

Recovery & Resolution



Graham Lundberg & Peschel *Founded 1979*

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS

**Inside
this
month's
R&R...**

**Under-
standing
Uninsured
Motorist
Insurance
Coverages
on page 2**

**Disappear-
ing UIM
Coverage
on page 3**

**Free
Seminar
Schedule
on page 3**

**We Wrote
the Book
Your
Patients
Need...
"Crash!
Course"
on page 4**

Why Insurance Companies Are Raising Medical Malpractice Rates

The insurance industry is again gouging healthcare providers because insurance companies have gambled and lost on the stock market. Their increased exposure to risky stock and bond investments resulted in near-billion-dollar losses from investments in risky stocks, including Enron and WorldCom. The insurance companies do not take blame for their own error and instead seek to pass the cost on to the healthcare industry, consumers and people injured through no fault of their own.

The Washington State Trial Lawyers Association recently brought to light the truth about the insurance industry claims — the American jury system is to blame for their woes. Insurance company investments in corporate stocks and bonds have mushroomed since 1994 as a percentage of investment portfolios, according to The Foundation for Taxpayer and Consumer Rights Report "Risky Business: Insurers' Increasingly Risky Investments in Corporate America Cause Insurance Premiums to Skyrocket," published in 2002. The same article reveals that St. Paul Insurance, the biggest medical malpractice underwriter in the United States, recently bailed out of the stock market

when their Enron stock took a dive. The article also pointed out that St. Paul had previously shifted \$1.1 billion in reserves — reserves to cover claims — and passed it on to stockholders and company projects.

The last time tort reform hit Washington State was in the 1980's. After passage of what was then hailed as "one of the most comprehensive [tort] reform bills yet," the Washington State Physicians Insurance Association asked for a rate hike even after it testified that the law would reduce premiums by 25% to 30%. See United Press International, December 4, 1986 "State Hires Outside Firm to Look at Liability Rate Increase," and Seattle Times, July 1, 1986, "Tort Reform Legislation: Did State Get 'Suckered'."

As the tort reform debate resurfaces, we encourage everyone to get all the facts. Check the Washington State Trial Lawyers Web site at www.wstla.org for the truth about insurance companies efforts to pass their

losses on to the medical community, patients and consumers. Contact your member of Congress and State legislators and express your opposition to the efforts by insurance companies to make doctors and consumers culpable for their billion-dollar stock losses. You can contact Graham Lundberg & Peschel if you need help finding contact information for your Congressperson or legislator.



Plan to Attend Our Legal Educational Seminar...

What You Should do Differently When Your Patient is Injured by an Uninsured Motorist
See page 3

Understanding Uninsured Motorist Insurance Coverages

When was the last time you asked yourself “what insurance do I have?”

Better yet, when was the last time you were able to answer that question? Unfortunately, too often folks find that they know little or nothing about the policies they have purchased to insure their health and automobiles in the event of loss, damage or injury.

Now that you or your patient need to use that automobile insurance policy, do they even know what it does and does not cover? If your patients answer like most people, they probably do not. Most of our clients buy insurance because they know it's the right and prudent thing to do. They depend on their agent to make many of their choices, hopefully in their best interest. But when the time comes to make a claim against a policy, or multiple policies, too often we find ourselves asking all the questions then that we should have asked when we first signed on the dotted line.

The State of Washington passed legislation in the 1980's that requires all Washington motorists to carry minimum liability coverage of \$25,000.00 per person. The fines and penalties for failing to have insurance while operating a motor vehicle are extremely high. However, many citizens still drive without insurance coverage. What should you or your patient do if they are involved in automobile accident, and the at-fault party (tortfeasor) is either uninsured (UM) or underinsured (UIM)?

The law requires insurance companies to offer uninsured motorist (UM) and underinsured motorist (UIM) coverage to every

person purchasing liability coverage. An insured who chooses not to purchase UM or UIM coverage must decline the coverage offer in writing. At the time of the accident, if our client's insurance carrier can not produce a signed waiver, UM/UIM coverage is automatically extended.

A driver is classified as “underinsured” when he or she injures another party in an accident and has no insurance to cover the damage caused. If your patients are damaged by an uninsured negligent party, or “tortfeasor,” UM coverage will substitute and pay for the damage that has been suffered at the hands of the uninsured driver.

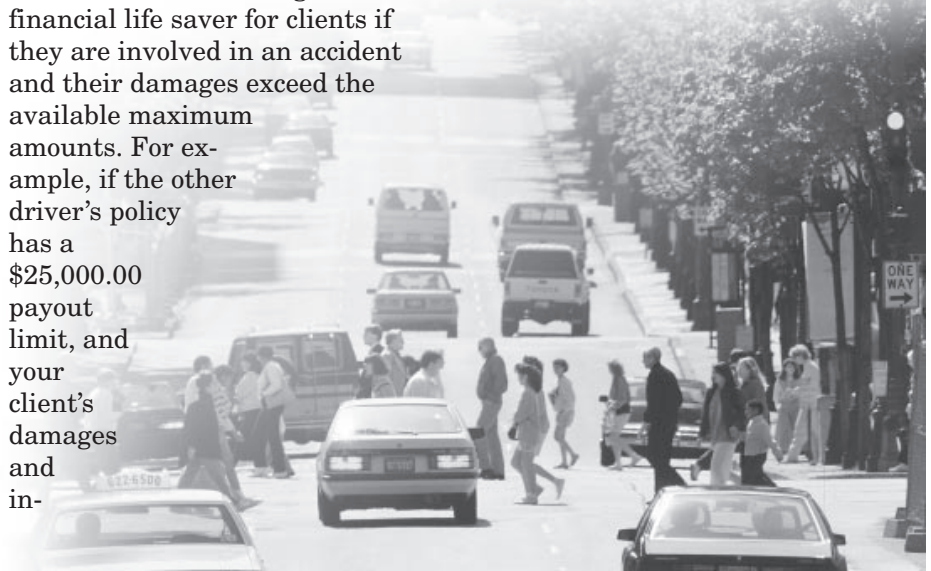
An “Underinsured” (UIM) driver is one who has liability insurance, but whose insurance policy limits do not cover the total damages incurred by the injured party. If your patient incurs damages by the negligent acts of an underinsured motorist, they can receive payments for their damages from their personal automotive UIM coverage.

UM and UIM coverage can be a financial life saver for clients if they are involved in an accident and their damages exceed the available maximum amounts. For example, if the other driver's policy has a \$25,000.00 payout limit, and your client's damages and in-

juries total \$65,000.00, the UIM coverage on your client's policy will substitute in and pay the additional costs up to the \$65,000.00 case value.

Our firm, in a recent case, was able to obtain a \$175,000.00 award for a client wherein the at-fault party fled the scene and was a cause of our client's significant injuries. In this case, the client had purchased a \$250,000.00 primary UM/UIM automobile policy coverage amount and but/ for this coverage, our client would not have been able to recover any compensation for their serious and permanent injuries.

If you find that your patient has been injured in an accident where the at-fault party is uninsured, a referral to a reputable personal injury attorney should be made immediately. Additionally, if your patient appears to have very serious injuries, a referral should also be made as multiple insurance policies will have to be utilized and stacked in order for your client to receive full monetary compensation for their claims.



Disappearing UIM Coverage

The Case of The Phantom Vehicle:

Underinsured Motorist Coverage (UIM) is statutorily mandated. That means every insured driver has that coverage unless they specifically reject it. However, that coverage may disappear or not be applicable to a certain event or accident unless an insured is aware that they must comply with the provisions of RCW 48.22.030 (8) when an accident has been caused by a "phantom vehicle."

According to RCW 48.22.030 (8) a "phantom vehicle" is a motor vehicle which causes bodily injury, death or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

a. The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

b. The accident has been reported to the appropriate law enforcement agency within 72 hours of the accident. **Significantly, the limiting definitions of a phantom vehicle must actually be stated in the insurance policy in order to be available for the benefit of the insurance company.**

So what must an insured actually do according to the common law of Washington, which is derived from the facts and circumstances of Washington Appellate cases to preserve their UIM coverage when they have sustained injury or property damage because of the fault of a driver of a phantom vehicle. First, they should report the accident, from the scene, as soon as possible. Insist that the police agency having jurisdiction come to the scene and take statements from any witnesses or assist in finding witnesses who may have

observations that could corroborate the existence of negligent actions of a phantom vehicle. For example, evidence of an insured's own out-of-court, unsworn, excited utterance has been used to corroborate the existence of a phantom vehicle. An excited utterance, according to Black's Law Dictionary, is "A statement relating to a startling event or condition made while the declarant was under the distress of excitement caused by the event or condition. It is an exception to the hearsay rule."

Generally, an accident can be corroborated only by those persons who do not have a claim. For example, a passenger in an insured's car cannot testify to corroborate the cause by phantom vehicle where the witness has a potential UIM claim. In contrast, though, an insured spouse was able to testify and provide competent evidence even though that spouse was an insured, because they were not occupying the covered vehicle at the time of the accident and were not making a claim for damages. Sometimes, a person can lose coverage even though they have strictly complied with the statute. In a 1994 case, when a claimant could not demonstrate that she had made "reasonable efforts" to identify a phantom vehicle driver, she lost her available UIM coverage.

The consequences of losing UIM coverage available to an injured person can be devastating. This is particularly true when they simply assume that because they cannot identify the phantom vehicle or the negligent driver, they cannot make a claim. Making the innocent driver aware of the applicability of UIM coverage in these circumstances will preserve UIM coverage and solve the case of the phantom vehicle.

FREE SEMINARS

Graham Lundberg & Peschel welcomes you and your office staff to attend a **FREE** Educational Seminar.

What You Should do Differently When Your Patient is Injured by an Uninsured Motorist

Thursday, April 3

Everett – Howard Johnson Hotel

Thursday, April 10

Bellevue – Red Lion Bellevue Inn

Wednesday, April 16

Tacoma – Cliff House Restaurant

Thursday, April 17

Federal Way – Verrazano's Restaurant

Wednesday, April 23

Puyallup – Best Western Park Plaza

Thursday, April 24

Tukwila – Best Western South Center

Wednesday, April 30

Lakewood – Lakewold Gardens

Thursday, May 1

Port Orchard – McCormick Woods

Thursday, May 8

Seattle – Best Western Executive Inn

Plan to attend this informative seminar!

- All Seminars: 12:30 – 2 pm
- Complimentary Lunch Buffet
- This Seminar is for Doctors, Therapists and their staff!
- Health Care Providers Earn Continuing Educational Credit





Attorneys at Law

We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Our Attorneys

John Graham
 Scott F. Lundberg
 Brian J. Peschel
 Kenneth B. Golden
 Cydney Campbell Webster
 Sean A. Ayres
 Angela DeWig
 Kenneth Barry Dore
 John Webber
 *John Williams
 Rodney G. Zerr
 Tara Eubanks – Intern
 Ben Lambert – Intern
 *admitted in Ohio only

Our Paralegals

Patricia Clanton
 Patti Cryder
 Kimberly Cutting
 Johnnie Dano
 Kathleen Gottlieb
 Judy Hanson
 Lora Harris
 Grace Stephens
 Heather Webb

Our Administration

Arlene Bolger
 Tamara Briggie

Administration, cont.

Diane Daniel
 Thelma James
 Brian Jones
 Heather Kelly
 Martha McDonald
 Becky Moilanen
 Tina Mulcahy
 Lucinda Pieczatkowski
 Tom Reger
 Celine Cloquet Vogler
 Joyce Watts
 Marie Wohler

CONVENIENTLY LOCATED

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn 253-931-1111**
- Bellevue 425-827-1111**
- Burien 206-241-1708**
- Everett 425-252-1111**
- Federal Way . . 253-946-1111**
- Gig Harbor . . . 253-853-5005**
- Lakewood 253-274-1111**
- Lynnwood 425-775-1111**
- Marysville 360-658-1111**
- Port Orchard . 360-876-5005**
- Puyallup 253-845-1112**
- Renton 425-235-1111**
- Seattle 206-448-1992**
- Tacoma 253-627-7701**

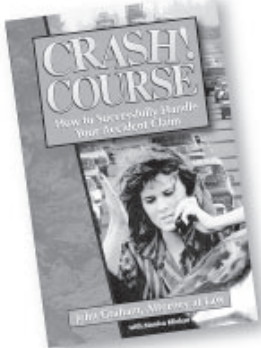
Or Call Toll Free

North Puget Sound area including King & Snohomish Counties
800-422-4610

South Puget Sound area including Pierce, Kitsap & Thurston Counties
800-273-5005

or visit us online...
www.glpattorneys.com

Are Your Patients Asking Questions About Their Recent Accident And You Don't Know Where To Turn For Help?



YOUR PATIENTS NEED...

Crash! Course

By John Graham
How to Successfully Handle Your Accident Claim

Call our office for your complimentary copy at (800) 422-4610



Attorneys at Law

500 John Street
 Seattle WA 98109

PRSR STD
 US POSTAGE
 PAID
 #34
 SEATTLE WA