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### Exposing "Illusory" Underinsured Motorist Coverage

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# INSURANCE CONSUMER COUNSEL'S COLUMN

EXPOSING "ILLUSORY" UNDERINSURED MOTORIST COVERAGE

BY PROFESSOR GREG MUNRO

## Introduction

Plaintiff's counsel is likely familiar with the problem of "illusory" UIM coverage. The client, who has been severely injured by the negligence of an auto driver, presents in the office terrified by the mounting medical bills. Counsel is relieved to find that the tortfeasor has insurance, and the client prudently purchased Underinsured Motorist coverage. The Declarations page of the client's policy shows a separate UIM coverage limit for which the insured has been paying a premium. However, counsel's relief turns to frustration when he or she determines that, in spite of counsel's best efforts, under the terms of the UIM coverage or endorsement, no UIM benefit is go-

ing to be payable because the UIM limit doesn't exceed the amount the client will receive from the tortfeasor or tortfeasors. In another variation of this scenario, the client presents with \$25,000 UIM coverage, and, under the terms of the policy, counsel can find no situation in which any benefit would ever be payable!

The problem is caused by the policy's definition of Underinsured Motor Vehicle and, sometimes, by a companion "reducing clause." For our purposes, there are two very different definitions of Underinsured Motor Vehicle that are in wide use by automobile insurance carriers in Montana today. One, which I will call the "narrow"<sup>1</sup> definition most certainly produces an "illusory" cover-

age that is the subject of this article. In the case of *Hardy v. Progressive Specialty Ins. Co.*<sup>2</sup> pending at the Montana Supreme Court, the insured Hardy seeks to have the offending illusory "narrow" UIM definition declared invalid. MTLA member, Kent Duckworth of Ronan has challenged the definition, and Randy Bishop and I briefed the position of Amicus MTLA on this issue as well as the "stacking" issue presented in this column last quarter. Both were argued in *Hardy* on January 23, 2003.

## The UIM definitions

The "narrow" coverage UIM definition is used by Progressive Specialty Insurance Company and some other companies in Montana

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and defines an "underinsured motorist" as one whose liability limits are less than the limits of the injured insured's UIM coverage. For example, Progressive's UIM coverage provides:

"Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a **bodily injury** liability bond or policy applies at the time of the **accident**, but the sum of all applicable limits of liability for **bodily injury** is less than the coverage limit for Underinsured Motorist Coverage shown on the Declarations Page.

Other auto insurers use the "broad"<sup>3</sup> definition that defines UIM as the difference between the tortfeasor's limits of liability and the insured's tort damages. For instance, State Farm's policy provides:<sup>4</sup>

**Underinsured Motor Vehicle**— means a land motor vehicle:

1. The ownership, maintenance or use of which is insured or bonded for bodily injury liability at the time of the accident; and
2. whose limits of liability for bodily injury liability:
  - a. are less than the amount of the **insured's** damages; or
  - b. have been reduced by payments to **persons** other than the **insured** to less than the amount of the **insured's** damage.

The two definitions are profoundly different in their application. The "broad" coverage definition is insurance-consumer friendly and provides a solid benefit whenever the insured's damages exceed the BI coverage available. The "narrow" coverage definition used by Progressive and others provides an illusory coverage often entirely defeated by its own terms. That coverage definition is made even worse when coupled

with a "reducing clause" which reduces any UIM benefit by any BI benefits paid the injured insured by any tortfeasor. (The "reducing clause" problem will be discussed later in this article.)

### Illustrating the Problem

To best illustrate the illusory nature of the coverage caused by the narrow definition, let us consider the situation of the insured who has purchased \$25,000 UIM coverage with the narrow definition. The following are five inescapable truths about that situation:

First, regardless of the insured's UIM limit, if the tortfeasor has no liability insurance, it is a UM claim and the UIM will provide no benefit.

Second, if by chance, an out-of-state vehicle driven in Montana had BI limits less than \$25,000, then that vehicle is deemed an "uninsured motor vehicle" under *Oleson v. Farmers Ins. Group*,<sup>5</sup> so there is no UIM benefit. Progressive's policy excludes "uninsured" vehicles from UIM coverage. This is important because some courts, while grasping for straws to avoid finding the coverage "illusory" have held it could conceivably provide UIM coverage for out-of-state vehicles with BI limits lower than those required by the state financial responsibility act. See, for example, the Indiana court's decision in *Meridian Mut. Ins. Co. v. Richie*.<sup>6</sup> However, there is no such benefit to support the use of the clause in Montana, since, under *Oleson*, the UIM will not apply.

Third, if the insured has \$25,000 limits of UIM in Montana, because Montana motorists are all required to carry \$25,000 mandatory liability limits, there is no way to recover, since by the "narrow" definition, there can be no "underinsured motorist." (If you object that we all know many Montanans don't carry insurance in spite of the law, remember: If they don't,

they are uninsured motorists defeating any UIM benefits.)

Fourth, in fact, if the insured has purchased \$25,000 UIM, regardless of the limit of the tortfeasor's BI coverage or the extent of the insured's damages, there can be no UIM benefit payable under this "narrow" definition.

Fifth, regardless of the fact that the Declarations page shows \$25,000 UIM coverage, there is no way to recover a single dollar of benefits under the narrow definition. The insured has paid premiums for nothing.

### Court Treatment of the "Narrow" UIM Definition

Consequently, some courts have invalidated the narrow coverage UIM definition. For instance, while the Montana Supreme Court has not yet decided the issue, Judge Lovell, writing for the Federal District Court, declared the narrow definition invalid in *Transamerica Ins. Group v. Osborn* in 1986.<sup>7</sup> There, the injured Osborn obtained a state court judgment for \$187,333.19 and secured \$125,000 in Bodily Injury liability coverage from the car and driver that hit him. Osborn personally carried \$50,000 UIM coverage that utilized the narrow definition. Consequently, Transamerica took the position that the other vehicle was not an underinsured motor vehicle.

Judge Lovell noted that the Declarations page of Osborn's policy showed \$50,000 limits for UIM. However, he noted:

The underinsured motorist coverage will be triggered only when the vehicle involved carries insurance of at least \$25,000 but less than \$50,000. In the final analysis, under no set of circumstances will Transamerica be liable for more than \$25,000 under the underinsured motorist provisions of the policy.

Consequently, he found the narrow definition of UIM void as against public policy in Montana for violating the reasonable expectations of the insured that he had purchased \$50,000 of UIM coverage.

However, Magistrate Judge Anderson, in *Schantz v. Geico Gen. Ins. and Farmers Alliance Mut. Ins.*,<sup>8</sup> recently reviewed the narrow definition of an underinsured motor vehicle and, applying contract principles without any discussion of Montana public policy, let it stand to deny UIM coverage to the insured. As mentioned earlier, the Montana Supreme Court, which is not bound by the decisions in *Osborn* or *Schantz* is facing the issue squarely in the pending case of *Hardy v. Progressive*.

In Minnesota, in *Hoeschen v. S.C. Ins. Co.*,<sup>9</sup> the court had to apply a North Carolina UIM statute and policy language both of which used the narrow definition of UIM. The insured's UIM limit and the tortfeasor's BI limit were each \$25,000. The court noted that, under the applicable North Carolina statute (as in Montana under *Oleson*), autos insured with limits of less than \$25,000/\$50,000 are uninsured motor vehicles and could not qualify for UIM. To be "underinsured," the court found required that the policy be at least \$25,000/\$50,000. The court said in frustration:

It seems to us perfectly clear that although the declaration sheet of Hoeschen's policy states that it provides underinsured motorist coverage with limits of \$25,000 each person and \$50,000 each accident, it is impossible for any motor vehicle to fit the policy definition of an underinsured motor vehicle: a vehicle insured to liability limits

equal to or greater than but less than \$25,000 per person and \$50,000 per accident.<sup>10</sup>

The court could not reconcile the Declarations page "which ostensibly shows the limits of a separate underinsured motorist coverage" and the policy language and refused

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**That court's holding is consistent with the Montana Supreme Court's recognition of the insurance consumer's reasonable expectations with regard to UIM coverage.**

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to resolve the conflict "to totally eliminate underinsured motorist coverage from the policy." Accordingly, the justices held that the UIM definition "entitles its insured to benefits to the extent his damages exceed the liability coverage of the defendant, not exceeding the policy limits of the insured's policy." In essence, the court construed the illusory narrow coverage UIM to be broad coverage UIM.<sup>11</sup>

In the Wisconsin case of *Hoglund v. Secura Ins.*,<sup>12</sup> the court held the narrow definition rendered such UIM coverage illusory because there were no circumstances under which Hoglund could recover the benefits. In Hoglund, as in many cases, the policy itself said that a tortfeasor insured for a limit less than the financial responsibility law's minimum was an uninsured motorist so that, as in Montana, even the driver with a \$15,000 limit of liability would not fit the definition of UIM. The court held the narrow definition is "inconsistent with the insured's reasonable expectations."<sup>13</sup> That court's holding is consistent with the Montana Supreme Court's recognition of the insurance consumer's reasonable

expectations with regard to UIM coverage.

In *Bennett v. State Farm Mut. Auto. Ins. Co.*,<sup>14</sup> the court said:

Montana citizens should have a reasonable expectation that when they purchase separate policies for underinsured motorist coverage, they will receive adequate compensation for losses caused by an underinsured motorist, up to the aggregate limits of the policies they have purchased.

The court's quoted statement in *Bennett* protected the insured's expectation of receiving the benefit of multiple UIM coverage limits through "stacking." One would expect that the court would protect the insured's expectation to receive something more than illusory coverage when a single UIM policy is involved.

In *Landis v. Am. Ins. Exch.*,<sup>15</sup> an Indiana appellate court held in the same minimum limits circumstances that the narrow definition violated "as a matter of law the public policy interest which disfavors illusory coverage."<sup>16</sup> "Where an otherwise unambiguous insurance clause provides only illusory coverage when construed within the insurance contract in its entirety, the courts of this state will enforce the provision so as to give effect to the reasonable expectation of the insured."<sup>17</sup> The court ruled that, since the declarations page of the Landis's insurance policy provided \$25,000 limits of UIM, it was reasonable for the insured to expect the limit was available for his damages. As in *Hoeschen*, the court treated the narrow coverage provision as though it was the broad coverage. MCA §35-15-316 (1985) provides that "Every insurance contract shall be construed according to the entirety

of its terms and conditions as set forth in the policy..." just as the *Landis* court did.

In invalidating the narrow coverage UIM definition in another minimum limits case, the Supreme Court of Alabama, in *Smith v. Auto-Owners Ins. Co.*,<sup>18</sup> said, "Not only can the insured recover nothing under these circumstances, she could recover nothing under any other set of facts." The court found the narrow definition violative of the basic insurance principle, saying:

Is not the very essence of insurance the assumption on the part of the insurer, for a valuable consideration, of certain risk of loss on the part of the insured? Asked another way, can an insurance policy legally provide "coverage" for which the insurer can never be liable? We think these questions are self-answering. Surely, these facts involve the application of the "reasonable expectation" doctrine.

Meeting the "reasonable expectations" of the insured, the court mandated that the insurer provide the amount of UIM coverage shown on the declarations page.<sup>19</sup>

In *Glazewski v. Allstate Ins. Co.*,<sup>20</sup> the Illinois Appellate Court held that, under the narrow UIM provision, the sale of minimum limits of UIM in a state with the same minimum mandatory liability limit not only is the sale of "illusory" coverage, but can be the basis for a class action for fraud and for violation of the Uniform Deceptive Trade Practices Act for all those who purchase the coverage.

The narrow UIM coverage definition also provides illusory coverage for the entire class of insureds whose

UIM limits, regardless of their amount, turn out to be equal to or less than the BI Liability limits of the tortfeasor. In fact, Progressive's narrow definition has been slightly modified from the ISO drafting so that the insured's UIM limit is compared to "all applicable limits of liability for bodily injury" instead of "its limit of

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liability" (referring to the BI liability limit on the underinsured motor vehicle). Hence, in any case where all other liability limits equal or exceed the insured's UIM limit, the insured receives no UIM benefit regardless of his damages.

This last class of frustrated insureds is denied any benefit for their UIM premiums, even if the insured didn't personally recover the amount of BI Liability coverage that negated his or her UIM benefits. Consequently, in *Farmers Ins. Co. of Idaho v. Buffa*,<sup>21</sup> the court held that, where four injured vehicle occupants split the tortfeasor's single BI liability limit of \$100,000, the \$100,000 UIM limit on the car in which they were riding was ruled unavailable to them, since the tortfeasor's vehicle was not "underinsured" under the narrow coverage definition.<sup>22</sup> Similarly, in *Nationwide Mut. Ins. Co. v. Scarlett*,<sup>23</sup> the tortfeasor had a BI liability limit of \$100,000 and the insured had four vehicles each insured for \$100,000 UIM, and the court held there was no UIM benefit under the narrow coverage definition. In *State Farm Mut. Auto Ins. Co.*

*v. Messinger*,<sup>24</sup> the tortfeasor's \$300,000 BI liability limit was allocated \$290,000 to a catastrophically injured occupant of the auto and \$5,000 each to injured husband and wife co-occupants. Their \$300,000 UIM coverage was held to be unavailable to them since, under the narrow coverage definition, the

tortfeasor wasn't "underinsured" regardless of their tiny recoveries. In every case mentioned above, the insured could have recovered under the "broad" coverage UIM definition, if the insured's damages exceeded the tortfeasor's BI limits.

Insurers in Montana rely on *Stutzman v.*

*Safeco Ins. Co. of Am.*,<sup>25</sup> as authority for their position that the narrow clause is valid. *Stutzman*, however, is irrelevant to the validity of the clause. At issue in *Stutzman* was the validity of a family exclusion to the "broad" coverage UIM definition. The broad coverage definition of UIM does not result in illusory coverage. *Stutzman* upheld a family exclusion to broad form UIM coverage against a claim that it violated public policy. The court found no public policy violation in the exclusion because it was designed to prevent insureds from using cheaper UIM coverage as a form of BI coverage.<sup>26</sup>

It is true that *Stutzman* said, "[e]xpectations that are contrary to a clear exclusion from coverage are not 'objectively reasonable'." Citing *Wellcome*, 257 Mont. At 359, 849 P.2d at 194. There is no clear exclusion involved in this issue. Instead, the insurer has created a structural policy ambiguity because the "narrow" coverage definition of UIM and the reducing clause appear in complete conflict with the declaration page's promise of a certain dollar amount of UIM limits. Carriers also rely on *Am. Family Mut. Ins. Co. v.*

*Livengood*,<sup>27</sup> but, the issue there was whether the household exclusion to the liability coverage violated public policy. Review of the case shows no relevance to the issue of the illusory nature of the narrow UIM definition.

The Montana Supreme Court has applied the doctrine of reasonable expectations to consumers of UIM coverage in *Bennett v. State Farm Mut. Ins. Co.*<sup>28</sup> and *State Farm Mut. Auto. Ins. Co. v. Estate of Braun*.<sup>29</sup> In both cases, the court affirmed that Montana public policy supports UIM coverage where the recovery from the tortfeasor is inadequate to provide the insured compensation for his or her injuries. Finally, and most importantly, *Bennett* stands for the proposition that "The public policy embodied in these decisions is that an insurer may not place in an insurance policy a provision that defeats coverage for which the insurer has received valuable consideration."<sup>30</sup> Consequently, the courts should declare the use of the "narrow" definition of an underinsured motorist in Montana as invalid as against public policy, because it provides an illusory UIM coverage. As the Montana Supreme Court said in *Bennett*, it is irrelevant that UIM is not required by statute. Those public policies still apply.<sup>31</sup>

### The "Reducing Clause's" Role in Rendering the UIM Coverage "Illusory"

Insurance Services Office, Inc. (ISO), the trade organization for the property/casualty insurers, in its form PP 03 11 06 94,<sup>32</sup> couples the narrow UIM definition with a "reducing clause" that is added into the "Limit of Liability" provision for that coverage. With regard to the limits of UIM coverage available, that clause provides as follows:

However, the limit of liability shall be reduced by all sums paid because of the "bodily

injury" by or on behalf of persons or organizations that may be legally responsible. This includes all sums paid under Part A of this policy.

Accordingly, Progressive's "reducing clause" reduces any UIM coverage benefits available by all amounts paid by the tortfeasor's insurance. The threshold requirement for UIM coverage is that the tortfeasor has liability insurance. However, under the reducing clause, that liability insurance is subtracted from the limit of UIM coverage promised on the declarations page. Consequently, in 1989, in the Wisconsin case of *Wood v. Am. Family Mut. Ins. Co.*,<sup>33</sup> the court found the reducing clause rendered the UIM coverage "illusory" because the insurer "will never pay the policy limits of its UIM policies."

And, it doesn't matter that the insured recovers some, but not all of the UIM benefit. In *Wood*, the UIM coverage limit was \$100,000, and the liability limit subtracted was \$25,000, so that the insured netted \$75,000 in UIM benefits after the reduction. However, because the insurer will never have to pay the first \$25,000 of UIM coverage, the court held the UIM coverage "illusory." As the Wisconsin Supreme Court said in *Kubn v. Allstate Ins. Co.*<sup>34</sup> in 1993, the "insured will receive some but never all of the \$50,000 coverage." Therefore, in *Kubn* too, the court held such a reducing clause "renders the purported \$50,000 coverage illusory and contrary to public policy." Applying the reasonable expectations test, the court asked, "Is it reasonable for the insured, who is sold \$50,000 limits of underinsured motorist coverage, to expect never to qualify for the stated limits? We think not."<sup>35</sup> The court's remedy was to hold that the tortfeasor's liability limit would be subtracted from the insured's total damages not from the limits of the UIM coverage, in essence changing

the UIM to a "broad" coverage definition to avoid the illusory coverage result caused by the reducing clause.<sup>36</sup>

In the companion case of *Kaun v. Indus. Fire & Cas. Ins. Co.*<sup>37</sup> decided the same day, the court held the reducing clause invalid on the same grounds and applied the same remedy. Also, in *Christensen v. Wasau Ins. Co.*,<sup>38</sup> the Maryland court said that to interpret UIM coverage to deduct the liability limits from the UIM limits means "that the victim cannot recover part of the underinsurance limit he has bought and paid for, and that portion of the limits also would be illusory."<sup>39</sup> That policy had no definition of UIM, but the narrow definition offered by the insurer as the correct interpretation was what the court was rejecting.

(I note here that in 1995, Wisconsin enacted a statute expressly permitting UIM reducing clauses.<sup>40</sup> Subsequently, *Sukala v. Heritage Mut. Ins. Co.*<sup>41</sup> followed the legislative enactment and necessarily diverged from the rule of *Hoglund, Wood, Kubn, and Kaun*. The Wisconsin statute has no counterpart in Montana, and those cases still contain sound reasoning for treating negating clauses in Montana.)

Incredibly, insurers defending the narrow definition of UIM and its companion reducing clause assert that purchasers of \$25,000 limits of UIM only want to assure that they have minimum limits of compensation available for their injuries and that, if they receive that \$25,000 from the BI coverage of the tortfeasor, their expectation is satisfied. That argument is dead wrong and cannot withstand scrutiny. The risk that a tortfeasor will only have \$25,000 minimum limits to compensate the injured insured is the exact risk which the insured wanted to avoid. UIM coverage appeared on the market in Montana shortly after the state enacted the Mandatory

Liability Protection Act. That Act required that each motor vehicle be covered by \$25,000 BI coverage thereby rendering UM coverages (some with limits of up to \$500,000) inapplicable. Insureds realized what a disaster it would be if they were seriously injured by a motor vehicle covered by minimum limits, and the market for UIM coverage was born. No insured would buy \$25,000 UIM unless he or she expected that they would receive it if the tortfeasor only had \$25,000 in BI coverage.

### **The "Reducing Clause" as Subrogation Subject to the "Made Whole" Doctrine**

If one analyzes the "reducing clause" it is clear that, in essence, it is nothing but subrogation the insurer awards itself before the insured even recovers from the tortfeasor. If the UIM insurer inserted a subrogation clause in Montana, it would be subject to the "made-whole" doctrine, and the insurer likely would not receive any subrogation benefit. Under, *Skauge v. Mt. States Tel. & Tel. Co.*,<sup>42</sup> and *DeTienne Assoc. v. Farmers Union Mut. Ins. Co.*,<sup>43</sup> the Montana Supreme Court has decreed that the carrier doesn't get paid back until the insured has been made whole including costs and attorney fees. Because tort law doesn't require tortfeasors to pay attorney fees, even when they lose in court, there is little likelihood of insurer reimbursement by subrogation. The insurer's answer to the fairness of the made-whole doctrine is to draft and insert in UIM coverage the "reducing clause" which essentially says if the insured recovers from the tortfeasor, we reduce the money benefit we owe by the same amount. Hence, the insurer receives full subrogation without honoring the made-whole rule.

In recognition of this reality, in *Hoeschen v. S.C. Ins. Co.*,<sup>44</sup> the Supreme Court of Minnesota applied the principle that UIM coverage may

not be reduced by amounts paid by one legally liable if that would prevent the insured from being "made whole." The sound public policy underpinnings for the Made Whole Doctrine set forth by this court in *Skauge* and *DeTienne* apply equally as well to the reducing clause in policies in Montana. If counsel cannot convince the court to declare the reducing clause invalid, he should encourage courts in Montana to follow the Minnesota Supreme Court in making the reducing clause subject to the Made Whole Doctrine.

### **The "Reducing Clause" as Subject to the "Common Fund" Doctrine**

In *Mountain West Farm Bureau Mut. Ins. Co. v. Hall*,<sup>45</sup> the Montana Supreme Court recognized the common fund doctrine. There, it made a hospital which sought to satisfy its \$309,000 medical lien from the plaintiff's \$530,000 tort recovery pay its proportionate share of the plaintiff's attorney fees and costs.<sup>46</sup>

The court identified the "common fund" doctrine as an equitable exception to the American rule that a party to a civil action is not entitled to attorney fees absent a specific contractual or statutory provision saying:

The "common fund" concept provides that when a party through active litigation creates, reserves or increases a fund, others sharing in the fund must bear a portion of the litigation costs including reasonable attorney fees. The doctrine is employed to spread the cost of litigation among all beneficiaries so that the active beneficiary is not forced to bear the burden alone and the "stranger" (i.e., passive) beneficiaries do not receive their benefits at not cost to them-

selves.

Subsequently, the court followed *Hall* in *Flynn v. State Compensation Ins. Fund*<sup>47</sup> where it made the State Fund pay plaintiff's attorney fees and costs when, pursuant to statute, the fund reduced the claimant's total permanent disability benefits by reason of his recovery of Social Security disability benefits. The court's test was whether there was "an existing identifiable monetary fund or benefit in which an ascertainable non-participatory beneficiary maintains an interest." The court equated the insurer's reduction with receiving a monetary benefit from the claimant's recovered fund. *Flynn* should have an important application to reducing clauses in general.

Logically, if plaintiff's counsel cannot defeat a reducing clause by having it declared invalid or by having it declared a form of subrogation subject to the made whole doctrine, then, using the law of *Hall* and *Flynn*, the insurer's benefit under the reducing clause should be subject to the common fund doctrine. Consequently, the carrier should pay its proportionate share of plaintiff's contingent attorney fees and costs on the amount of the reduction it enjoys.

### **Conclusion**

An auto insurer that uses the "narrow" UIM definition and couples it with a "reducing clause" violates public policy in Montana. The conflict between what the declarations page promises and the UIM benefit the policy will actually pay creates an inherent ambiguity. The definition and reducing clause violate the consumer's expectations and defeat the very purpose of UIM coverage causing an injustice to the insured who has been prudent enough to purchase UIM coverage to guard against the tortfeasor who carries minimum limits. The minimum \$25,000 BI limit required in

Montana's Mandatory Liability Protection Act, MCA §61-6-301 and set forth in the Motor Vehicle Safety Responsibility Act, MCA §61-6-103 et. seq., has never been raised, and many believe it politically impossible to do so. Consequently, the prudent insureds try to protect themselves by purchasing limits of UIM only to find that their coverage is in whole or in part often illusory even though they have dutifully paid a separate premium for the coverage.

This is a matter of injustice in insurance contracting, and it is unnecessary. High volume insurers like State Farm use the consumer friendly "broad" UIM definition and remain competitive. Counsel must persuade the courts in Montana to invalidate the narrow definition and its companion-reducing clause to end the sale of "illusory" UIM coverage to Montana

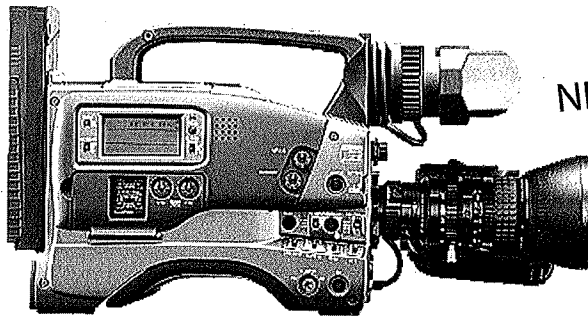
motorists. ♦

**Endnotes**

1. Martin J. Huelsmann and William G. Knoebel, *Underinsured Motorists: An Evolving Insurance Concern*, 17 No. Kentucky L. Rev. 417, 427 (1990)
2. Pending Mont. Sup. Ct. Cause no. 02-488
3. Huelsmann & Knoebel, *supra* n. 1 at 425
4. State Farm 1995 form 8263
5. 185 Mont. 164, 605 P.2d 166 (1980)
6. 544 N.E. 2d 488 (Ind. 1989)
7. 627 F.Supp. 1405 (D. Mont. 1986)
8. 30 M.F.R. 86 (2002)
9. 378 N.W.2d 796 (Minn. 1985)
10. *See id.* at 799
11. *See id.* at 800
12. 500 N.W.2d 354 (1993)
13. *See id.* at 356
14. 261 Mont. 386, 862 P.2d 1146 (1993)
15. 542 N.E.2d 1351 (Ind. App. 1989)
16. *See id.* at 1354
17. *Id.*
18. 500 S.2d 1042 (Ala. 1986)
19. *See id.* at 1044-45
20. 466 N.E.2d 1151, 1157 (1984)
21. 806 P.2d 438 (1991)
22. *See id.* at 440
23. 780 P.2d 142, 143 (1989)

24. 283 Cal. Rptr. 493, 496 (1991)
25. 284 Mont. 372, 945 P.2d 32 (1997)
26. *See id.* at 37
27. 292 Mont. 244, 970 P.2d 1054 (1998)
28. **Bennett**, 261 Mont. at 386, 862 P.2d at 1146
29. 243 Mont. 125, 793 P.2d 253 (1990)
30. **Bennett**, 261 Mont. at 389, 862 P.2d at 1149
31. *Id.*
32. Miller's Standard Insurance Policies Annotated, form PAP, Vol. 1, pp. 9-10
33. 436 N.W.2d 594 (Wis. 1989)
34. 510 N.W.2d 826 (Wis. App. 1993)
35. **Kuhn**, 510 N.W.2d at 831
36. *See id.* at 831
37. 436 N.W.2d 321 (Wis. 1989)
38. 519 A.2d 776 (Md. App. 1987)
39. *See id.* at 779
40. Wis. Stat. § 632.32 (5)(i)
41. 622 N.W.2d 457 (Wis. App. 2000)
42. 172 Mont. 521, 565 P.2d 628 (1977)
43. 266 Mont. 184, 879 P.2d 704 (1994)
44. 378 N.W.2d 796, 799 (Minn. 1985)
45. 2001 MT 314; 308 Mont. 29; 38 P.3d 825
46. However, MCA §71-3-1114(1)(b) (1999) as amended now provides that a hospital lien is not liable for attorney fees or costs
47. 312 Mont. 410 (2002)

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