



A BRIEF REVIEW OF TEXAS AUTOMOBILE INSURANCE

Automobile liability insurance coverage is mandatory in Texas. But in addition to the liability coverage, a whole menu of other coverage options is also available, providing different protections and benefits for you and your family in the event of a collision. Most of us do not understand those coverages until after an accident, and that may be too late. When I ask clients what automobile insurance they have, they sometimes shrug and say they've "got full coverage." There is no standard definition of "full coverage" and clients are sometimes surprised to find that their coverage is rather limited.

The Declarations Page

To find out what automobile insurance coverages you purchased, open to the first page of your policy, called the "Declarations Page". It declares which of the available coverages you bought, and how much coverage you have within each option. This newsletter reviews some of the choices available to you and describes what these coverages can do for you and your family.

Liability Coverage: Whom it Does and Does not Protect

Like it or not, accidents -- and lawsuits -- happen and your personal assets may be at risk if you do not have sufficient liability coverage. The "liability" part of your automobile policy generally looks like this (illustrating the minimum limits required by law as of January 1, 2011):

Coverage is provided where a premium and a limit of liability are shown for the coverage

COVERAGES	VEH	A. LIABILITY COVERAGE			B1. MEDICAL PAYMENTS COVERAGE EACH PERSON	B2. PERSONAL INJURY PROTECTION COVERAGE EACH PERSON	C. UNINSURED/UNDERINSURED MOTORISTS COVERAGE (\$250 DED. APPLICABLE TO P.D. LIABILITY)			D. COVERAGE FOR DAMAGE TO YOUR AUTO		TOWING LABOR COSTS PER DISABLE
		BODILY INJURY (THOUSANDS)		PROPERTY DAMAGE (THOUSANDS) EACH ACCIDENT			BODILY INJURY		PROPERTY DAMAGE EACH ACCIDENT	OTHER THAN COLLISION ACTUAL CASH VALUE LESS DEDUCTIBLE	COLLISION ACTUAL CASH VALUE LESS DEDUCTIBLE	
		EACH PERSON	EACH ACCIDENT				EACH PERSON	EACH ACCIDENT				
LIMITS OF LIABILITY	1 2 3 4	30	60	30								

State law requires that you carry at least \$30,000/60,000/30,000 in liability coverage, an increase above the \$25,000/\$50,000/\$25,000 minimum limits in effect before January 1, 2011. Your insurance company pays up to your policy limits, at its discretion, if it believes you (or certain drivers of your car) were negligently at fault in causing an accident which injures other people or property. For each accident, up to \$30,000 is available for any one person's bodily injuries. Up to \$60,000 is available to cover the injuries of more than one person, but no one person's injuries get more than \$30,000. \$30,000 is available for all of the property damage. You can (and should) purchase higher limits of coverage.

An example of how this works (hang in there with me, the illustration is unpleasant): You carry \$30,000/60,000/30,000 in coverage, you fall asleep at the wheel, run a red light, kill one person (a mother/wife) and injure three others (unrelated friends in the same car).

A bunch of people can sue you.

The mother's estate representative has a claim for her injuries, pain and suffering and medical bills before death, burial expenses, etc. Her husband and two children and two parents can all sue you for the impact of her death on them: the loss of her income, love and companionship, household services, etc. A total of \$30,000 is all that is available to these six people, since only one person of this group of claims holders (the mother) had a bodily injury. **The \$30,000 coverage is for each injured person, not for each claim holder.**

The other \$30,000 (out of the total of \$60,000 available per accident) might be divided among the other three injured people and whoever else may have a claim as a result of their injuries. None of that second \$30,000 is available to the family of the woman who died because they were not in the car and did not have bodily injuries. (The answer may be different if the family members witnessed the crash.)

Whom the liability insurance protects:

Is this state mandated minimum coverage enough to protect injured people? Maybe, maybe not. But the point of your insurance is not necessarily to protect **others** from the damage you cause, but to protect **you**: it protects you from losing the assets the injured persons could take from you to compensate them for the damage you cause.

Likewise, if you are hit by a negligent driver, his or her insurance is not there to protect you, but is to protect him or her from being sued by you.

The Texas Courts have said that insurance carriers owe their duty to the negligent policy holder (the driver who bought or is covered by the policy), not to the people he or she hurts. This means that if a Driver hits you, and is at fault, then that Driver's insurance company's job is to protect that Driver, not you. I have seen insurance companies slip a bodily injury release into a property damage payment, for example, leaving the injured person bereft of any rights to pursue reimbursement for their injuries after getting the car damage paid. The Courts say this behavior is OK (as long as the carrier did not lie about what it was doing) since the insurance company has fulfilled its duty to protect its policy holder. Therefore, if you are in an accident, get some independent advice from your own insurance sales agent, your insurance claims office, or your own attorney. Read what you sign, question what you do not understand, and get advice before you sign any release or endorse any settlement check.

In addition to these pitfalls, a lot of drivers have no assets to protect, are therefore not worried about having those (non)assets taken from them. These drivers either carry the minimum coverage or none at all. I am still seeing a lot of uninsured drivers, despite tougher laws requiring coverage.

How to protect yourself:

If your car is hit by a negligent driver, then your **liability** coverage does not pay you any money at all; it only pays other people if you are liable to them for causing the accident, up to your policy limits.

If the negligent driver has no coverage, and if you do not have uninsured/underinsured motorist

coverage, then you may be out of luck. (Actually, there are some things you can try, but some are long shots and some do not work very well. Call me and I will send you some advice.)

So you need to do two things. First, evaluate your own liability insurance. How much is enough to protect you and your family from being sued for the damage you may do to others? Do you have enough insurance to pay others so that they will not take your personal assets if you cause injuries?

Second, to protect yourself and your family if you are hit by a driver who has no coverage or insufficient coverage, you need Uninsured/Underinsured Motorist coverage (called UM coverage here).

On your declarations page, UM coverage is shown in the C column:

Coverage is provided where a premium and a limit of liability are shown for the coverage

COVERAGES	VEH	A. LIABILITY COVERAGE			B1. MEDICAL PAYMENTS COVERAGE EACH PERSON	B2. PERSONAL INJURY PROTECTION COVERAGE EACH PERSON	C. UNINSURED/UNDERINSURED MOTORISTS COVERAGE (\$250 DED. APPLICABLE TO P.D. LIABILITY)			D. COVERAGE FOR DAMAGE TO YOUR AUTO		TOWING LAB COSTS PER DISABLE
		BODILY INJURY (THOUSANDS)		PROPERTY DAMAGE (THOUSANDS)			BODILY INJURY		PROPERTY DAMAGE	OTHER THAN COLLISION ACTUAL CASH VALUE LESS DEDUCTIBLE	COLLISION ACTUAL CASH VALUE LESS DEDUCTIBLE	
		EACH PERSON	EACH ACCIDENT	EACH ACCIDENT			EACH PERSON	EACH ACCIDENT	EACH ACCIDENT			
LIMITS OF LIABILITY	1 2 3 4						30	60	30			

Your limits for UM coverage should match your liability coverage. You cannot buy more UM coverage than your liability limits, and you should not buy less. If you carry higher liability limits than UM limits, you are ensuring that the strangers you may hit can receive better benefits than your family -- which I have seen.

Uninsured/underinsured Motorist Coverage:

UM protects you and your family members from being financially disadvantaged by the negligence of insolvent or hit and run drivers. Your UM limits can be stacked on top of the other driver's liability coverage (if any) to the extent needed. If you are a passenger in an innocent driver's car and get hit by an uninsured driver, you get the benefit of both the UM insurance for the car in which you are riding and of your own UM policy, if necessary.

Let's look at how a simple outing can quickly get complicated:

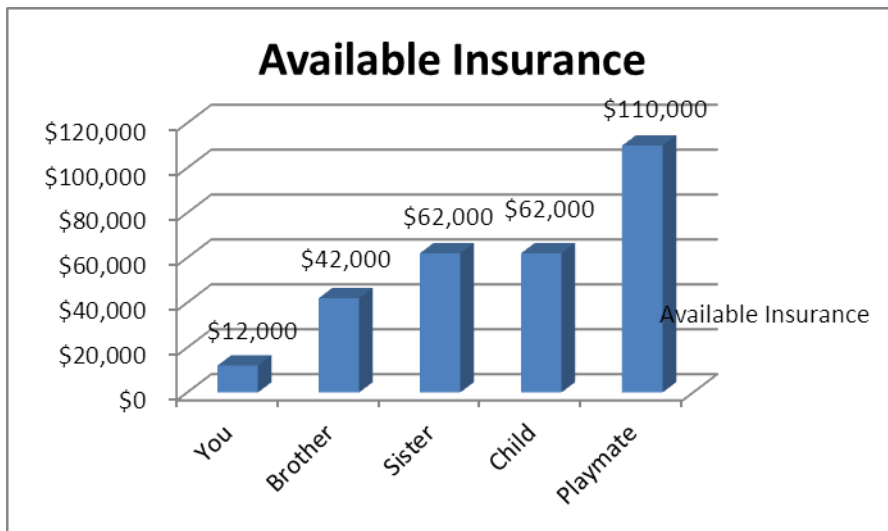


You're driving your car to the mall. Your passengers include your adult brother, your adult sister and her child, and child's little playmate. Suddenly, your car is hit by an uninsured driver:

All the people in your car have separate households and separate insurance policies, except your sister's child is on her policy. You carry \$30,000/60,000 in UM coverage; brother has \$30,000/60,000 in UM coverage; sister has \$50,000/100,000 in UM and little playmate's family has \$100,000/250,000 in UM coverage.

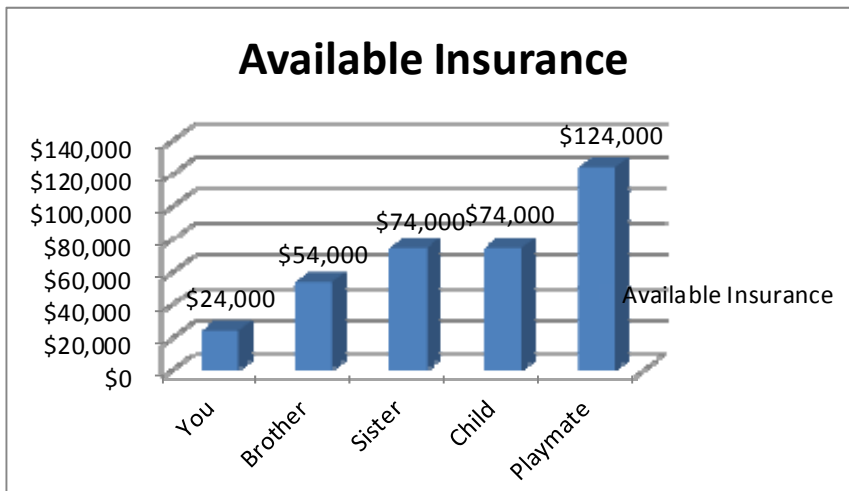
Who gets what? Assume everyone is badly injured.

Your uninsured motorist coverage (\$60,000 total, with up to \$30,000 per person) applies to protect everyone from the damage caused by the uninsured driver, hypothetically (but not always) divided equally (\$12,000 to each) to the five of you. Brother has \$30,000 of his own benefits in addition to the \$12,000 from you; (because only one person covered by his policy -- Brother -- is injured, he cannot use the whole \$60,000). Sister and her child have the whole \$100,000 to divide between themselves (up to \$50,000 each) over and above your \$12,000 each UM coverage so a total of \$62,000 is available to each of them. And little playmate has your \$12,000 (the 1/5 of your UM policy) plus her own family's \$100,000 for \$112,000 total. (If your sister is divorced, or if the playmate's parents are divorced, then there may be some other parental coverages available to either child.) The available insurance is shown in the graph:



If the negligent Driver had a minimum policy of \$30,000/60,000 instead of nothing, the Driver may still be *underinsured*. Each person in your car would have the same UM limits available to him/her, but those coverages would stack onto the bad Driver's liability limits. In this case, you and your passengers' coverage would be called underinsured motorist coverage, meaning that the liable driver did not have enough liability insurance to cover the damage he caused.

Assume, again, that each person in your car was equally hurt. Assume they shared equally in the negligent driver's coverage (\$12,000 each) and in your own underinsured motorist coverage (another \$12,000 each). The available insurance coverages for each person in the car would look like this:



Keep in mind that you and your relatives and friends become competitors for the negligent driver's coverage and for your own underinsured motorist coverage; there is no guarantee that your coverage or the other driver's coverage will be equally divided. This competition means that there is a conflict of interest among the parties. And of course, if the negligent Driver does only minor damage, such that his \$30,000/60,000 is enough to pay all claims, then no one else's UM coverage gets used.

If the full amount of coverage is not needed, then it does not get spent.

You do not have to be in a car to use your car insurance.

You may also be entitled to automobile insurance benefits even if you are not in a car when injured. If you (or your child or other covered person) are a pedestrian or bicyclist, for example, and are hit by a car, then the bad driver's coverage should pay for the injuries. If the driver is uninsured or underinsured, then **your UM coverage should step in to help**. Your UM coverage will generally owe the injured person all the same things the negligent driver is obligated to pay: medical bills, lost earnings and lost earning capacity, pain and suffering, physical impairment and disability, scarring, etc., up to the amount of the coverage you bought. The child of divorced parents, or the college student who has more than one residence, may be able to access the coverage of both parents or the student's and parents' coverages.

**Be careful what you release;
it may be your own claim!**

Keep in mind that your UM insurance company has the right to try to sue the bad Driver to recover any money your UM company pays you if that Driver does not have enough liability coverage. **Do not ever sign a release of the other Driver without getting your UM carrier's permission**, because if you do away with your own company's right to get reimbursed from the bad Driver (by giving the Driver a release) then you may also do away with your right to turn to your UM company for help.

PIP!

A third type of coverage, Personal Injury Protection (PIP), provides relatively prompt assistance while the rest of these complicated issues get resolved. This little known but useful coverage is in the B2 column on your Declarations Page:

Coverage is provided where a premium and a limit of liability are shown for the coverage

COVERAGES	VEH	A. LIABILITY COVERAGE			B1. MEDICAL PAYMENTS COVERAGE EACH PERSON	B2. PERSONAL INJURY PROTECTION COVERAGE EACH PERSON	C. UNINSURED/UNDERINSURED MOTORISTS COVERAGE (\$250 DED. APPLICABLE TO P.D. LIABILITY)			D. COVERAGE FOR DAMAGE TO YOUR AUTO		TOWING LABR COS PER DISABLE
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		EACH PERSON	EACH ACCIDENT	EACH ACCIDENT			EACH PERSON	EACH ACCIDENT	EACH ACCIDENT			
LIMITS OF LIABILITY	1 2 3 4					2500						

PIP is wonderful stuff, even if you also have health insurance and UM coverage. You should purchase at least the minimum of \$2,500 of PIP coverage, or buy the \$5,000 or \$10,000 which is also offered. This coverage is relatively inexpensive and generally pays faster than the other coverages. PIP reimburses you for 100% of the cost of your medical treatment and 80% of your lost earnings (if employed when the accident happens), up to the limits of coverage you purchased. It is available for you and each person in your car. (If you have \$2,500 of PIP and you and three passengers are in an accident, each one of you has a separate \$2,500 account.)

If you are injured while a passenger in someone else's car, and if you each bought PIP coverage, then your own coverage can be used, if needed, after you exhaust the coverage of your driver. Like your UM coverage, PIP applies for any injuries caused by a car accident, even if the injured person is a pedestrian or cyclist and is not in the car when the accident happens.

Why do I like PIP so much? Liability insurance companies, or even your own UM company, may not pay for a claim for months, or longer. Insurance companies generally do not pay a claim in bits and pieces, preferring to wait until they know the total value and then offering a lump sum settlement in exchange for a release. If the claims are disputed or if it takes a long time for the full value of the claim to be known (such as while you are still getting treatment and recovering), then you may not get any financial help for a long time. PIP, however, pays within 30 days of the date the bills are submitted and therefore helps much sooner.

Even if you have health insurance, some health policies are very restrictive, call for high deductibles, or limit your choice of doctors or your levels of treatment.

PIP will help fill in the gaps which are not covered by health insurance, plus it reimburses for lost earnings. Since too few people have disability insurance, this aspect may be extremely important. Finally, PIP may help with paying for outside household help if you are a homemaker who is disabled by an automobile accident.

Unlike UM, PIP is a no-fault policy. Whether the accident is your own fault, someone else's fault, or no one's fault, and whether or not there is other liability or UM coverage to turn to, PIP reimburses up to its policy limits.

Medical Payments Coverage: In the B1 column of the declarations page, you may see Medical Payments coverage instead of PIP/B2 coverage. Both coverages will reimburse medical expenses incurred as a result of a car accident, but Medical Payments coverage excluded lost

wages *and* requires reimbursement from the negligent driver's settlement. I recommend that anyone with Medical Payments coverage promptly change that coverage to PIP.

This Letter's Limits of Liability

Finally, realize that the above examples are not the whole story. Other facts (such as others who may have contributed to a collision, policy definitions and exclusions, injured persons competing with each other to use coverages disproportionately, etc.) will have a bearing on how any **real** case should be handled. We have not yet touched on homeowner's insurance, the subrogation rights of health care insurance companies, the State of Texas Guaranty Fund which protects consumers whose insurance companies have gone broke, workers' compensation coverage and how it interacts when there is an on the job injury caused by a negligent by underinsured driver, etc. etc.

These examples simply illustrate the need to read your policy and get good advice when -- or before -- an accident happens. Do not try to get complete legal advice from a newsletter, from well-meaning friends or family, or from the other side's insurance company. Learn as much as you can from all those sources, and then double check the information from an attorney who is knowledgeable and whose only loyalty is to you, the client. Most personal injury attorneys allow a free, no obligation visit for this purpose. Good luck.

--- this article was written by Judy Kostura.