

Texas UM/UIM Coverage

SUGGESTED PROCEDURES IN THE HANDLING OF UM/UIM CLAIMS	<p>1. Get the Policy or Policies</p> <p>Whenever possible, it is always a good idea to obtain a copy of the actual policy at issue. The Texas Department of Insurance makes changes in endorsement forms and policy language from time to time, and those changes may or may not be accurately reflected by specimen policies available to the claims person. Hopefully, information regarding policy forms will be available from the underwriting department.</p> <p>If you cannot get the actual policy involved, at least get a specimen policy. The underwriting department or the Texas Department of Insurance has specimen policies for all forms approved for sale and delivery in Texas by admitted carriers. REMEMBER, the provisions of policies not issued in Texas may vary tremendously from the policy forms approved by the State Board of Insurance of Texas.</p> <p>CAUTION!!! Always compare the policy language with the language of the relevant statute, (<i>e.g.</i>, liability, UM, or PIP). The Texas Department of Insurance has approved forms which Texas courts have held violate these statutes.</p>
	<p>2. Get the Facts</p> <p>From the first interview with the insured, you must attempt to get all the facts which may relate to the coverage involved in the claim. The importance of prompt investigation cannot be overstated. Memories are fresh and information is available that may disappear with the passage of time. Texas Insurance Code article 21.55 generally requires the prompt acknowledgment, investigation, handling, and payment of claims.</p> <p>Admitted insurers, within 15 days (30 days for surplus lines insurers) from receipt of "notice of a claim," must: (1) acknowledge receipt of the claim; (2) begin to investigate any claim; and (3) request from the claimant all items, statements, and forms the insurance company believes at the time will be needed from the claimant. Under Texas Insurance Code article 21.55, notice of a claim "means any notification in writing to an insurer, by a claimant, that reasonably apprises the insurer of the facts relating to the claim."</p>
	<p>3. Notify</p> <p>Once your investigation is completed, notify the claimant of your decision. Within fifteen days of receiving all required items, statements, and forms, the insurer must: (1) accept the claim; (2) reject the claim; or (3) tell the insured why it can do neither at that time. If the insurer rejects the claim, the insurer must specify the reason or reasons for its rejection. If the insurer chooses the third option, it must accept or reject the claim within 45 days of giving that notice. If the insurer delays payment for more than 60 days after it has "all items, statements, and forms reasonably requested and required," it is liable for an 18% statutory penalty and attorney's fees, in addition to other relief.</p> <p>If the insurer tells the claimant that it will pay, it must do so within 5 days of agreeing to pay. If the claimant must perform some act as a condition to payment, the payment must be made within 5 days after the act is performed.</p>
	<p>4. Document</p> <p>Record your efforts to resolve the claim. If you feel that the claimant has acted improperly or has failed to provide information, notify him in writing. Keep these written communications simple and direct. Be certain to use language which would not embarrass you in front of a jury.</p>
	<p>5. Maintain Momentum</p> <p>Try to answer all inquiries immediately. Your doing so will contrast with the delays caused by the claimant. It is very difficult for the claimant to complain of delay on the part of the insurer if he or his attorney has obviously engaged in delay.</p>

Nature of Coverage

Texas law requires that personal auto policies include Uninsured/Underinsured Motorist Coverage unless rejected in writing by the insured. A written rejection of UM/UIM coverage is effective, even as to renewal policies, until the insured requests the coverage in writing. No special language is required for rejection of UM/UIM coverage. But, if the insurance carrier cannot produce a written rejection, the UM/UIM coverage is in force even if the insured has orally rejected the coverage and the insurance carrier has not charged a premium for it.

The minimum UM/UIM coverage is \$20,000.00 for bodily injury or death to one person in any one accident and \$40,000.00 for bodily injury or death to two or more persons in any one accident, plus \$15,000.00 property damage coverage. A policyholder may purchase any additional amount of UM/UIM coverage desired as long as it does not exceed the liability coverage purchased by the policyholder under the same policy.

UM/UIM and PIP coverage are not required to be offered when an endorsement for hired and non-owned auto liability is added to a business's multi-peril insurance policy.

Application of Coverage

The UM/UIM coverage provided by a standard Texas Personal Auto Policy generally applies to four situations:

1. Absence of Liability Coverage - The most familiar situation involving uninsured (UM) coverage is where a driver responsible for an accident has no automobile liability insurance coverage. This includes situations where the driver never purchased insurance and where the insurance lapsed or was canceled.

2. The Hit and Run Driver - When the driver responsible for the accident leaves the scene and cannot be identified, the policyholder's UM coverage is triggered. For this coverage to apply, there must be actual physical contact between the motor vehicle owned or operated by such unknown person and the person or property of the insured. This requirement is satisfied if the hit-and-run vehicle hits another vehicle, which then hits the insured vehicle. However, UM coverage does not apply if cargo falls from the hit-and-run vehicle and hits the insured vehicle. Further, one Texas court has held that a trailer ramp that detaches from a trailer and strikes another vehicle is not considered a "trailer" under a UM policy, even though it was a component of the trailer moments before the impact.

3. Uncollectible Liability Coverage - Even though the driver responsible for an accident may have a valid policy of automobile liability insurance in effect at the time of the accident, he may be rendered an "uninsured motorist" if his insurance carrier denies coverage. UM coverage is also triggered when the responsible person's insurance carrier is insolvent and, consequently, unable to make payments.

4. Too Little Liability Coverage - Underinsured (UIM) coverage provides insurance for accidents involving a negligent motorist who is covered under an automobile liability policy, but the limits are too low to fully compensate for the injured party's actual damages. The insured is not required to exhaust the tortfeasor's insurance limits to make a UIM claim. However, the insurer is entitled to an offset for the full amount of the tortfeasor's policy limits.

Who is Covered?

In order to recover under a UM/UIM policy, a claimant must establish that he was either a named insured under the policy (or a family member covered by the policy) or that he was injured while occupying a vehicle covered by the policy. Also, the claimant must establish that the UM/UIM motorist was negligent. The standard of proof is the same as if the case were being brought against the UM/UIM motorist and, in many cases, that person will be joined as a party defendant in the same litigation.

1. "Named Insured" - Where a corporation's business auto policy does not list the UM/UIM claimant as a designated person, the claimant is not a "named insured" for purposes of coverage. This includes an employee of an insured corporation, regardless of whether he or she was acting in the course and scope of employment at the time of the auto accident.

2. "Occupying" - The standard form policy provides that an insured is any person "occupying a covered auto," and defines "occupying" as "in, upon, getting in, on, out, or off." This determination is generally a fact-dependent analysis for adjusters and the courts. For example, claimants have been held not "occupying" the insured vehicle for purposes of UM/UIM coverage when: standing outside a parked truck when struck by another vehicle; walking toward another vehicle from the covered vehicle when struck by a third vehicle; and, walking down a service road toward a telephone after the insured truck had a flat tire.

Burden of Proof

When the issue is whether the motor vehicle is uninsured, the insurer has the burden of proof. However, when the issue is whether the vehicle is underinsured, the burden of proof is on the claimant. Therefore, once the carrier shows that negligent motorist has some insurance, the burden of proof is on the insured to show that the negligent motorist is underinsured.

The Covered Vehicle Requirement

In order to recover under UM/UIM coverage, the claimant's injury or damage must "arise out of the ownership, maintenance or use" of the covered motor vehicle. Further, coverage is provided for a vehicle "temporarily used as a substitute" for an owned vehicle that is temporarily unusable due to mechanical problems.

"Legally Entitled to Recover"

Texas courts are generally in agreement that, until an insured establishes he/she is "legally entitled" to recover against a UM/UIM motorist, the insurer has no obligation to pay UM/UIM benefits. Generally, legal entitlement to recover means either: (1) a trial establishing the UM/UIM motorist's liability to the insured; or (2) a settlement between the insured and the UM/UIM motorist, approved by the UM/UIM carrier.