 A.2d 1325 (1979).

F. Liquidation of Claims: Section 27-7-2.1 provides that the release of the at fault tortfeasor with consent of the insurer will not bar a UIM claim regardless of whether the claim has been “liquidated.” The corollary of this is that if there has been settlement without the company’s knowledge or consent, an insurer may raise any policy defense of the type envisioned by the Stanko court and contend that the insured’s claims have been satisfied in full (“liquidated”). Cf., Gosselin v. Automobile Club Ins. Co., 574 A. 2d 1243 (R.I. 1990).

#### **IV. LIMITATION OF ACTIONS**

A. Statute of Limitations: In Rhode Island, contracts such as insurance policies are subject to a ten (10) year Statute of Limitations. That period may be extended if the insured claimant was a minor or under some other legal disability at the time of the occurrence. See § 9-1-13 of the General Laws of Rhode Island and Lessard v. New Hampshire Ins. Co., 106 R.I. 275, 258 A.2d 793 (1969).

#### **V. INTER- AND INTRA-POLICY STACKING**

A. Definitions: The following definitions are useful in understanding these concepts:

- (1) “Inter-policy” Stacking: Combining or aggregating coverages from more than one policy. (Example: more than one policy held by members of the same household.)
- (2) “Intra-policy” Stacking: the aggregation of limits for vehicles covered by a single policy. (Example: several cars listed on the same policy.)

B. Statutory Provisions: Section 27-7-2.1 provides that whenever an insured has *paid two (2) or more separate premiums* for UM or UIM coverage *in a single policy*, (intra-policy) *stacking will be allowed, regardless of policy language to the contrary*. A single premium charged in a single policy for multiple vehicles does not allow stacking rights. DePalma v. Metropolitan, 615 A. 2d 1019 (R.I. 1992). (For example, assuming that there are UM and UIM benefits of \$50,000 listed on the policy declarations and you have two vehicles on that policy, if separate premiums are listed for each car, the UM or UIM coverage is doubled to \$100,000, but if there is only one premium for the two cars, only \$50,000 is available.)

C. Judicial Interpretation: In addition to the intrapolicy (single policy) stacking allowed by statute, the inter-policy variety of aggregating coverage among several policies is also allowed by judicial decision, depending on policy language. Taft v. Cerwonka, 433 A.2d 215 (R.I. 1981).

D. Fleet Stacking: When separate premiums have been paid for “fleet vehicles,” only the person (an individual) who actually paid the premiums may stack such coverages. American Univ. Ins. Co. v. Russell, 490 A.2d 60 (R.I. 1985).

## VI. EXCLUSIONS AND LIMITATIONS

A. Other Insurance Clauses--Pro Rata Liability: Each insurance policy which would provide coverage to an insured if it were the only applicable policy is to be shared on a pro-rata basis, despite the existence of conflicting other-insurance clauses. If companies continue to “exchange legal gunfire over the fine print” in these clauses, the Supreme Court of Rhode Island has said that “we will still abide here, with our sword poised and ever at the ready to cut the Knot again”. Hindson v. Allstate, - A.2d- (R.I., 1997).

B. Vehicles Owned But Not Scheduled on Policy: Policy exclusions on coverage when using, occupying, or if struck by an owned vehicle which is not scheduled (listed) on the policy are valid and enforceable. Dellagrotta v. Liberty Mut. Ins. Co., 639 A.2d 980 (R.I. 1994); Carlton v. Worcester Ins. Co., 923 F. 2d (1st Cir. 1991).

C. Off Road Vehicles. It has been judicially determined that a snowmobile is a “vehicle” which can be used on public roadways. Thus an insured struck by an uninsured snowmobile is able to maintain a UM claim. Sentry Ins. Co. v. Castillo, 574 A.2d 138 (R.I. 1990).

On the other hand, a golf cart was not found to have the same reasonably-anticipated public roadway use. An insured using a golf cart may not have liability coverage for such unscheduled vehicle. By implication, a motorist struck by a golf cart cannot maintain a UM or UIM claim, either. Jennings v. Midville Golf Club, Inc., 636 A.2d 707 (R.I. 1994).

D. Defining “Use” and “Occupancy” of a Motor Vehicle: In a 1990 decision, the Rhode Island Supreme Court reviewed a case in which following an automobile accident, an insured was shot while standing near a policeman investigating the situation. It was said that this incident arose from the “use” of an automobile since it was a vehicular accident which caused the insured to be present at such an untimely moment. This “constructive use” theory was expressed in General Acc. Ins. Co. of America v. Olivier, 574 A.2d 1240 (R.I. 1990).

E. Residency Requirements: Rhode Island courts have considered the definition of who is a “resident” of an insured’s household for automobile policy purposes. It has concluded that a “totality of circumstances” approach should be utilized on a case-by-case basis. Aetna Cas. & Sur. Co. v Carrera, 577 A.2d 980 (R.I. 1990). It has also concluded that a person may have more than one residence. Barricelli v. American Univ. Ins. Co., 583 A.2d 1270 (R.I. 1990).

In another decision it was held that when an insurer listed the names of all household drivers on a renewal certificate solely for underwriting purposes, it created an ambiguity. Since the typical insured would “likely believe” that persons listed as named drivers were “covered insureds”, the sibling in question was found to be entitled to UM coverage. Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A. 2d 18 (R.I. 1995).

F. Credits or Set-Offs: Many Rhode Island decisions have noted that UM and UIM coverage was created to protect insureds for their actual damages. Any policy provision which tends to reduce UM or UIM coverage through the application of credits or set-offs may be void as against public policy. Cf., Aldcroft v. Fidelity & Cas. Co. of New York, 106 RI 311, 259 A.2d 408 (1969). (Example: If an insurer has made a \$5,000 payment under medical payments policy provision and has UM or UIM coverage, it can only claim an offset if the insured’s damages are less than the amount of coverage held by the insured; otherwise, if the insured’s damages exceed the UM or UIM coverage, there can be no set-off.)

An exclusion which denied UM/UIM coverage to an insured who had already obtained liability benefits from the same policy was valid and did not offend public policy. Thus an insured passenger who is injured through the negligence of another insured operator cannot obtain UM/UIM benefits after receiving BI payments under the same policy. Amica Mut. Ins. Co. v. Streicker, 583 A. 2d 550 (R.I. 1990). (See also, Union Insurance Co. v. Dubuc, A. 2d (R.I. 1997).

Where a state police officer received salary (wage benefits) following an injury received while in the performance of his or her duties, it was held that this constituted disability benefits (or those provided pursuant to a similar law § 45-19-1 of the General Laws of Rhode Island, entitled “Relief of Injured and Deceased Fire Fighters and Policy Officers”). Therefore, the amount of such benefit payments could be deducted from a UM or UIM award to the extent that they created a double recovery. Sugrue v. Amica Mut. Ins. Co., 588 A. 2d 125 (R.I. 1991)

Deductions of this type are only to be taken from total damages, not policy face value/limits. Poulos v. Aetna Cas. & Sur. Co., 119 R.I. 409, 379 A.2d 362 (1997); Casco Indemnity Co. v. R.I. Interlocal Risk Management, 113 F. 3d 2 (1st Cir., 1977).

G. Medical Payments: A medical payments set-off provision was upheld so long as it did not affect minimum statutory UM/UIM limit requirements in DiTata v. Aetna Cas. and Sur. Co., 542 A 2d 245 (R.I. 1988). [This decision was based upon a prior version of § 27-7-2.1 and in a footnote left open the question of the potential effect of the current “separate premium” language. However, a previous decision disallowed “stacking” of medical payments coverage itself, despite payment of separate premiums. Lemoi v. Nationwide Mut. Ins. Co., 453 A. 2d 758 (R.I. 1982) and § 27-7-2.1 does not address medical payments coverage.]

H. Consortium Claims: Consortium claims are recognized in Rhode Island. These claims relate to things such as the loss of services, society, and/or companionship suffered by the spouse and/or children of an injured party or the parent(s) of an insured child or children under the age of majority. In Rhode Island, consortium claims are said to be derivative in nature; thus they are subject to the per person limit applicable to the injured spouse and not any per accident benefit. Hodor v. United Services Auto Ass'n., 637 A. 2d 357 (R.I. 1994). (For example., with UM or UIM limits of 50,000/100,000, a husband claiming a loss of his injured wife's consortium can only make claim against the same \$50,000 available to her, and then only if her settlement, award, or judgment has not exhausted such \$50,000.)

## **VII. MISCELLANEOUS**

A. Interest: Arbitrators and courts will add pre-judgment interest to UM and UIM awards and verdicts as a matter of course. Since statutory interest is currently twelve percent (12%) per annum, attention to this is not trifling consideration or detail. In an *underinsured* motorist (UIM) setting, prejudgment interest is applied on the full, or gross, award from the date of the accident *through the time that the injured insured received payment from the responsible party* and thereafter prejudgment interest is applied on the gross award *less payment received* to the time that any excess award (i.e., an award exceeding the payment from the responsible party) is paid. See *Metropolitan Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I., 2006).

B. Scope of Arbitration: In the absence of agreement between the parties, only those matters described in the arbitration provisions of a policy are to be decided by arbitrators. Accordingly, awards discussing matters such as coverage are exclusively reserved to the courts. Bush v. Nationwide Mut. Ins. Co., 448 A.2d 782 (R.I. 1982); Balian v. Allstate Ins. Co., 610 A. 2d 546 (R.I. 1992). But see Peerless Ins. Co. v. Nault (decided 10/20/97), holding that application of an affirmative defense (there, the “Firefighter’s Rule”) was for courts, not arbitrators.

C. Medical Examinations: It has been held that the failure of an insured to submit to a medical examination by a particular doctor selected by the company will not result in a forfeiture of UM coverage unless the insurer can demonstrate this to be a breach of a condition precedent (and which perhaps was prejudicial as well). Colonial Penn. Ins. Co. v. Mendozzi, 488 A. 2d 734 (R.I. 1985).

D. Accidents in Other States: Given the size of Rhode Island and the mobility of its citizens, it is not at all unusual to encounter claims arising from accidents with uninsured motorists in other states (particularly Connecticut and Massachusetts). Under a UM policy providing that an insurer would pay all sums that the insured was “legally entitled to recover as damages from the owner or operator of an uninsured vehicle”, Rhode Island insureds were precluded from recovering non-economic losses in a New York accident, since they would not have been entitled to such damages against the resident tortfeasor. Berardi, U.S.A., Ltd. v. Employers Mut. Cas. Co., 526 A. 2d 515 (R.I. 1987).

In another decision it was held that Massachusetts law governed whether Rhode Island residents injured in an accident in Massachusetts (with a motorist residing in that state) would be entitled to pain and suffering recoveries. Since their medical bills did not equal or exceed the Massachusetts no-fault threshold they were denied UM coverage for such “pain and suffering”. In other words, there was no tortfeasor from whom the insured was “legally entitled to recover”. Blais v. Aetna Cas. & Sur. Co., 526 A. 2d 854 (R.I. 1987).

The result(s) in Berardi and Blais might well have been different had the out-of-state accident involved two (2) or more Rhode Island vehicles whose trips began and were intended to end in Rhode Island. Under such circumstances, the choice or conflict of laws procedure previously used by the Supreme Court seems to give more weight to Rhode Island law, and says that this state has a greater interest in seeing its laws applied to its residents than do other jurisdictions. Woodward v. Stewart, 104 R.I. 290, 243 A. 2d 917 (1968).

E. Estoppel

Estoppel is a legal fiction in which one party intentionally induces prejudicial reliance on the part of another. To successfully argue estoppel, an insured must show that the insurance company, by some affirmative act or representation, intentionally induced the insured to do or not to do something in detrimental reliance on the conduct or representation. Raymond v. B.I.F. Industries, Inc., 112 R.I. 192, 308 A.2d 820 (1973).

For example, in a 1996 decision, it was held that the previous payment of UM benefits to an employee's father would not "estop" an insurer from later denying UM benefits to the employee. Such prior payments could have been made "for any number of reasons, including mistake". Martinelli v. Travelers Ins. Companies, 687 A. 2d 443 (R.I., 1996).

A FINAL NOTE: AS IS THE CASE WITH ALL PAPERS AND DISCUSSIONS OF THIS TYPE AND THOSE FOUND ON THIS BLOG OR WEB PAGE, THE FOREGOING IS NOT INTENDED TO PROVIDE LEGAL ADVICE. EACH CASE HAS ITS OWN UNIQUE FACTS AND THE LAW IS CONSTANTLY CHANGING AND BEING UPDATED. THEREFORE, THIS IS ONLY A GENERAL GUIDE ABOUT THIS TOPIC AND YOU SHOULD CONSULT AN ATTORNEY FOR ADVICE ABOUT YOUR ACTUAL OR PERSONAL SITUATION AND NOT RELY ON THIS PAPER AS A SUBSTITUTE FOR SUCH LEGAL ADVICE.

PLEASE CONTACT JOHN REILLY & ASSOCIATES, 100 North Main Street, 4<sup>th</sup> Floor, Providence, Rhode Island 02903 (401-272-1800 or [jreilly@lawyers-online.us](mailto:jreilly@lawyers-online.us)) FOR ANSWERS TO SPECIFIC QUESTIONS OR HELP WITH YOUR UM/UIM CASE.

JOHN B. REILLY © 2009

(Prejudgment interest notes revised, June 2009)