

# **GARDEN STATE CLE LESSON PLAN**

**A 1.0 credit course**

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LESSON PLAN AND EVALUATION**

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## **UNINSURED AND UNDER-INSURED MOTORISTS**

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**With**

**Robert W. Rubinstein, Esq.**  
Certified Civil Trial Attorney

**And featuring**

**Robert Ramsey, Senior Instructor**

### **Program description**

**“I had a bad CRASH and the other driver has NO INSURANCE! Even worse, I got badly hurt and the other guy only has a 15 policy the dirty scum!” Well, this 1 credit CLE will teach you all about these situations and how to protect your client’s insurance rights!**

## **I. Introduction**

- **Robert W. Rubinstein, Certified Civil Trial Attorney**
  - **Personal injury business is harder than ever – insurance companies are willing to take risk of jury verdicts as opposed to settling**
  - **609-392-7600**

## **II. Uninsured Motorist Coverage**

- **Uninsured motorist coverage must be offered to all NJ insureds and must be equal coverage as liability limits**
- **For UIM – you can have lower UIM limits**
- **Standard policy - \$15K**
  - **Get uninsured as part of the policy - mandatory**
  - **For under insured you have options of amounts of coverage**
- **Uninsured motorist protects you if you are in an accident with someone who is uninsured or with a “phantom” vehicle (one that left the scene)**
- **If you have \$15K/\$15K policy what happens when:**
  - **Accident with uninsured motorist – rear end collision:**
    - **You are entitled to uninsured motorist coverage**
    - **Contractual claim against insurance company**
    - **You would have to go after your own insurance company to get the money – they stand in the shoes of the uninsured motorist**
    - **Contact your own insurance company**
    - **Give proof that other driver is uninsured**
    - **Your insurance company will set up uninsured motorist claim as if regular claim**
    - **You are pursuing your own insurance company**
- **When would you have to sue your own insurance company for uninsured motorist coverage?**
  - **You are stopped at red light and someone hits you from behind**
  - **Other vehicle is not registered or insured**
  - **You are injured and property damage**
  - **Now you have an uninsured motorist claim against insurance company**
  - **MOST IMPORTANT thing to consider is that they have the right of subrogation – by standing in your shoes to then turn around and sue the at fault driver – statute of limitations changes – 2 years for personal injury v. 6 years for uninsured motorist**
  - **Attorney must keep the statute of limitation in mind relative to subrogation rights of insurance company, i.e. should client sue uninsured driver in order to retain insurance company’s**

- subrogation rights in the future? Whether receive release from insurance company or not?**
- **What if you are driving and skid on ice and hit another vehicle? How would this effect the issue of uninsured motorist?**
  - **No effect on UM claim – no UM claim if you are the driver**
  - **The at-fault driver has to be the uninsured driver.**
  - **Must show negligence of uninsured person**
  - **UM insurance is contractual – if you are driving your car and a tractor trailer hits from behind and you have a verbal threshold – there is no threshold b/c commercial vehicle if there is insurance – but if the tractor trailer does not have insurance then you are subject to uninsured motorist claim/threshold**
- **You are sitting at the light and car crashes into you and takes off – no license plate – what happens?**
  - **Need police report (most insurance companies require)**
  - **Phantom vehicle/uninsured motorist claim**
  - **When insurance companies are difficult, file a claim of Mr. Smith v. John Doe Red Sport Utility Vehicle to protect statute of limitations**
- **You are driving and you are about to get out of the car and someone shoots you.**
  - **No UM coverage, but you would get PIP coverage because during use of motor vehicle**
  - **Need some attributable use of motor vehicle on the other side**
- **You are walking down the street and a vehicle comes by and hits you and leaves....**
  - **You would be covered by UM coverage because it involves the use of a car**
  - **If you own a motor vehicle and your vehicle is properly insured**
  - **UM coverage is because phantom vehicle**
- **You don't own a car, you walk across the street and a vehicle hits you**
  - **You have a claim against PLIGA – Property Liability Insurance Guaranty Association – becomes your carrier if you qualify – can get PIP coverage (\$250K) and UM claims - \$15K**
  - **PLIGA gets money from the tax payers**
- **You own a car but insurance is expired, you get hit by a car walking across the street**
  - **You don't have an UM claim pursuant to N.J.S.A. 39:6A-4.5 (loss of right to sue for failure to insure, for DWI for intentional acts)**
  - **PLIGA probably not available**
- **\$15K policy = \$15K uninsured motorist; \$100K policy = \$100K uninsured motorist**

- **Recommend reasonable policy of combined single limit policy for liability of \$250K/\$500K, no verbal, and have umbrella policy of \$1M that provides for UM and UIM coverage**
  - **“umbrella policy” – protects assets and future income of the name of insured in addition to the primary policies – provides coverage over and above what your coverages are – insurance company usually requires that all insurance is with same company – excess coverage what you already have**

### **III. Under Insured Motorist Coverage**

- **Take policy of insurance on your car and put that side by side with other driver’s policy – difference between the two policies**
- **You can be uninsured and under insured at the same time – different vehicles**
- **If the person is uninsured, then go to uninsured coverage; if under insured, then you go to under insurance coverage**
- **Underinsured the insurance companies do allow you to purchase less than liability levels because lower premium**
- **If you have a \$100K policy, then you should have the same UIM – can’t buy above liability limits**
- **Ideally – uninsured coverage equal to liability coverage and same for UIM coverage**
- **Situations where in fights with insurance company to get UIM**
  - **Mostly related to damages – whether they are as high as saying they are**
- **Worker’s comp would reduce your take of the UM or UIM claim**

### **IV. PIP coverage**

- **Part of NJ auto insurance laws**
- **No right of subrogation**

### **V. How to approach the insurance companies**

- **Get police report and find out who insurance carriers are**
- **May find out that there was no insurance – need to put your carrier on notice if there is a possible UM issue**
- **Ask for UM claim to be set up with insurance company if that is the issue**
- **Now the process is just as if you were suing other driver – but it is your own insurance company**
- **Used to be that there was mandatory arbitration for all cases – but now just file suit**
- **De novo hearing after arbitration – defendant sends a letter to you and says that the arbitration award is rejected and then goes to trial – specific language is required – check statute and caselaw for proper language**
- **Bardis v. First Trenton, 397 NJS 138 (App Div 2007) – lie to jury that we don’t know who defendant is when you are suing your own insurance**

**company, create a legal fallacy for the jury by lying to jury about who the defendant is, want to avoid deep pockets issue**

- **Why are UM claims denied?**
  - **Phantom vehicle – issue is was the phantom vehicle really negligent or whether the insured was negligent**
  - **Whether verbal threshold has been met**

## **VI. Underinsured claim differs**

- **Put other carrier on notice**
- **Either filing suit or resolution with tortfeasor**
- **No release because underinsured claim by insurance company**
- **Longworth case – Longworth letter – at time want to resolve case with tortfeasor – used to put the defendant on notice that your claim exceeds the policy limits of the defendant, and you will hold the insurance company liable for any verdict in excess of the policy – letter goes to your UIM carrier**
  - **Longworth v. Ohio Casualty, 223 N.J. Super. 174 (App. Div. 1988)**
  - **You want to get to your UIM claim**
  - **Get offer in writing and copy of declarations page – need to give to your UIM carrier**
  - **Give 30 days for carrier to get back to you – pursuant to Longworth decision – general release or pay policy**
  - **UIM carrier has the right to pursue the other driver over and above the policy**
  - **Insurance company does asset search**
  - **Ask for affidavits from tortfeasor regarding other coverages, personal assets, etc.**
  - **Attorneys may resolve case just to get to UIM claim**
  - **Short offer is because adjuster wants to look good to his/her boss**
  - **Must evaluate decision on whether to take offer or go to trial – still limited to policy limits on claim**
- **After Longworth letter and you have settled case with tortfeasor**
  - **Can then sue UIM carrier**
  - **2 years to protect UM and UIM carrier's rights for personal injury claims but UM and UIM rights are 6 years**
  - **Better conduct to file against tortfeasor – instead of waiting for insurance company to release you from that filing – protect statute of limitations**
- **Conflict of same insurance company on both sides of a case**
  - **Separate adjuster for each part of case – tortfeasor and UM/UIM**

## **VII. Captive insurance companies**

- **In house insurance companies**
- **Company paying someone to sue themselves – issue of whose allegiance is the attorney with – who is the client**

- **House counsel has no incentive to insure case – salaried employees of the company**

### **VIII. What if you want to be a PI attorney? – advice**

- **Read the most recent cases (Longworth, etc)**
- **Read the policies and understand requirements for UM and UIM**
- **Read statutes**
- **Know the caselaw**
- **When dealing with adjuster:**
  - **No customer service or customer loyalty**
- **Be aggressive**
- **Actual value of case and process is the same as any other auto case (UM/UIM)**
- **Know caselaw in order to protect your claim**
- **In NJ the insurance company does not have to tell you liability insurance policy limits are – don't know what other driver's insurance is – can't put UIM carrier on notice unless you know**
  - **Tell adjuster that the injuries are bad and need to know liability limits – you can glean from conversation whether there is an issue of UIM**
- **Contractual claims – limited by what you contracted to**

### **IX. Miscellaneous**

- **Rova Farms letter? Bad faith?**
- **Taddei v. State Farm Indem Co, 401 N.J. Super. 449 (App Div. 2008) – bad faith claim against insurance company**