

**Your Personal Guide to Car Wrecks in Indiana and Kentucky**

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Also, the Kentucky and Indiana Bar Association require me to inform you that 1) I will advance the legal costs associated with prosecuting your claim and that these sums do come out of your settlement; 2) if I don't recover any money on your behalf, you are not required to reimburse me those costs and; 3) my attorney's fee is charged off the top, on your total recovery.

Also, the Indiana Bar Association requires me tell you that this book is "ADVERTISING MATERIAL."

Further, Desmond Law Office, PLLC, does not presently maintain an office in Indiana.

## Why Listen to Me?

The simplest most honest answer to that question is, “I still have a roof over my head!” I have been practicing law for twenty years and I am still making a good living do it. Why, because I actually enjoy what I do. I am not the kind of person you want to start talking to at a cocktail party about car crashes because I will talk your ear off. I think it is exciting, challenging area of the law. This is why I tend to limit my legal practice to almost exclusively to motor vehicle accidents. Why should you listen to me? Because after 20 years of legal practice, I am still going strong and just like I have with my other clients, I will EARN your business!

I have written this book so that consumers could have good, solid information that will help protect them against irresponsible drivers. After meeting with hundreds of potential clients and asking them what they knew about their own car insurance policies I discovered that the insurance industry had done a very poor job of educating its own consumers. As you will see, it is my opinion that this is not a mistaken oversight on the part of the insurance industry. Rather, there appears to be a deliberate attempt to keep consumers “in the dark” about the most important car insurance they could buy.

My name is James “Jim” Desmond and I have been representing individuals in car wreck cases since I first became a licensed attorney in 1993. What I have seen is a complete unfairness of the system. The value of a car wreck claim really is not determined by the severity of your injuries but rather, how well insured the person is that hit you.

In Kentucky and Indiana, a person can lawfully operate a motor vehicle with just \$25,000 of insurance. If a drunk driver takes off your left arm, this means the drunk driver’s insurance carrier is on the hook for \$25,000 at not a penny more. This book

wants you to understand how to protect yourself in that instance, and other instances, wherein the irresponsible driver gets away with murder.

**IN MANY CIRCUMSTANCES, THE AT-FAULT DRIVER IS NOT GOING TO PAY ALL OF YOUR MEDICAL BILLS!!**

The biggest myth under Kentucky and Indiana law is that that the At-Fault Driver is responsible for my medical bills. WRONG! WRONG! WRONG!

Under Kentucky and Indiana law, drivers can lawfully operate a motor vehicle with just \$25,000 in insurance coverage. You hear these commercials from Safe Auto promoting “Minimum Coverage for Minimum Budgets!” This is what they are they are talking about.

So if you are hospitalized from a car accident and walk out of that hospital with a \$35,000 medical bill, Safe Auto says sorry for luck, here is \$25,000 and we wish you all the best in figuring out how you are going to pay for that other \$10,000 in bills. Or worse yet, let’s assume that the at-fault driver was drunk and took off your left arm in this car wreck. Once again, Safe Auto says sorry for your luck, here is \$25,000 or the maximum amount of insurance coverage the drunk driver bought, and sends you on your way.

You can protect yourself from this kind of tragedy ever happening to you and your family by putting on your own automobile insurance uninsured motorist coverage, underinsured motorist coverage and no-fault or med-pay coverage. While I am going to address a motor vehicle accident in the order events occur, I truly hope you will take the time to read the sections below on these types of insurance coverage and make sure that they are on your insurance policy before the car crash happens.

If you don't understand these types of insurance, call me, Attorney James Desmond, directly on my cell phone. The number is (502) 609 – 7657.

### **THE CAR CRASH JUST HAPPENED. WHAT DO I DO?**

#### **1) *At The Scene of the Car Wreck:***

Realize that whatever you say to the other driver or the police officer, can be used against you later on. I would never suggest that you admit fault for the accident. The issue of fault is really a legal concept and there are so many factors you just don't know right then. Tell the investigating police officer what happened and let him form his own conclusions

If you are physically able to do so, I do recommend that you take photographs of the vehicles, get the other driver's name and address and take a photograph of the license plate of the other vehicles involved in the car crash. In short, if the police report becomes lost or takes a while to track down, this information can help us get the case moving quickly despite the missing police report.

#### **\*\*\*\*Side note about Police Reports and Auto Accidents\*\*\*\***

Generally speaking, a police report is not considered admissible into evidence as it is considered hearsay. In Kentucky, this issued is covered by the Kentucky Rules of Evidence. The specific rule is KRE 803 (8). The idea being that Investigating Officer's conclusions as to fault for the accident are hearsay but factual information, such as the length of the skid marks, would be allowed. Nevertheless, the insurance companies put a lot of weight on the information contained in the police report and it helps tremendously if a police report does not put you at fault for a car wreck. Not always but generally, the investigating officer will put

the driver he believes to be at-fault for a car wreck as Driver number one.

2) *Seek Medical Attention:*

If you are injured, I recommend you go ahead and get checked out at the Emergency Room. Don't take any chances. People can be a lot more injured from a car wreck than they realize. If the automobile accident happened in Kentucky, we will use your no-fault coverage to pay your medical bills. If the accident happened in Indiana, we can use your med-pay coverage to pay these hospital charges. If you don't have either of these types of coverage, tell the hospital to bill your health insurance and then call me so I can explain to you the law regarding ERISA liens.

Please note that under all circumstances, I do encourage anyone that calls to see their family doctor within the first four days after an automobile accident and advise that doctor of any pain, no matter how small it may be, that you are having. My concern is I have seen many personal injury clients feel fine immediately after a car wreck and not develop any pain until several weeks later. You are not a medical doctor. Don't try to diagnose your own injuries. Let the Emergency Room or your family doctor examine you and make sure you are as good as you think you are. Further, this one visit to your family doctor starts the records you need should you decide to pursue a personal injury claim.

The value of a personal injury claim is largely determined by the material contained in a client's medical records. While is admirable for you to try and let your injuries heal on their own with rest and over the counter medications, it appears to a jury that you were not hurting unless you have a medical record that documents your complaints of pain. I tell my clients all the time to get checked out immediately after an automobile accident. This allows them time to consider whether their injuries actually warrant the filing of a personal injury claim.

3) *Do not call me from the Emergency Room.*

While in most of this material I am telling you to call me with questions, please do not call me from the Emergency Room. If you want, call me as soon as you get in the parking lot, just not while you are in the Emergency Room. While I know that sounds elemental, I have had people do it before. Realistically, the last thing you want to convey, directly or indirectly, is that you are more concerned with your personal injury claim than your medical treatment. Trust me, I have seen ER records wherein you can tell that the doctor did not like how the patient was acting and therefore, noted that things like “patient is eating potato chips and does not appear to be in any pain.”

*4) Go ahead and report the motor vehicle accident to your automobile insurance carrier.*

If you are well enough, call your car insurance company and report the car wreck claim. They will want to know how the automobile accident happened, the accident report number issued by the police, your injuries and where your motor vehicle is located. I expect that they may record this phone call and what you tell them. If you do this, I would caution you to make sure that you do not minimize their injuries. I

Once you report the personal injury claim, they will give you a claim number and assign a liability adjuster to your claim. Keep that claim number available as you will need it and it will make it a whole lot easier to track down your file when you call your insurance carrier in the future. Also, if you hear from the at-fault driver or an injury attorney, do not discuss with them the facts of the automobile accident. Rather, provide them with the contact information for your insurance adjuster and the corresponding claim number. It is the job of your insurance company to evaluate all the injury claims stemming from this car wreck and to protect you from liability, within the limit of the auto insurance you have purchased, to the best of their abilities.

### **WHAT ABOUT THE DAMAGE TO MY CAR?**

If the only damage in your case is that your car got banged up, then you don't have a personal injury case – but you may have a property damage case. The problem with property damage claims is that the amount of money at stake, may not justify a lawsuit or an attorney's hourly wage. Most experienced attorneys charge \$200 or more for an hour of their time. As a result, it does not make any sense to have a jury trial for a car that is worth \$5,000.

While I do not handle property damage cases, I don't mind answering your talking to you about the same. Generally, if a person has just damage to their car and was not injured, I will encourage them to use their collision coverage with their own automobile insurance carrier. The claim tends to get addressed quicker and it avoids any arguments over who was at fault in causing the accident. While you are out your deductible this way, your insurance company should endeavor to recover your deductible from the other insurance company if you were not at fault in causing the accident.

In regard to property damage arising from motor vehicle claims, I will tell you some general principles:

- *You can take your car wherever you want to get it fixed.*
- *The insurance company has to, by law, consider your car a total loss if the repair costs equal a certain percentage of the fair market value of the vehicle. While this percentage varies according to the statute, a car is generally considered a total loss when the cost of repairs is equal to 75% of the fair market value of the vehicle.*
- *If the car is a total loss, the insurance company owes you the fair market value of the vehicle, not the cost to repair it.*
- *Fair Market Value generally refers to what the car could have been sold for right before the accident occurred. As a result,*

*make sure you make the insurance company aware of the repairs and improvements you have done to the car.*

- *Fair Market Value does not mean what you owe on the car. If you got a lousy deal when you bought the car and are now owe more than it is worth, you will still owe the full balance of your car loan. The liability carrier only owes you the Fair Market Value of the vehicle, not the payoff!*
- *To protect yourself from owing more than the car is worth, see if you can get “gap” insurance to cover the difference. My insurance company, Amica, calls it “auto loan/lease” insurance and it is cheaper through them than the car dealership.*
- *Yes, you can keep a car that is considered a total loss. However, you have to apply for a salvage title to do so. Check with your local county clerk as to the specific requirements of obtaining and licensing a vehicle with a salvage title.*
- *If you keep the car, the insurance company does not pay you the car’s salvage value. The easiest way to think of salvage value is the amount that the insurance company will receive from a junkyard for your wrecked vehicle.*
- *I only recommend keeping a car and applying for a salvage title if the damage to the car was mostly cosmetic and the insurance company has placed a low salvage value on the vehicle.*

**KENTUCKY AND INDIANA LAW DOES NOT GUARANTEE YOU THAT SOMEONE WILL BE ABLE TO PAY FOR YOUR DAMAGED VEHICLE.**

Kentucky and Indiana law both only require automobile insurance coverage in the amount of \$25,000 per person, \$50,000 per accident and \$10,000 in property damage. So if you are driving your new \$60,000 BMW home from Sam Swope and a drunk driver hits you in the rear-end with such force as to total your brand new car, you could be in trouble. If that drunk driver has Kentucky Farm Bureau insurance and they only insured him for the state minimum, Kentucky Farm Bureau is only responsible for your property damage claim up to \$10,000. Hopefully, you put collision coverage on the BMW and this way, your own insurance company is responsible for paying you the fair market value of the BMW. When I buy a new car, this is why I always call my insurance company from the car dealership before I leave the car lot. I don't want to take any chances that someone will say that this new, expensive vehicle did not have "full coverage."

**MY CAR IS WORTH LESS BECAUSE IT WAS INVOLVED IN AN AUTOMOBILE ACCIDENT. WHAT DO I DO?**

This is generally referred to as a diminution in value claim. My suggestion is to talk to your automobile dealership and see if they will give you a letter, on their letterhead, saying that the car would now sell for less on their lot since it has been in an automobile accident. Once you have this letter, present a copy to the insurance company for the at-fault driver and tell them you want to present a diminution in value claim. Please note that if you have collision coverage on your car, it does not

typically cover this type of claim and therefore, you want to present this claim to the insurance company for the at-fault driver.

In Kentucky, the Kentucky Supreme Court said about a diminution in value:

The cost of repair to a damaged motor vehicle is not the true criterion of the amount of damage that may be recovered by its owner, since the fact that it has been in a wreck, necessitating repair, depreciates its marketable value after being repaired.

*General Construction Company v. Kemplin*, Ky., 218 S.W.2d 384 (Ky. 1949). See also, *Eckler-Moore Express, Inc. v. Hood*, Ky., 256 S.W.2d 33 (Ky. 1953); *Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993).

## **HOW DO I GET MY MEDICAL BILLS PAID FROM A CAR WRECK?**

I am going to talk next about how you get your medical bills paid as a result of a car wreck in Indiana or Kentucky. This is because most people worry about whether they can afford to go to the Emergency Room or doctor for treatment. I understand this concern and if this is your concern, call me! I am happy to brainstorm with you and see what your options are to get your medical bills paid. My cell phone is (502) 609-7657.

Nevertheless, I want you to understand that in my opinion, the later parts of this book that deal with Uninsured Motorist Coverage and Underinsured Motorist Coverage are more important and it is imperative that you read the same. Very simply, the insurance coverage in regard to medical bills can be triggered by statute and it is more common. However, most people do not understand how to protect themselves from an uninsured or underinsured motorist .

### ***KENTUCKY IS A NO-FAULT STATE BUT, You Can Sue The At-Fault Driver For Your Damages!***

Most people think that because Kentucky is a no-fault state, you can't sue the other person for your damages. This idea is completely incorrect! In Kentucky, you can absolutely sue that at-fault driver for your damages.

No-Fault coverage is also referred to as no-fault benefits, basis reparation benefits, PIP benefits or personal injury protection.

Whatever you call it, it means that your medical bills and lost wages will be **paid by the insurance company for the vehicle you are riding in**, regardless of how the accident happens.

For example, if you are driving in my car and another driver collides with the rear-end of the car, my insurance company will pay for the first \$10,000 of your medical expenses. This is true no matter how the accident happened. So even if we are standing still and hit by a drunk driver, my company is still responsible for your medical bills and lost wages. After they pay your PIP benefits, they can go against the drunk driver's insurance company through what is known as a subrogation claim. However, they have to pay these benefits as long as they are reasonable and related to the accident.

No-fault benefits are designed to make sure that you can get the medical treatment you need in the case of an accident. No-fault coverage typically includes several other kinds of losses that can also be recovered. However, medical expenses and lost wages tend to be what it is primarily used for. No-fault insurance will also pay your medical expenses as your treatment is incurred rather than a lump settlement after your treatment is completed.

### ***HOW MUCH NO-FAULT INSURANCE DO I NEED?***

In Kentucky, the law does not allow an automobile insurance policy to have less than \$10,000 in no-fault coverage. See KRS 304.39-020 (2) and KRS 304.39-040.

Nevertheless, I recommend that you carry at least \$30,000 per person in insurance coverage. In my experience, this coverage tends to be very cheap and such an amount increases your likelihood to get the medical treatment you need as a result of the accident. Further, the basic \$10,000 of no-fault insurance is not "stackable". However, added or optional no-fault coverage is. What this means is that if you have purchased \$30,000 of no-fault on all three of the cars you own, you may qualify for \$70,000 in no-fault benefits.

Kentucky law requires every driver to have liability insurance coverage of at least \$25,000 per person. I would also suggest that everyone contact their insurance agent and explore the cost of adding OPTIONAL NO-FAULT BENEFITS or ADDED BASIC REPARATION BENEFITS. The relevant statute is KRS 304.39-140.

Why do I think added basic reparation benefits are so important? In my career, I have dealt with a number of cases wherein people have sustained a permanent injury or disabling trauma. Unfortunately, when I am at the hospital meeting with these potential clients, I asked many questions that I have to respond with “I don’t know.”

Until I have some time to investigate the matter, I don’t know if the other driver is truly insured and how much is he insured for. So in addition to every other fear and concern my clients are facing at that moment, they now have to be concerned about the financial effect this accident could have on their life.

Very simply, added basic reparation benefits or no-fault coverage means that no matter what, I have a tool to get my client’s medical bills paid, get them the treatment they need and allow them to recover lost wages immediately after an accident instead of months later. Whether you use me as your attorney or hire another personal injury lawyer, you will be glad that you followed my legal advice and purchased added basic reparation benefits on your automobile insurance policy.

***IT IS NOT OFTEN WHEN AN ATTORNEY ADMITS HE WAS WRONG BUT ME, ATTORNEY JAMES DESMOND, IS ADMITTING HE WAS WRONG!***

For Kentucky drivers I told you above to have at least \$30,000 of no-fault coverage on your car insurance. Well, I have changed my mind on that. Now I want you to have at least \$50,000 of added reparations benefit on your automobile insurance. If you are an Indiana driver, then I would suggest to you that you have at least \$50,000 of med-pay coverage on your automobile insurance policy.

Recently, I have seen a trend wherein the hospitals are unwilling to negotiate down my client's medical expenses and the health insurance carriers, because of the ERISA monster, are refusing to negotiate down the amount of their subrogation claim. So, let's minimize the bite of the ERISA monster by doing one of two things.

First, if we have added reparation benefits, your medical bills may be below the \$50,000 mark so we may not even need to involve your health insurance. Also, under Kentucky law, the lien of a no-fault carrier is extinguished if we recover the full policy limits of the at-fault driver. The statute is KRS 304.39-070 (4), which says:

. Any entitlement to recovery for basic or added reparation benefits paid or to be paid by the subrogee shall in no event exceed the limits of automobile bodily injury liability coverage available to the secured party after priority of entitlement as provided in this section and KRS 304.39-140(3) has been satisfied.

. So if you have \$45,000 in medical expenses from a motor vehicle and the at-fault driver has only \$25,000 in liability insurance, Kentucky law says that no-fault carrier, a.k.a. the PIP carrier, loses its right to recover the \$45,000 in medical expenses it paid on your behalf. ERISA claims do not work that way. Basically, the ERISA carrier has a right to recover no matter how much the other driver's insurance coverage is for.

. Second, Kentucky law allows us to direct the payment of no-fault benefits. The statute is KRS 304.39-241 and it states:

304.39-241 Insured's direction of payment of benefits among elements of loss -- Direction of payment to reimburse for medical expenses already paid.

An insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor. A reparation obligor shall honor the written direction of benefits provided by an insured on a prospective basis. The insured may also explicitly direct the payment of benefits for related medical expenses already paid arising from a covered loss to reimburse:

- . (1) A health benefit plan as defined by KRS 304.17A-005(22);
- . (2) A limited health service benefit plan as defined by KRS 304.17C-010;
- . (3) Medicaid;
- . (4) Medicare; or
- . (5) A Medicare supplement provider.

To illustrate this, consider a case wherein the client has very large medical expenses of \$300,000 stemming from a car wreck and the other driver only has insurance coverage with limits of \$100,000 per person. We have all seen, through the Explanation of Benefits sent out by your health plan, that most health plans have negotiated a lower rate with the hospitals and doctors within their network. Well, the ERISA lien is only for the amounts actually paid by the health plan, not the billed amount of the medical expense.

In this example, health plan pays out \$60,000 to satisfy the \$300,000 in medical expenses discussed above, KRS 304.39-241 allows us to direct the client's PIP or no-fault benefits to satisfy the ERISA lien. So if the client took my advice and had \$50,000 of added reparation benefits on their insurance policy, as their attorney I would first reserve my client's PIP benefits. I would then address the ERISA lien being asserted by the health plan and attempt to negotiate it down. Let's assume that the health plan won't recognize my attorney's fee but will reduce their claim from \$60,000 to \$50,000. I would then use KRS 304.39-241 to direct the payment of my client's PIP benefits to satisfy the health insurance lien. The end result being that the ERISA health plan is fully satisfied and therefore, receives no part of the \$100,000 that I can potentially recover from the insurance carrier for the at-fault driver.

In Indiana, I am not aware of a statute that directly allows this same kind of direction of benefits for med-pay coverage. However, I would still attempt this same procedure. I would just have to review the terms of the actual automobile insurance policy and see

if it would not allow me to do what I described above.

Further, in my experience, when the medical expenses from a car wreck are large, most hospitals tend to bill the health insurance carrier rather quickly. As a result, if \$50,000 in med-pay coverage was on an automobile insurance for an Indiana driver, I think we could still enact what I suggested. I would just want to make sure that I sent a letter to the med-pay carrier and attempting to reserve the benefits.

### **RESERVING NO-FAULT BENEFITS, KRS 304.39-241**

It is not very often that an author tells a reader to put his book down but in short time from now, I am going to do just that. I am going to tell you that because I want to stress to how important this one concept is.

As I discussed above, KRS 304.39-241 lets us reserve and direct the payment of no-fault benefits in Kentucky. So if you are reading this material on the internet and someone in your family was just in serious motor vehicle, pick up the phone and immediately tell your automobile insurance to reserve any PIP benefits that might be available because of this car wreck. Then call my cell phone, (502) 609-7657, and we can discuss whether to keep those benefits reserved or not.

Why reserve PIP benefits? I had a case wherein the client had an initial hospital bill for \$40,000 and we reserved my client's \$10,000 in PIP benefits and allowed his health insurance to pay his medical bills. They paid out \$12,000 for this \$40,000 bill. We then took the \$10,000 in PIP coverage and applied it to the health insurance lien. As a result, only, \$2,000 came out of my client's settlement instead of \$12,000. Now, you can see the importance of reserving these benefits immediately whenever the car wreck or motorcycle accident involves a trauma. By law, the Kentucky and Indiana Bar Association want me to tell you that every case is different and past results do not guarantee future successes. And yes, both Bar Associations would be correct. However, all I am doing at this point is asking you to give me two tools to work with:

1) added reparations benefits or med-pay benefits and; 2) an immediate reserving of these medical benefits. Obviously, if I don't use these tools, I can't enact the procedures that I have described which increase my chances of maximizing the recovery on your personal injury claim(s).

***I WANT TO USE MY HEALTH INSURANCE AND LEAVE MY AUTOMOBILE INSURANCE OUT OF IT. VERY, VERY HARD TO DO!***

In Indiana, you can sometimes pull this off. This is because Indiana med-pay is not automatic. You have to purchase it to have it on an insurance policy. So if I am handling an Indiana car wreck and my client does not have med-pay coverage, I direct all of my client's medical providers to bill my client's health insurance. Also, Indiana law does not abolish tort liability for the first \$10,000 in medical expenses as Kentucky law does. In other words, Indiana law allows you to make a claim against the at-fault driver for all of your medical expenses while Kentucky transfers that right for the first \$10,000 of these expenses to your no-fault carrier. I know that makes no sense right now but, I will explain it below.

However according to Kentucky law, no-fault coverage is primary over health insurance. Therefore, unless your hospital charges are very high, your health insurance is likely to argue that they owe nothing until your no-fault coverage is exhausted. In Kentucky, PIP or no-fault benefits are primary over your health insurance. As a result, until you can show proof to them that your no-fault benefits are exhausted, they are not likely to pay any of the medical expenses related to your personal injury claim.

Second, according to Kentucky law, the right to recover the first \$10,000 in medical expenses and lost wages is not your right but the right of the PIP carrier. This is referred to as the abolition of tort liability. It is a fancy way of saying if the medical expenses and lost wages are or should be owed by a PIP carrier, you lose the

right to recover these benefits from the at-fault driver. The relevant statute is KRS 304.39-060.

This makes sense because they, the no-fault carrier, are responsible for these expenses so they should have the right to recover them from the at-fault driver. So in Kentucky, if you approach the liability carrier and try to settle your personal injury claim for a total of \$10,000, \$5,000 for pain and suffering and \$5,000 for medical bills, they will tell you correctly that they do not owe the \$5,000 in medical expenses. They will agree to only pay you \$5,000 for your pain and suffering claim. This is why I insist my clients use their basic reparation benefits coverage instead of their health insurance. Otherwise, by using their health insurance instead of the no-fault coverage, my clients would be penalized by Kentucky law as they would not be allowed to recover their medical expenses from the at-fault driver but arguably would still owe repayment of the ERISA health insurance lien.

As discussed above, a health insurance carrier has a subrogation claim or a lien against the case. A lien means that they have the right to recover any amounts they paid out from any settlement you reach with the insurance company for the at-fault driver. Further, you will still have your co-pays and deductibles to deal with and you don't know if all your doctors will accept your health insurance.

***I UNDERSTAND THAT ALL THIS MAY SEEM CONFUSING AND CONTRADICTORY! I DO NOT RECOMMEND YOU TRY TO HANDLE YOUR OWN AUTOMOBILE ACCIDENT CLAIM!!!***

Look, I understand that many of the concepts discussed herein are confusing. I further understand that in one section of the book I am telling you we are going to your medical bills paid by your health insurance first and in the other section I am saying that we can't do that. This is because the law is not black and white but rather, completely and entirely grey!

Law school does not train lawyers how to read a book and find a statute, but rather, it trains us on a way to think about things. This material is trying to give you some general background as to

the law regarding Indiana and Kentucky car wrecks. Further, it is trying to provide you with the means of researching and learning more about the subject through the proper topics or statutes to Google. However, it is not trying to give you the means of handling your own personal injury claim. Every case is different and the facts of every auto accident are different so they are handled differently.

This is why I have told you several times throughout this material, pick up the phone and call me so that I can evaluate your claim personally. Today is one of several Saturdays I have spent at the office writing this book and yes, during this Saturday afternoon, I have taken several phone calls from my clients. My name is James “Jim” Desmond and my law firm is Desmond Law Office, PLLC. My cell phone is (502) 609-7657. Yes, I will pick up your call personally and yes, you can even send me a text to get the conversation started.

***MY INSURANCE COMPANY IS ASKING FOR A PEER REVIEW OR AN INDEPENDENT MEDICAL EXAM. WHAT DOES THAT MEAN?***

In essence, your insurance company is looking for a way to not pay your medical bills. Remember that your insurance company owes you no-fault benefits if the medical bills are reasonable and related to the accident. Well, if the insurance company has a doctor saying that the bills are not for treatment related to the accident or that the charges were not reasonable, they don't owe them.

They call it an Independent Medical Exam. Most plaintiff's attorneys call it a Defense Medical Exam because the doctor they send you to, they have used hundred of times. If you agree to one of these, they will give you the name of a doctor that will see you one time and perform an examination. Thereafter, that doctor will issue a report to the insurance company giving his opinion as to your current medical condition and whether he believes you have been or are truly hurting.

So let's apply some logic here. Your insurance company is sending you to a doctor in an effort to reduce the money they have to pay on your claim and that doctor they are using regularly gets business/income from that insurance company. Does it not seem obvious that they are slanting the cards in their favor

I don't recommend you agree to an I.M.E. In fact, if the insurance company is asking for such an exam, it is probably time to get an attorney. In Kentucky, an insurance company has to obtain a court order compelling you to attend such an exam and the case law says that they have to show "good cause" for the request. See KRS 304.39-270. While many courts tend to grant them the right for such an exam, I would seek legal advice as to whether this is in your best interests.

In contrast to an I.M.E., a doctor performing a peer review never actually examines you. Instead, the peer review doctor looks over your medical records and bills and issues a report giving his opinion as to whether your treatment was proper in length, total charges and the type of treatment rendered. And yes, the insurance company uses this doctor regularly and he typically issues a report allowing them to deny all or some of your charges.

A peer review is typically performed by a chiropractor on chiropractic charges. In fact, this is the only kind of review authorized by the Kentucky statutes. The statutes governing peer reviews are contained in KRS 312.200 and deal with the regulation of chiropractors. In fact, the statutes regarding Kentucky chiropractors require the people performing peer reviews to have special education and licensing. See KRS 312.175.

The insurance carriers are now using medical doctors to review chiropractic charges. There is a debate and litigation pending as to whether this is allowed or not. They are also doing this with physical therapist and trying to claim that according to medical guidelines, strains of the back from an automobile accident should not last more than six weeks. This is malarkey and I would encourage you to rely on the advice of your doctor, not your insurance carrier.

For you as a consumer, you should know that your insurance company has a duty to hold you harmless for any charges that they deny. As a result, if you are not going to seek legal advice, make sure at the very least you get a letter from them stating that they will hold you harmless for these charges and that they will provide you with legal counsel, at their expense, if this medical provider should sue you over the denied charges. However, as far as I am concerned, as soon as your insurance company starts talking about your medical expenses, you need to consult an attorney!

### ***CAN I REJECT MY NO-FAULT BENEFITS?***

Yes, you can reject your PIP or No-fault benefits. The statute is KRS 304.39-060(4). However, generally speaking, I do not recommend you do so. If you reject your no-fault benefits, you recover the right to recover the first \$10,000 of your medical expenses and lost wages from at-fault driver or his insurance carrier. This is how Indiana does it. Your medical bills and lost wages are part of your total claim for pain and suffering against the at-fault driver or his insurance carrier.

The problem is that the liability carrier is not going to settle any part of your claim until they can settle all of it. So if you reject your no-fault benefits, you have no way of getting your medical bills paid or lost wages paid until your personal injury claim is settled. I tell most of my client's that the average personal injury claim does not resolve until six to eight months after the accident.

To illustrate, I used to be in-house counsel for Yellow Cab Company of Louisville and because of this connection, I represent a lot of cab drivers that have been injured in automobile accidents. Because Yellow Cab does not want to be paying their driver's no-fault benefits, they have their cab drivers sign a rejection of these PIP benefits. This rejection is then filed with the Kentucky Department of Insurance.

When I create a demand package for a cab driver's personal injury claim, I send a request up the Kentucky Department of Insurance for copy of my client's rejection of no-fault benefits. This

copy then becomes part of the demand package and allows me to argue the liability carrier that they owe my client's medical expenses in addition to his personal injury claim. This way my client's medical bills are recovered as part of his personal injury claim. The problem of course is that if my client's medical expenses have been owing for months, he has probably dealt with collection calls and/or the owed charges could affect his credit score. As a result, in this instance, I hope my client has health insurance and that we might have been able to use his health insurance to pay his medical expenses as they were incurred.

In my opinion, the only time you reject your PIP benefits is if you are riding on a motorcycle and decided not to purchase no-fault coverage. See KRS 304.39-060. In this instance, Kentucky law penalizes a motorcycle and does not allow him to recover the first \$10,000 in medical expenses and lost wages. The law states that this is the right of the non-existent PIP carrier, not your legal right. As a result, if you reject your no-fault benefits while operating a motorcycle, you can recover your medical bills and lost wages from the liability carrier when your personal injury claim is settled. In this way, you avoid the penalty the law imposes for riding a motorcycle.

By the way, in Kentucky, the law for motorcyclists varies a lot from what I have described herein in regard to car wrecks. I have written a complete book pertaining to the law on motorcycles. If you were involved in a motor vehicle accident while riding a motorcycle, call me at (502) 609-7657. I think the law regarding motorcycles in Kentucky is complicated so: 1) you want someone with experience to handle the claim and' 2) I would never recommend you try to handle such a claim without seeking the advice of legal counsel.

### ***MED-PAY INSURANCE IS AVAILABLE IN INDIANA.***

Indiana is not a no-fault state and the most similar type of coverage you could purchase would be referred to as Med-Pay. Med-Pay is limited to covering only your medical expenses that are related to the accident and does not include your lost wages. Moreover, med-pay is not automatic. What I mean by automatic is in Kentucky, the \$10,000 is the state minimum for basic reparation benefits and it applies as soon as the car wreck happens. In Indiana, there is not set minimum for med-pay coverage. So if you did not purchase med-pay coverage through your automobile insurance, it does not apply. In that instance, we would have to use your health insurance or a lien with the doctor's office, to get you the treatment you need for your injuries.

### ***HOW MUCH MED-PAY COVERAGE DO I NEED?***

The answer to this question really depends upon your financial means and whether you have health insurance. However, as discussed above at length, I think you should consider at least \$50,000 in med-pay coverage on the insurance policy for the vehicle you own. Very simply, with the high costs of medical treatment, it is actually pretty easy to run up over \$10,000 in medical bills from an automobile accident and I explained above how we might be able to use this med-pay coverage to satisfy all or part of the ERISA subrogation lien.

**UNINSURED MOTORIST COVERAGE**

**HAVE IT!**  
**HAVE LOTS OF IT!**  
**PRAY YOU NEVER HAVE TO USE IT!**  
**THANK GOD WHEN YOU DO USE IT!**

Uninsured Motorist coverage lets you make a personal injury claim against your own automobile insurance carrier for the damages caused by an Uninsured Motorist. An uninsured motorist is someone who does not operate his vehicle without at least the state minimum in insurance coverage. On this note, keep in mind that a vehicle could be legally insured through a variety of ways. A motor vehicle can have insurance coverage because either the owner or the driver of the vehicle has insurance coverage. As a result, when I am looking for insurance coverage on at-fault driver, I need to be sure that both the owner of the vehicle and the driver had no automobile insurance and that they were not covered through an employer's insurance policy also.

In regard to an uninsured motorist claim, your insurance company evaluates your personal injury claim just as they would the injury claim of a third-party. They may or may not offer to settle your injury claim and they are not going to pay you a higher amount just because you their insured. However, whatever funds they pay out on your behalf, they will sue the at-fault driver in an effort to recover.

Why this coverage is so important is that for a few hundred dollars a year, you have transferred the risk that the at-fault driver has no money and no assets to your insurance company. Your insurance company can bear this risk a whole lot easier than we can.

Assume for a minute that you have just bought your newly licensed, sixteen year old his first car, a 1996 Toyota for \$2,500. Of course, he is excited about his new car and immediately wants to show all of his friends. He is going down the road when a Ford F150 truck pulls out of the Thornton's gas station and hits the Toyota directly in the driver's side door. There is no question that the Ford truck is completely at fault for the accident as your son was obeying the speed limit, driving carefully and the Truck driver had a suspended license.

The accident was serious and your son is taken from the accident scene by EMS to the Trauma Unit of University of Louisville Hospital. After you arrive at the hospital, you find out that your son will be fine but he does have a displaced fracture in his leg that will need to be repaired through surgery. The police officer that investigated the accident tells you that while the driver of the Truck was clearly at fault, he has issued a citation to that driver for failing to have his vehicle properly insured. What do you do?

While Kentucky and Indiana law clearly requires all drivers to maintain insurance coverage on their vehicles, many drivers do not. Simply put, they cannot afford the cost of liability insurance and they have little from which a Judgment can be collected. Yes, it is against the law and they face criminal charges for failing to do so. However, it happens all the time. So how do you protect your family in the event of a serious car wreck? Uninsured Motorist Coverage purchased from your own automobile insurance carrier provides your son with a means of recovering his claim for pain and suffering and medical expenses.

Most Kentucky and Indiana automobile policies have this coverage as it is required by Kentucky law unless you sign a specific rejection of it. The problem I find is that most people have this coverage only in the amount of \$25,000 per person. I

recommend that people carry at least \$100,000 per person of Uninsured Motorist Coverage on every car they own. To be candid, people walk out of their insurance agent's office thinking they have "full coverage" and are protected. Well, in both Kentucky and Indiana, the term "full coverage" has no legal significance. My point being that perhaps your insurance agent sent you out with \$25,000 of uninsured motorist coverage but, that is not enough! If you have a serious motor vehicle accident, chances are that your medical expenses alone will come close to, or exceed, that \$25,000 in insurance coverage.

Further, by using the above example about your son being in a serious car wreck, I want to make something clear. We are not just talking about recovering for your son's pain and suffering claim. Your son's damages would include at least: the \$2,500 value of the Toyota; the loss of use in regard to his car; his lost wages from his part-time job; the co-pays and the deductibles from his health insurance; the physical scars he has from the accident; his inability to play sports while healing; the mental scars from the accident and; the cost of those items (crutches, etc.) that may not be covered by his health insurance. **Your son did nothing to cause this accident** and yet, he has all these damages. So how is he going to recover any of these damages when some deadbeat made a conscious decision to violate the law?

I understand that many people don't care for attorneys, the legal system or believe in making claims for pain and suffering. Nevertheless, this is not about those things. This is about making sure your family is not left to the mercy of a flawed system. This is about making sure that you have the means of recovering all the damages allowed by law whether you choose to do so through an attorney, on your own, or not at all. This is about making sure your family's financial goals are not through into ruin because someone else thought it was okay to drive a car in violation of the law. Uninsured Motorist Coverage protects you when the automobile accident happens and the at-fault driver does not have any liability insurance on his or her automobile.

Further, Uninsured Motorist Coverage protects you in the case of a hit and run accident. If the at-fault driver rear-ends your

vehicle and then speeds off, you can make a claim for your pain and suffering through the uninsured motorist coverage on your own automobile insurance. However, in the instance of a hit and run driver, the case law and/or the insurance policy generally requires that there be evidence of physical contact, direct or indirect, between the phantom vehicle and your car. As a result, if you were involved in a hit and run accident, be sure to take photographs of the damage to the car and insist your insurance carrier comes out to inspect the damage. Then call me, Attorney James Desmond, on my cell phone, (502) 609-7657, so we can discuss what else might need to be done.

**ANOTHER EXAMPLE WHEREIN UNINSURED MOTORIST COVERAGE CAN SAVE THE CASE!**

Let's assume a drunk driver did not pay his auto insurance premiums, he probably does not have liability insurance coverage for this car wreck. Further, by leaving the scene of the car accident, we may not even know who he is so how is he going to pay for your personal injury damages with no insurance and/or if we don't even know who he is? However, your incurred personal injury damages such as:

- 1) medical expenses;
- 2) your time off from work;
- 3) the property damage to your car;
- 4) your rental car;
- 5) and out-of-pocket expenses.

Yes, you can sue the drunk driver for all your compensatory and punitive damages!<sup>1</sup> However, what good does it do you to obtain a Judgment (basically a piece of paper that says you are owed money) if he has no money, assets or a home that can be used to pay for your personal injury damages.

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<sup>1</sup> Punitive damages can be recovered when a driver is guilty of gross negligence or extreme recklessness. The argument is that a person's voluntary intoxication qualifies as gross negligence and therefore, justifies an award of punitive damages. Punitive damages are harder to bankrupt than compensatory damages.

Uninsured Motorist Coverage allows an injured party to recover his/her damages, stemming from a car wreck, from his/her own car insurance company. Your car insurance company, whether it be by a personal injury settlement or through a lawsuit, is responsible for the damages the drunk driver was legally responsible. If we don't know who the drunk driver was, your insurance company, because of the uninsured motorist coverage, can still be responsible for your personal injury damages. This kind of coverage gives us a definite source from which to recover your damages from. Without it, your only option is to sue the drunk driver, hope he has some assets and hope any Judgment you obtain is not discharged when he files Bankruptcy. Worse yet, if we don't know who the drunk driver was, you are left only with a claim for no-fault or med-pay benefits.

So in a car crash involving uninsured motorist benefits, It is the client's insurance carrier who then sues the at-fault driver to try and recover what they paid out on your behalf. This way, your insurance company and not you, bears the risk that this at-fault driver has little to no money to pay for your damages. If we don't know who the at-fault driver was as in the case of a hit and run accident, your insurance company simply has no means of recovering the money it paid out in uninsured motorist benefits. It does not mean that they don't owe you these benefits or you don't have a personal injury claim. It just means that you bought this kind of coverage, you paid insurance premiums for this kind of coverage and this is why they bear the risk that no one can recover any funds from the at-fault or phantom driver.

### **CAN YOU REJECT YOUR UNINSURED MOTORIST COVERAGE?**

Yes, legally your can reject this type of insurance coverage but, I would never, never recommend it! Instead, make sure you specifically ask for this insurance coverage and never sign anything wherein you are waiving this type of automobile insurance coverage. In short, if you don't have this insurance coverage, you risk that you could owe thousands in medical bills, for car crash that was not your fault, because you tried to save several hundred dollars by rejecting your uninsured motorist coverage.

By the way, put my advice to the test. Ask your insurance agent about this kind of insurance coverage and do the recommend it. They will tell you that this is solid advice no matter whom you choose to represent you in your personal injury claim.

### **HOW MUCH UNINSURED MOTORIST COVERAGE DO I PURCHASE?**

The amount of the coverage depends upon your financial needs and how much you can afford. I would suggest you discuss this issue with your insurance agent. However, I reasonably recommend that everyone carry at least \$100,000 per person in uninsured motorist coverage. My reasoning being that if you do not have health insurance, this amount gives me the greatest chance of getting your medical bills paid should you be involved in a serious automobile accident. Recall that I am trying to make sure that you are protected when the car wreck results in surgery, loss of limbs or hospitalizations.

### **I WAS IN A CAR WRECK WITH AN UNINSURED MOTORIST, WHAT IS MY NEXT STEP?**

Call me at (502) 609-7657 or 855-REACHMYCELL. It is my job to make sure that the at-fault driver was truly uninsured. Don't assume that the other driver is truly uninsured or that there can be no recovery because the at-fault vehicle fled the accident scene.

If we know who the at-fault driver was, we might discover he actually did not own the vehicle he was driving. In which case, we might be able to find liability insurance on the driver or the owner of the vehicle.

Also, the at-fault driver might have been working for an employer at the time of the car accident thereby putting the employer's coverage on the hook. Further, he might have had coverage through an automobile policy in the household. *There are several ways in that someone can have insurance that may not be*

*obvious*. Let's explore those possibilities before making any final decisions in regard to your injuries and your legal right of recovering on your personal injury claim.

### **REAL LIFE EXAMPLE OF UNINSURED MOTORIST COVERAGE IN USE**

A former client called me and asked me to meet with his neighbor who I will call Mary. Mary had just discharged her prior attorney as she was not getting her questions answered and simply was being told the other driver was uninsured.

When I met with Mary, I saw a severely smashed Audi in her driveway that the husband told me was worth about \$15,000 and he did not have collision coverage on that car. Mary asked me to act as her attorney. While I agreed, I was worried from minute one that the other driver was uninsured. Moreover, the automobile policy they showed me did not have uninsured motorist coverage on it.

Well, after an initial investigation and talking to the Jefferson County Attorney about the criminal charges pending against the at-fault driver, I was able to confirm that the at-fault driver had no insurance coverage. However, I had contacted my client's own insurance company as well. They had already opened a no-fault claim for my client's medical expenses but, they had not realized that the other driver was uninsured. After a lengthy conversation, we were able to find uninsured motorist coverage on another vehicle that would apply to this accident. Basically, the insurance policy is written in such a way so as to allow it to apply no matter which vehicle Mary was occupying. Consequently, her claim for pain and suffering, and possibly medical bills over the no-fault coverage, can be pursued against her own insurance company.

And yes, Mary may be out of luck in regard to recovering the value of her automobile. In Kentucky, uninsured motorist coverage does not cover property damage claims. In Indiana, it tends to cover property damage claims as well.

**UNDERINSURED MOTORIST BENEFITS, PROTECTION  
AGAINST “Minimum Coverage for Minimum Budgets”**

**HAVE IT ON ALL YOUR INSURANCE POLICES!**

We have all heard the TV commercials wherein **SAFE AUTO INSURANCE COMPANY** advertises minimum insurance coverage for minimum budgets. However, do you really understand what this means? Let me translate this for you into “Desmond-ease”, **THE AT-FAULT DRIVER HAS MINIMUM MEANS TO PAY FOR YOUR DAMAGES!**

Both Kentucky and Indiana law require that a car driver only carry insurance coverage in an amount of \$25,000 per person and \$50,000 per automobile accident. **SO THERE IS NO GUARANTEE THAT THE AT-FAULT DRIVER HAS INSURANCE COVERAGE TO PAY YOUR ALL MEDICAL BILLS, LOST WAGES, OR YOUR CLAIM FOR PAIN AND SUFFERING.**

Let’s assume that are driving your antique convertible on Interstate 64 when another driver crosses the centerline and motor vehicle head on. The accident is severe and you are both taken to the trauma center of the University of Louisville Hospital. You undergo surgery for several broken bones and are told you have a closed-head injury. Your spouse is treated and released. You are finally released from the hospital after 10 days and you are told you should not go back to work for four weeks. Further, when you open arrive home from the hospital and open the mailbox, you open a medical bill from U of L Hospital for \$43,000. Your car is a total loss as well.

In the upcoming weeks you receive several other bills from the emergency room doctors, the MRI provider, for a CT scan and from the X-ray physicians. In total, your bills come up to over \$82,000. To date, your wife has incurred about \$14,000 in medical expenses between the emergency room visit, an MRI and continuing chiropractic care. The problem is clear. If the at-fault driver is only insured to the extent required by Kentucky or Indiana law, **your medical bills alone exceed that insurance coverage.**

In Kentucky and Indiana law allow a person to drive around with \$25,000 in insurance, not enough to cover your medical expenses much less the other aspects of your claim. Actually, in this example, your medical bills alone totaled over \$82,000. Most insurance policies are sold in \$25,000 increments until you get over \$100,000 in coverage. As a result, in this example, the at-fault driver was probably underinsured even if he had \$100,000 in insurance coverage.

As your attorney, I would be scrambling to find Underinsured motorist coverage on either your car or motorcycle insurance. Once I collect the policy limits from the liability carrier, underinsured motorist coverage allows me to go against your own automobile insurance for whatever damages that were not recovered for. **UNDERINSURED MOTORIST COVERAGE TRANSFERS THE RISK THAT THE AT-FAULT DRIVER DOES NOT HAVE ENOUGH INSURANCE COVERAGE TO YOUR OWN INSURANCE COMPANY.** So uninsured motorist coverage transfers the risk, to the insurance company, that the other driver was uninsured and underinsured motorist transfers the risk that the at-fault driver did not have enough insurance coverage. Now before going any further, I want you to stop and think for a second. We are in a tough economic time. From merely a logical perspective, people are going to cut back where they can and this may mean they drive their motor vehicle with little or no insurance. Now, ask yourself if you really want to be involved in a motor vehicle accident with such a person.

Underinsured Motorist coverage takes away the risk that the at-fault driver cannot fully pay your claim. It gives me a source

from which I can recover, on your behalf, your medical bills, lost wages, future medical expenses and claim for pain and suffering.

Don't misunderstand me, collecting underinsured motorist coverage is no cakewalk. The underinsured motorist carrier gets credit for the amount you have recovered from the liability coverage as well as the amount they paid in no-fault benefits to you. Nevertheless, it gives you a source to recover your claim from when the at-fault driver does not have enough liability insurance to pay the full value of your claim. If it is not there, we are facing again the possibility that we get a piece of paper, a judgment, that says you are owed money but has little actual value.

**YOU CAN'T MAKE AN UNDERINSURED MOTORIST CLAIM WITHOUT COMPLYING WITH THE KENTUCKY OR INDIANA STATUTE.**

Also, you can't make a claim for underinsured motorist coverage without following some procedures laid out in the statutes. In Kentucky, the underinsured motorist statute is KRS 304.39-320 and it says:

**304.39-320 Underinsured motorist coverage -- Effect of settlement of claims.**

- . (1) As used in this section, "underinsured motorist" means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident.
- . (2) Every insurer shall make available upon request to its insureds underinsured motorist coverage, whereby subject to the terms and conditions of such coverage not inconsistent with this section the insurance company agrees to pay its own insured for such uncompensated damages as he may recover on account of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.
- . (3) If an injured person or, in the case of death, the personal representative agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim, then written notice of the proposed settlement must be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage. The underinsured motorist insurer then has a period of thirty (30) days to consent to the settlement or retention of subrogation rights. An injured person, or in the case of death, the personal representative, may agree to settle a claim with a liability insurer and its insured for less than the underinsured motorist's full liability policy limits. If

an underinsured motorist insurer consents to settlement or fails to respond as required by subsection (4) of this section to the settlement request within the thirty (30) day period, the injured party may proceed to execute a full release in favor of the underinsured motorist's liability insurer and its insured and finalize the proposed settlement without prejudice to any underinsured motorist claim.

- . (4) If an underinsured motorist insurer chooses to preserve its subrogation rights by refusing to consent to settle, the underinsured motorist insurer must, within thirty (30) days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. Thereafter, upon final resolution of the underinsured motorist claim, the underinsured motorist insurer is entitled to seek subrogation against the liability insurer to the extent of its limits of liability insurance, and the underinsured motorist for the amounts paid to the injured party.
- . (5) The underinsured motorist insurer is entitled to a credit against total damages in the amount of the limits of the underinsured motorist's liability policies in all cases to which this section applies, even if the settlement with the underinsured motorist under subsection (3) of this section or the payment by the underinsured motorist insurer under subsection (4) of this section is for less than the underinsured motorist's full liability policy limits. The term "total damages" as used in this section means the full amount of damages determined to have been sustained by the injured party, regardless of the amount of underinsured motorist coverage. Nothing in this section, including any payment or credit under this subsection, reduces or affects the total amount of underinsured motorist coverage available to the injured

party. Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 564, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 103, sec. 2, effective December 1, 1990. -- Amended 1988 Ky. Acts ch. 180, sec. 1, effective July 15, 1988. -- Created 1974 Ky. Acts ch. 385, sec. 32, effective July 1, 1975.

In Indiana, the Underinsured Motorist Statute is contained in Indiana Code 27-7-5 and it is too lengthy to reprint here. However, the gist of both the Kentucky and Indiana statute is the underinsured motorist carrier has to consent to any settlement you achieve with the insurance carrier for the at-fault driver or drivers for your to make a personal injury claim for underinsured motorist benefits. Since I think this is confusing, I will give you an example of how this works.

Assume a drunk driver is insured with Safe Auto, hits my client and he only has insurance for the state minimum of \$25,000 per person. My client has underinsured motorist coverage of \$50,000. When and if Safe Auto agrees to tender their policy limits of \$25,000, I have to send my client's insurance company proof of

this offer and proof that the drunk driver did not have more insurance coverage. My client's insurance company then has to decide if they are going to preserve their right to sue the drunk driver (known as their subrogation rights) by going ahead and paying my client the \$25,000 or if they are going to waive their rights and consent to the proposed settlement. If I don't give my client's underinsured motorist carrier this opportunity to waive or preserve their subrogation rights, my client's underinsured motorist claim would be barred and I would have malpracticed his case.

As a result, for both the Indiana and Kentucky, the procedure laid out in the statutes has to be completely followed.

**WHAT ABOUT UNDERINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE FOR AN AUTOMOBILE ACCIDENT IN INDIANA?**

Beware Indiana has an offset for underinsured motorist benefits! In other words, you can only recover underinsured motorist benefits to the extent that the other driver has less liability insurance than you have underinsured motorist coverage.

To illustrate, assume the drunk driver has \$50,000 of liability coverage and you have a \$100,000 policy of underinsured motorist coverage. You can only recover a total of \$100,000 between all the parties involved. In other words, the underinsured motorist carrier gets to offset the benefits it owes you by the extent you recovered from the at-fault driver's insurance company. The liability carrier pays \$50,000 and the underinsured motorist carrier pays another \$50,000 making your total recovery \$100,000. So even though you should be able to recover a total of \$150,000 since you purchased a \$100,000 underinsured motorist policy, Indiana law only lets you recover a total of \$100,000.

Kentucky law is the exact opposite. Kentucky law does not allow for an offset of underinsured motorist benefits. You could recover a total of \$150,000, (\$50,000 + \$100,000) in the above example.

So if your motor vehicle is registered in Indiana, I would suggest you have \$250,000 or more of underinsured motorist coverage. This is because I see a fair number of insurance policies from Indiana having liability coverage of \$100,000. Well, if the other driver is insured for \$100,000 and you have \$100,000 of underinsured motorist coverage, you don't have an underinsured motorist claim. Basically, \$100,000 minus \$100,000 equals zero. As a result, you can recover \$100,000 from the liability carrier and \$0 from your own company as underinsured motorist benefits. In Kentucky, it would be the opposite. You could recover \$100,000 from the liability coverage and \$100,000 from the underinsured motorist carrier for a total of \$200,000. By the way, this offset actually applies to uninsured motorist coverage as well. However, since you are probably only going to see this offset for uninsured motorist benefits when there are multiple uninsured motorists policies available, it is not discussed as much.

**SO WHAT HAPPENS IF I DRIVE MY CAR OUTSIDE THE STATE IT INSURED IN?**

This area of the law is known as Conflicts of Law and it addresses when a court is going to apply its own law versus the law of another state. As a general rule, the answer is that the insurance coverage you buy in your state follows you to other states and that insurance policy is controlled by the law of the state it was issued.

So if you are driving your car home from a vacation and a car wreck happens while you are in Florida, the insurance coverage you purchased in Kentucky still applies for the car wreck that happened in Florida. While Florida law may control the law in regard to the car wreck, Kentucky or Indiana law, in regard to your automobile insurance policy, should still control.

This is a complicated area of the law and I would encourage you to call me if you think your case presents a Conflicts of Law Issue. However, you should know this. Purchase in your home state the insurance coverage you need to protect you and your family and it should follow you to any other state you travel in.

## **WHAT DOES IT MEAN TO STACK MY UNDERINSURED MOTORIST INSURANCE COVERAGE?**

Kentucky law allows stacking of uninsured and underinsured motorist benefits depending upon how the insurance policy is written. Indiana does not allow insurance policies to be stacked.

Simply put, stacking refers to recovering insurance policies from more than one applicable policy. In other words, you own three vehicles: a Chevrolet, an Audi and a Ford Van. On all three of these vehicles, you put \$100,000 of underinsured motorist coverage. Stacking means that since you effectively bought three \$100,000 policies of underinsured motorist coverage, you have \$300,000 of underinsured motorist benefits available to you. Even though you were only in one of your vehicles at the time of the accident, the insurance coverage from the other two policies applies.

Insurance companies have now written most of their insurance policies wherein a single policy of uninsured or underinsured motorist coverage will cover any vehicle you are in. The idea is that they want to prevent stacking. So if I have two automobiles but I have one policy of underinsured motorist coverage, my insurance company wrote my insurance coverage in such a way that it would apply no matter which vehicle I am driving. In essence, they made it so I only have one policy of underinsured motorist coverage.

Stacking honestly requires a lawyer to look at the specific automobile policy and the current case law. The point I want you to understand is to never take anything at face value and allow an attorney to look things over before agreeing to walk away from an insurance policy. Very simply, I spoke above about a case wherein we found uninsured motorist coverage on an automobile that was not involved in the motor vehicle accident. I have had a case wherein we made uninsured motorist coverage from an automobile insurance policy apply to a motorcycle wreck. My point being that don't guess at what kind of insurance coverage you have when a car wreck occurs. We can look over all the insurance policies

together and decide which ones apply and which ones don't. The phone call is free and my cell phone is (502) 609-7657.

### **DIVORCED PARENTS AND AUTOMOBILE ACCIDENTS.**

I am divorced myself so this issue has a special fondness for me. For divorced parents, I want to digress just for a minute because this issue can also apply to car wrecks or motor vehicle accidents involving scooters. In essence, a good lawyer, when handling serious motor vehicle accident, may have to fish for uninsured and underinsured insurance coverage between different households. Let me explain.

When I first got divorced, my children spent an equal amount of time at my house and my ex-spouse's home. As a result, my children were covered by my uninsured and underinsured motorist coverage even if they were not in a motor vehicle owned by me when the automobile accident occurred.

My insurance policy is written so that my children, even if they were riding in my ex-spouse's car, could make a claim for uninsured motorist benefits or underinsured motorist benefits on my automobile insurance. My children qualify as resident relatives of my household. I even sent a letter to my insurance company explaining my interpretation and they agreed with my reasoning and sent me a letter confirming my interpretation.

Take this example and apply it to car wreck. You need to understand that you may have uninsured or underinsured motorist coverage through an automobile insurance policy issued to one of your relatives or someone living in the same household as you. This can be crucially important to investigate for a car accident because the medical bills, without considering your other damages, may exceed the insurance coverage on the at-fault driver. Further, most people don't know they are supposed to put underinsured motorist coverage on their automobile insurance policy or that they should look for it when a car wreck happens. This is because they

suffer from the misconception we discussed herein that the at-fault driver is going to be responsible for your medical bills.

Part of my job as an attorney is to be a Fisherman. I have to know the law well enough to “fish” for other insurance coverage that may apply. The last thing I want to do is walk away from money that could be collected on your behalf.

I previously handled a personal injury claim for a young lady who was a stripper and lost part of her leg in a motorcycle wreck. She was a passenger on the motorcycle and the motorcycle operator had no insurance coverage of any kind. The only way we ultimately recovered anything for her was that we were able to make an argument that she lived part-time with her father and fell under his uninsured motorist coverage as a resident relative of the household. Without this argument, we would have recovered nothing.

On this issue, don't guess! Let me look into it and see if I can track down other insurance coverage that may apply. This is not a simple issue that can be addressed easily. Let's make sure it is done right.

### **Parting Thoughts**

I previously handled a personal injury claim for a client that no underinsured motorist coverage available. Before I accepted the settlement offer from the liability carrier, I explained to my client that we had recovered the maximum amount we could recover without suing the at-fault driver and trying to collect against his assets. We had ran an asset search and already determined that the at-fault driver really had no assets to collect a judgment from.

We obtained the policy limits of at-fault driver, and I explained to my client that his case was worth more than we were recovering but, there was no other insurance source from which to recover from. He claimed he understood and authorized me to accept the liability carrier's offer of their policy limits.

I brought this client into my office to sign the release and receive his check. It was at that time he asked me, after seeing sea television commercial for the Winters and Yonkers, why he was not recovering more. As he explained it, Mark Yonkers was standing by a car with less damage than his client car and yet, holding a check for a greater amount than I had recovered for him. He did not understand why someone with less damage to his car received more than he was recovering. Of course, I explained to him that this was an advertisement and probably not an actual case for the advertising law firm. However, more importantly, I explained that if this had been the most costly attorney in the United States had handled the case himself, he probably would have recovered the same amount that I did for him.

The moral of my story is clear. When it comes to car wrecks and motorcycle crashes, so much of your rights are established before you ever walk into an attorney's office. We, as attorneys, are limited by the facts of your case, the law and the insurance coverage you purchased before the car wreck happened. This principle applies to all attorneys!

When an automobile accident happens, it is like a photograph is taken. Everything in that photograph stays in that photograph and you can't add anything to it. For this reason, I hope that you are reading this book before the automobile accident occurred and I hope you are calling your insurance agent today to verify that you have no-fault coverage, med-pay coverage, uninsured motorist coverage and underinsured motorist coverage. Because no matter whom you choose as your legal counsel, you will thank me for this advice as these types of coverage on your automobile or motorcycle insurance, protect you and your family member in the case of a serious car wreck involving permanent injuries.

As I tell all my clients, because my legal practice concentrates on car accidents, I hope you will never have to use me again. But if you do, I am available even if it is to ask a simple question. All my clients have my cell phone number as it is my way of showing my appreciation for this continuing loyalty.

I wish you and your family all the best and pray that you will never be the victim of a serious car accident.

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