

# New Jersey

By Julie P. Apter

## Uninsured Coverages

### ***Is UM coverage mandatory or discretionary?***

UM coverage is not required if the insured purchases a “Basic Policy.” UM coverage is mandatory under a “Standard Policy” in the amount of \$15,000 on account of injury to or death of any one person in any one accident; \$30,000 on account of injury to or death of more than one person in any one accident (subject to the per person limit), exclusive of interest and costs; and an aggregate limit of \$5,000 on account of injury to personal property subject to a per vehicle exclusion of the first \$500.

### **Is UM coverage governed by a statutory scheme? Are there any landmark cases?**

UM coverage is governed by N.J. Stat. Ann. §17:28:1.1a.

### **Must the insured reject UM coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?**

Not applicable.

### ***Is UIM coverage mandatory or discretionary?***

UIM coverage is discretionary up to at least the following limits: \$250,000 each person and \$500,000 each accident for bodily injury; \$100,000 each accident for property damage or \$500,000 single limit.

### **Is UIM coverage governed by a statutory scheme? Are there any landmark cases?**

UIM coverage is governed by N.J. Stat. Ann. §17:28:1.1b; N.J. Admin. Code §11:3-2.7 (2015). Because UIM is discretionary, an insurer need only offer coverage up to the amount of liability coverage as set forth in the New Jersey statutes. *See Selective Ins. Co. of Am.*

*v. Hojnoski*, 722 A.2d 118 (N.J. Super. Ct. App. Div. 1998). UIM restrictions have generally been upheld, provided the restrictions are reasonable, clearly stated, and do not contravene public policy. *See Pannebecker v. Philadelphia Indem. Ins. Co.*, No. A-3246-09T4, 2011 WL 1135149, at \*7 (N.J. Super. Ct. App. Div. 2011).

### **Must the insured reject UIM coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?**

Not applicable.

### ***Is uninsured motorist property damage (“UMPD”) coverage mandatory or discretionary?***

All motor vehicle liability policies, except basic automobile insurance policies, shall include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages because of injury to or destruction to the personal property of such insured, with a limit in the aggregate for all insurers involved in any one accident of \$5,000.00, and subject, for each insured, to an exclusion of the first \$500 of such damage.

### **Is UMPD coverage governed by a statutory scheme? Are there any landmark cases?**

This property damage coverage is governed by N.J. Stat. Ann. §17:28-1.1a(2)).

### **Must the insured reject UMPD coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?**

Not applicable.

***Is uninsured motorists “economic only” (“UEO”) coverage mandatory or discretionary?***

UEO coverage is not available in New Jersey.

**Is UEO coverage governed by a statutory scheme? Are there any landmark cases?**

Not applicable.

**Must the insured reject UEO coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?**

Not applicable.

***Does the state have any other uninsured coverages that are mandatory or discretionary?***

Corporations/businesses shall not provide less uninsured or underinsured motorist coverage for an individual employed by the corporate or business entity than the coverage provided to the named insured under the policy.

**Are such coverages governed by a statutory scheme? Are there any landmark cases?**

N.J. Stat. Ann. §17:28-1.1, amended 2007. The amendment to the statute applies prospectively and claims arising prior to the statute’s effective date do not trigger coverage. *See James v. New Jersey Mfrs. Ins. Co.*, 83 A.3d 70 (N.J. 2014).

**Must the insured reject such coverages in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?**

Not applicable.

**Limits**

***Must the UM or UIM limits match the liability limits for “bodily injury”? Are there minimum UM or UIM limits?***

Yes. UM/UIM coverage limits must be less than or equal to the bodily injury and property damage

coverage provided in the policy. *See Selective Ins. Co. of Am. v. Hojnoski*, 722 A.2d 118 (N.J. Super. Ct. App. Div. 1998). The insured may purchase either the “Basic Policy” created by the 1998 amendment to the no-fault law, which provides only minimum coverage, or may purchase the “Standard Policy,” which allows for the optional coverage for underinsured coverage, and allows an increase to the bodily injury coverage and the ability to match coverage. N.J. Admin. Code §11:3-3.4 (2015); N.J. Stat. Ann. §17:28:1.1a.

***Must the UMPD limits match the liability limits for “property damage”? Are there minimum UMPD limits?***

All motor vehicle liability policies, except basic automobile insurance policies, shall include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages because of injury or destruction to the personal property of such insured, with a limit in the aggregate for all insurers involved in any one accident of \$5,000.00, and subject, for each insured, to an exclusion of the first \$500 of such damage. N.J. Stat. Ann. §17:28-1.1a(2).

***Are there minimum limits for UEO coverage?***

Not applicable.

***Are there minimum limits for other uninsured coverages that are mandatory or discretionary in this state?***

Not applicable.

**When Is Coverage Available?**

***Under what circumstances is UM coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?***

In addition to the usual circumstances under which UM coverage is available, a self-insured, leased vehicle is required to provide liability and uninsured coverage to lessees while driving in New Jersey. By driving in the State of New Jersey with a leased vehi-

cle registered in another state, the lessor is considered to have issued an insurance policy to itself and is subject to the mandatory insurance coverage for its rental vehicles while driving in New Jersey. N.J. Stat. Ann. §17:28-1.4; *Liberty Mut. Ins. Co. v. Thompson*, 896 A.2d 1143 (N.J. Super. Ct. App. Div. 2006).

***Under what circumstances is UIM coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?***

In addition to the usual circumstances under which UIM coverage is available, a self-insured, leased vehicle is required to provide liability and uninsured coverage to lessees while driving in New Jersey. By driving in the State of New Jersey with a leased vehicle registered in another state, the lessor is considered to have issued an insurance policy to itself and is subject to the mandatory insurance coverage for its rental vehicles while driving in New Jersey. N.J. Stat. Ann. §17:28-1.4; *Liberty Mut. Ins. Co. v. Thompson*, 896 A.2d 1143 (N.J. Super. Ct. App. Div. 2006).

***Under what circumstances is UMPD coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?***

See “Is uninsured motorist property damage (“UMPD”) coverage mandatory or discretionary?,” *supra*.

***Under what circumstances is UEO coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?***

Not applicable.

***Under what circumstances is coverage available under other uninsured coverages? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?***

Not applicable.

## **Arbitrating and Litigating Disputes**

***Is arbitration of UM claims allowed, or specifically prohibited? UIM? UMPD? UEO? Other uninsured coverages?***

Yes. Arbitration of UM/UIM claims is permitted.

***If arbitration is allowed, what procedures govern in arbitration?***

While courts favor arbitration as a means of resolving disputes without tying up judicial resources, the scope of the arbitration is determined by the parties’ agreement. Under the “standard” UM arbitration clause in New Jersey, the arbitrator decides issues of liability and damages and the court decides coverage issues (not arbitrable). See *Berger v. First Trenton Indem. Co.*, 772 A.2d 28, 30 (N.J. Super. Ct. App. Div. 2001).

Additionally, an arbitration clause in an insurance agreement will be invalidated to extent that it requires an arbitration proceeding that duplicates the underlying litigation of tort claim. See *Zirger v. Gen. Acc. Ins. Co.*, 676 A.2d 1065 (N.J. 1996) (insurer which had adequate notice of and opportunity to intervene in underlying action was collaterally estopped and barred from enforcing standard arbitration clause in policy after insured fully litigated the matter and obtained a damages award).

***If an insured claimant obtains an arbitration award in excess of the UM, UIM, UMPD, UEO or other uninsured coverage limits, can the insurer obtain a reduction of the award to match the limits?***

Not applicable.

***What requirements must an insured claimant satisfy in order to file suit against, and serve, an insurer for UM coverage? UIM? UMPD? UEO? Other uninsured coverage?***

None.

***Do any unique procedures govern such coverage litigation?***

Not applicable.

**If an insured claimant obtains a verdict in excess of the UM, UIM, UMPD, UEO or other uninsured coverage limits, can the insurer obtain a reduction of the award to match the limits?**

Not applicable.

### **Final Amounts Paid or Awarded**

#### ***Can offsets against the UM, UIM, UMPD, UEO or other uninsured coverage limits be taken?***

UM coverage does not require an offset for payments made under liability coverage. UIM coverage, however, does compel an offset for payments from third-party liability insurers. *Prudential Prop. & Cas. Ins. Co. v. Johnson*, 568 A.2d 1193 (Super Ct. App. Div. 1989). In addition to the setoffs involving liability payments, N.J. Stat. Ann. §17:28-1.1 permits an insured the option to choose to entitle his or her insurer, when it has paid medical expense benefits on the insured's behalf, to reimbursement for the amount of such benefits paid from any recovery for general damages sustained in an auto accident and received by the insured. The reimbursement shall not exceed 20 percent of the amount of the recovery.

#### ***Are offsets taken from the UM, UIM, UMPD, UEO or other uninsured coverage limit—or from total damages?***

There are no offsets for UM coverage. With respect to UIM coverage, the amount payable under the UIM coverage is the policy's UIM limits reduced by the liability insurance payments received from any tortfeasor involved in the accident.

When an amount is awarded by a jury, the offset involves the settlement, not the jury award. The amount of settlement with the tortfeasor's insurer should be credited against the limit of UIM benefits, rather than the jury's damage award in favor of the insured since the statute requires the reduction of UIM limits by the amount recovered under all bodily injury liability insurance bonds. See *Krohn v. New Jersey Full Ins. Underwriters Ass'n*, 720 A.2d 640 (N.J. Super. Ct. App. Div. 1998).

In matters involving multiple claimants, the determination of offsets is made after looking at

the total liability limits. When multiple claimants exhaust all of the limits available to underinsured tortfeasors and when the claimant holds an underinsured motorist (UIM) policy creating coverage when compared with the tortfeasor's total liability limits, the amount the injured claimant is able to recover from the liability policy, as opposed to the liability policy limit itself, serves as the appropriate setoff against UIM benefits. *French v. New Jersey School Board Ass'n Ins. Group*, 694 A.2d 1008 (N.J. Super. Ct. App. Div. 1997).

#### ***Can the insurer take offsets for medical payments, workers' compensation or no-fault insurance? Are any other offsets allowed in the state?***

Yes. Offsets are permitted under N.J. Stat. Ann. §17:28-1.1 and give the insured the option to choose to entitle his or her insurer, when it has paid medical expense benefits on the insured's behalf, to reimbursement for the amount of such benefits paid from any recovery for general damages sustained in the auto accident and received by the insured. This reimbursement shall not exceed 20 percent of the amount of recovery. Moreover, this offset provision offers an insured the option to reduce his or her no-fault medical coverage premium, which must be stated as a percentage of the coverage premium, by reimbursing his or her insurer from a general damage recovery for all or a portion of the medical benefits paid on the insured's behalf.

The New Jersey Automobile Reparation Reform Act provides for the payment of no-fault benefits. N.J. Stat. Ann. §39:6A-4. Auto policies issued in New Jersey also provide that any amounts payable for economic loss under the PIP coverage shall be reduced by the amount of any personal injury protection benefits paid or payable under the policy. This offset has been deemed to be valid and not unfair, inequitable or against public policy. *General Acc. Group v. Shimp*, 371 A.2d 358 (N.J. Super. Ct. Law Div. 1977). The offset is based upon the statutory right of the automobile insurer to recover personal injury protection (no-fault) benefits from the tortfeasor. Thus, any claims made on an underinsured policy are subject



to the same provisions regarding offsets inasmuch as “the limits for uninsured and underinsured motorist coverage shall not exceed the insured’s motor vehicle liability policy limits for bodily injury and property damage, respectively.” N.J. Stat. Ann. §17:28-1.1(b); *see also David v. Government Employees Ins. Co.*, 821 A.2d 564 (Super Ct. App. Div. 2003).

***What liens, if any, can be asserted against the insured claimant’s recovery of UM? UIM? UMPD? UEO? Other uninsured coverages?***

With respect to workers’ compensation benefits received by a claimant injured by an uninsured motorist, the workers’ compensation lien would attach to the proceeds received by the claimant from his or her own uninsured motorist coverage. *Midland Ins. Co. v. Colatrella*, 510 A.2d 30 (N.J. 1986). Likewise, workers’ compensation benefits received by a police officer who was injured by a “hit and run” vehicle created a lien to the benefit of the city employer on any UM benefits payable to the officer. *See Christy v. City of Newark*, 510 A.2d 22, 29 (N.J. 1986).

***Can different limits be stacked? If yes, which limits? Does a specific procedure apply?***

No. N.J. Stat. Ann. §17:28-1.1c prohibits the stacking of UIM benefits on either an intra-policy or inter-policy basis. *French v. New Jersey School Board Ass’n Ins. Group*, 694 A.2d 1008 (N.J. 1997). Moreover, the anti-stacking statute enacted by the New Jersey legislature does not restrict spouses to the higher limit under two applicable policies. Spouses are not deemed to be, collectively, “the insured,” and even if the insureds purchased UIM coverage as a family unit and were treated collectively as “the insured,” the ambiguity in the way the policy was written would be construed in favor of the insured/spouse. *Selective Ins. Co. of Am. v. Thomas*, 847 A.2d 578 (N.J. 2004).

***In UIM claims, can the UIM insurer substitute its settlement payment for the insured’s settlement with the other vehicle’s/underinsured driver’s liability insurer? What is the applicable procedure? What rights does the UIM insurer then have (for example, subrogation)?***

No. However, an insured receiving an acceptable settlement offer should notify the UIM carrier, even though the insurer’s consent to settle is not required. New Jersey courts have held that consent-to-settle clauses are against public policy and should not void any offers made. *Longworth v. Van Houten*, 538 A.2d 414 (N.J. Super. Ct. App. Div. 1988).

When a settlement offer is made that does not completely satisfy the claim, and the *Longworth* notice is given to the UIM carrier, the carrier has two options. The first is to offer to pay the insured the amount of the tortfeasor’s settlement offer, or the arbitration award, in exchange for the subrogation of the insured’s rights against the tortfeasor. The second option is to allow the insured to settle. In either case, the UIM insurer must further allow the insured the benefit of UIM coverage. If the insurer fails to respond to the *Longworth* notice, the insured may move for a declaratory ruling by order to show cause. *Id.*; *Hallion v. Liberty Mut. Ins. Co.*, 766 A.2d 1224 (N.J. Super. Ct. App. Div. 2001).

***Bad Faith***

***Does the State recognize a cause of action for bad faith in the UM context? UIM? UMPD? UEO? Other uninsured coverages?***

Yes. New Jersey does recognize a cause of action for bad faith in the UM/UIM context, which may be brought against both the insurer and agent of the insurer (such as a servicing carrier), since both owe fiduciary duties to the insured. *See Miglicio v. HCM Claim Mgmt. Corp.*, 672 A.2d 266, 270 (Super Ct. Law Div. 1995). The New Jersey Legislature has attempted

to codify these principles, particularly in the insurance industry, by defining what is considered to be unfair or deceptive business practices in the area of insurance claims settlement. See N.J. Stat. Ann. §17:29B-4(9). See *Badiali v. New Jersey Mfrs. Ins. Group*, 57 A.3d 37 (N.J. Super. Ct. App. Div. 2012), *aff'd*, 2015 Lexis 133 (N.J. Feb. 18, 2015.)

## Other

### ***Are there any particular issues in UM, UIM, UMPD, UEO, or other uninsured coverages that are unique or specific to the state?***

New Jersey allows motorists to purchase either a “Basic Policy” or a “Standard Policy” of insurance. The “Basic Policy” provides what is known as a verbal threshold, which is a lawsuit limitation. Under this type of policy, suits for pain and suffering are prohibited unless an injury results in death, dismemberment, significant disfigurement or significant scarring, loss of fetus, displaced fractures or a permanent injury as defined in N.J. Stat. Ann. §39:6A-8. Standard policies come either with or without the verbal threshold language.

Should an insured’s policy contain the verbal threshold language, the insured would not be able to recover UM benefits against his or her insurer unless the threshold is satisfied. *Stamps v. New Jersey Auto. Full Ins. Underwriting Ass’n*, 653 A.2d 587 (N.J. Super. Ct. App. Div. 1995).

Another issue arising in New Jersey involving UIM claims involves the “step down clause.” This situation routinely arises when an individual is operating an employer’s vehicle. The step down clause in the employer’s policy for UIM coverage generally

provides that the most the employer’s insurer is required to pay to someone who was not a “named insured” under its policy, but was a “named insured” under another policy, is the highest applicable limit of insurance under any coverage to that insured. See *Pinto v. New Jersey Mfrs. Ins. Co.*, 839 A.2d 134 (N.J. Super. Ct. App. Div. 2004).

Last, issues have arisen involving UI/UIM coverage and the Unsatisfied Claim and Judgment Fund, which protects injured parties from uninsured motorists. In one matter, the appellate division held that a provision in a taxi’s automobile insurance policy that limits UI claims to the driver does not violate any statutory laws. Thus, an injured passenger riding in a taxi that was hit by a hit and run motorist cannot recover under the taxi’s policy for uninsured benefits. The proper recourse for that passenger would be to make a claim with the Unsatisfied Claim and Judgment Fund. *Jones v. Naser City Transp. Corp.*, 909 A.2d 752 (N.J. Super. Ct. App. Div. 2006).

In another matter involving a possible claim with the Fund, it has been held that a self-insured municipality must provide uninsured motorist coverage to fulfill the legislative intent of providing for an individual injured and cannot seek help from the Unsatisfied Claim and Judgment Fund. Nevertheless, due to its self-insured status, the municipality cannot be required to submit any disputes to arbitration. *Rox v. Allstate Ins. Co.*, 595 A.2d 563 (N.J. Super. Ct. Law Div. 1991).

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