



Beware of the still thriving “Step-Down Provision” in NJ

A mentor of mine once stated “Insurance is hours of boredom and moments of sheer terror”.

Below you will find a sheer terror moment we recently came across. With the holidays upon us, the information below is a big concern for many of us that drive others around or have nonresident family members from out of town borrow our vehicles.

Uninsured and Underinsured Motorist coverage (UM/UIM) is an often misunderstood coverage. In short, the intent is to protect the insured (you) if you are in a not at fault accident and the other driver does not have enough insurance to cover your damages (property and bodily injury).

Example

You, the responsible party have \$300,000 in liability and UM/UIM coverage.

You are 0% at fault in an accident and sustained serious injuries in which you were the only occupant of your vehicle.

Assume you are entitled to \$100,000 in damages, and the other driver has only \$25,000 in limits.

Your policy would be required to pay you the shortfall of \$75,000 in this scenario.

Example 2

Let’s look at the above scenario with one change. You pick up your mother from the assisted living facility that she lives at to bring her to your home for a holiday dinner. She has no car or auto insurance. You do not sustain injuries in the accident, but she does and is entitled to \$100,000 in damages. The other carrier pays the policy limit of \$25,000. You would then ask your carrier for the \$75,000 shortfall under your UM/UIM coverage because she is an occupant and occupants and permissive users are insured’s under your policy by definition. Do not be surprised when the ugly denial letter is sent to your mother and she is left out in the cold with no UM/UIM coverage from your insurance company.

Below is sample language that can be found in a NJ policy (highlighted areas for emphasis).

General Definitions (applies to all parts of the insurance policy).

9. “Family member” means:

A. Any person related to **“you”** by blood, marriage, legally recognized civil union or adoption;
and

B. **“Your”** ward or foster child;

if a resident of **“your” “household”**.

Definitions under the UM/UIM coverage part (the definition of an “Insured” is redefined in this coverage part).

1. “Insured” means:

A. **“You”**;

B. Any **“family member”**;



C. Any other person **“occupying”** a **“covered auto”** with permission from **“you”** or a **“family member”**, but only up to the minimum limits of liability specified by the financial responsibility, compulsory insurance and uninsured motorist laws of the state of New Jersey. This minimum limit applies to that person for any claim for Uninsured Motorist Coverage or Underinsured Motorist Coverage benefits under **Part III**;

or

D. Any person for damages that person is entitled to recover because of **“bodily injury”** to which this coverage applies that has been sustained by an **“insured”** defined in **1.A., 1.B.,** or **1.C.** above, subject to the minimum limits set forth above in **1.C.** for **“bodily injury”** to any person other than **“you”** or a **“family member”**.

An **“insured’s”** recovery under **Part III** for damages arising out of **“bodily injury”** is subject to that **“insured’s”** lawsuit tort option election under N.J.S.A. §39:6A-8, as amended, and any limitations on recovery due to that election.

So what does this mean?

In the above scenario, your mother who lives in an assisted living facility would fall under definition C. of an “insured.” Definition C states very clearly that any person falling into this definition is only entitled under this coverage part for the statutory minimum limits for the state of NJ which is currently \$15,000 per person.

As a result, your mother would have already received \$25,000 from the other insurance company and would not be entitled to your UM/UIM coverage in the above scenario.

This is a serious situation for those of us that have relatives that do not live with us and do not have their own auto insurance policies such as our aging parents, relatives that live in cities, etc. and may drive or be a passenger in our cars. I am not sure of any personal auto insurance policy that does not have this provision and most agents will look at you like you have three heads if you ask about a step down provision (most agents have no idea about this situation).

Some agents may tell you that the step down provision was abolished by the legislature. Unfortunately this is only partly true. The step down provision was made illegal only in regards to commercial autos by statute. There was nothing to address you picking up your aging parents and taking them out to lunch in your personal vehicle.

The step down provision is limited to a handful of states, but NJ is one of them.

The above scenario is for illustrative purposes only and not all insurance policies are the same. It is important to discuss the exact terms and conditions of your policy with a licensed agent to determine your specific coverages.