

# Recovery & Resolution

A LEGAL NEWSLETTER FOR  
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

## First Party Insurance —Who Is Covered?

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When it comes to insurance claims, questions about who is covered can frequently be more complicated than questions about what is covered. Add to the confusion the potential of multiple sources of recovery, stacking coverages, and policy exclusions, and the issues for victims of car accidents can quickly become a morass of technical insurance language and misguided recommendations. Typically, the problems arise in the arena of "first party" claims (PIP and UIM) so an analysis of who can make claims under these coverages and under what circumstances, may lead to a better understanding of who is covered for losses related to a car accident.

As a reminder, liability claims are claims made against the at-fault driver's insurance coverage or "third party." Washington State has a mandatory insurance law that requires all drivers to carry liability insurance in the minimum amount of \$25,000.00. Of course, the liability insurance carrier does not have an obligation to pay damages until settlement. This means that the at-fault driver's insurance carrier will not usually pay the injured victim's medical bills, in-

come loss or out-of-pocket expenses as they are incurred.

### Personal Injury Protection (PIP)

Coverage under a first-party insurance policy pays for reasonable and necessary medical expenses up to dollar amounts specified under the policy or for three years, whichever occurs first, and for income loss for 52 weeks up to the dollar amount specified under the policy. Remember that fault is not relevant to PIP claims, and that the minimum PIP medical payment coverage in Washington is \$10,000.00 per person. While the circumstances leading to coverage for PIP can be varied and unusual, the following are some typical scenarios:

**Drivers and Passengers** — If someone is driving his or her own vehicle, or the vehicle of another (with permission), then that person can make a claim for PIP benefits under the policy of insurance

on that vehicle. In the case of a person driving another person's vehicle, if that vehicle does not have any PIP coverage or if the amount of PIP coverage is insufficient, then the driver can make a claim for PIP benefits under

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Introducing a New Seminar Topic...

Unscrambling the ABC's of Insurance

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# Coverage – What Is Coverage?

Put simply, coverage is the extent of protection for losses provided by an automobile insurance company. The extent of protection is contained in a written insurance policy between the insurance company and the insured, which is actually a contract that can be legally enforced.

Insurance companies use terms such as “Easy Reader” and “Straight Talk” to describe their insurance policies. However, they are quite often very complex and contain limitations, exclusions and definitions that have very detailed meanings. Some of the coverage information can also be contained in a separate “rider” policy or addendum which must be read in conjunction with the original policy.

The best way to read through an automobile insurance policy is to treat it like a pyramid. We'll start at the bottom of the pyramid with the broader issues:

## **Did the loss or accident occur within the policy period?**

In other words, was the premium paid and the policy in force at the time of the loss or accident? Unlike health insurance policies, the automobile policy need not stay in force at the time a claim is made in order to receive protection and benefits. It must have only been in force at the time of the accident. If the policy was in force, then:

## **Did the loss or accident occur to a vehicle covered under the policy?**

The declarations page of the policy will list covered vehicles, insured drivers, and also the type of coverage available and the amount of the coverage. In many situations, the coverage will be the same for all vehicles, but it can vary. If you were either in an accident as a passenger in someone else's vehicle or injured as a pedestrian, there may still be coverage available to you, including

Personal Injury Protection (PIP), Uninsured Motorist and Underinsured Motorist coverage.

## **Are their specific definitions for words and phrases used in the insurance policy?**

Many policies start with a section of definitions which control their usage within the policy. A generally accepted definition of a word may be completely different than its use in the policy. For example: *Bodily Injury* means physical injury to the human body including sickness, disease, or death arising from the injury. Note that this definition uses the term physical injury in an attempt to exclude emotional or psychological injuries. *Accident* means an unexpected and unintended occurrence resulting from the ownership, maintenance, or use of a motor vehicle or a trailer which causes bodily injury or property damage. Note that this definition excludes all occurrences and losses that result from an intentional act. If a person

deliberately causes an accident, that will not be covered under the insurance policy. Definitions vary depending on the insurance company and policy, so it is very important to review each policy carefully.

## **Which part of the policy will cover a particular loss?**

What type of loss was involved? Property damage to your vehicle (Collision Coverage), damage to someone else's vehicle (Liability Property Damage Coverage), injuries to yourself (PIP), injuries to others (Liability Bodily Injury Coverage), theft or vandalism to your vehicle (Comprehensive Coverage), bodily injury or property damage due to a collision with an uninsured vehicle (Uninsured Motorist — UM and Uninsured Motorist Property Damage Coverage — UMPD) and bodily injury or property damage due to a collision with an underinsured vehicle (underinsured motorist UIM) are various coverages

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# Case Study – Insurance Coverage

An experienced personal injury attorney can be a valuable asset to your patients as they attempt to navigate the often hostile waters of insurance coverage issues. In many instances, multiple layers of insurance coverage are available, yet remain unknown to your patients. Potential insurance proceeds may be overlooked if a thorough investigation by a qualified attorney is not performed.

Our office recently resolved a case for a client who was severely injured in a car versus pedestrian collision. Our client was walking home from the grocery store one afternoon when she was struck by a car while she was in a crosswalk. Our client was rushed to surgery and incurred significant medical bills. She came to

our office because she had been unable to pay the mounting outstanding medical billings.

After consultation with the client and investigation of the facts and circumstances of the collision, our office contacted the at-fault party's insurance carrier and made a claim under the at-fault's Personal Injury Protection (PIP) coverage. PIP through the at-fault party was available because our client was a pedestrian. The at-fault party quickly paid their \$10,000.00 PIP limits to help satisfy the outstanding medical bills.

Our client's billings exceeded the at-fault party's PIP limits, so we then made another PIP claim. This second claim was made to our client's PIP carrier, who quickly

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## First Party Insurance, from page 1

the driver's own personal policy.

Similarly, a passenger in a vehicle can make a claim for PIP benefits under the policy of insurance on that vehicle. If the vehicle does not have any PIP coverage, or if the PIP coverage is inadequate, then the passenger can make a claim for PIP benefits under his or her own personal policy. Again, it is irrelevant that the passenger's vehicle was not involved in the collision.

**Pedestrians and Bicyclists** — Although somewhat strange, a pedestrian that is struck by a motor vehicle is entitled to make a claim for PIP benefits under the insurance policy of the car that hit him or her! As is commonly the case in car vs. pedestrian accidents, the PIP limits may be insufficient to pay all of the medical bills. So when the PIP policy limits are exhausted, the pedestrian can then make a claim under his or her own personal policy. Under Washington law, a bicyclist is considered a pedestrian for purposes of PIP claims.

**Residents and College Students** — Sometimes, when looking for PIP coverage, it is beneficial to look where someone is living for an extended period of time or to his or her legal residence to establish eligibility under a policy of insurance. PIP coverage can apply, depending on the policy language, even if the injured person is not a family

member or if he or she is out of state attending school, if residency can be established.

### Uninsured/Underinsured Motorist Coverage

Uninsured/Underinsured Motorist is also a first-party coverage that is available to pay for an injured person's damages in situations when the at-fault driver did not carry liability coverage, or when the at-fault driver's liability coverage is insufficient to pay all damages. Unlike PIP, issues of fault are relevant to UM/UIM claims. But similar to PIP claims, uncovering applicable UM/UIM coverage can be challenging and unusual. Again, consider the following situation:

**Employers** — Sometimes UM/UIM coverage can be found under an employer's policy if the accident victim was driving or was a passenger in an employer's vehicle at the time of the accident.

Both PIP and UIM coverages have to be added to a policy. However, in Washington, if an insured does not want these coverages, the insured must sign a written rejection form. It is recommended that all Washington drivers have these coverages. See the case study in this newsletter for an example of how first-party coverages can benefit an injured victim.

## Case Study, from page 2

paid their limits as well. This action relieved our client of the tremendous financial pressure she was feeling as she attempted to recover from her injuries.

Once our client reached maximum medical improvement, we made a liability claim against the at-fault party's insurance carrier. Although the at-fault carrier tendered their insured's liability policy limits, our client was not yet "made whole." We therefore then made an underinsured motorist claim to our

client's insurance carrier. Those limits were paid and our client was fully compensated for her damages.

The multiple layers of coverage available to our client most probably would have remained uncovered had she not received the simple advice from her doctor to give our office a call. Every case is unique and may not involve the level of insurance coverage outlined above, but our office can assist your patients in ascertaining what coverage is available to them.

## EDUCATIONAL SEMINARS—NEW TOPIC!

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

**Join us in a discussion regarding our:**

### Unscrambling the ABC's of Insurance

**This is one seminar you cannot afford to miss! Sign up today.**

Thursday, **October 14**  
**Everett** – Howard Johnson Hotel

Wednesday, **October 20**  
**Olympia** – Olympia Country Club

Thursday, **October 21**  
**Bellevue** – Red Lion Bellevue Inn

Wednesday, **October 27**  
**Tacoma** – Cliff House Restaurant

Thursday, **October 28**  
**Federal Way**  
Verrazano's Restaurant

Thursday, **November 4**  
**Renton** – Holiday Inn

Wednesday, **November 10**  
**Steilacoom** – E.R. Rogers Mansion

Thursday, **November 11**  
**Port Orchard**  
McCormick Woods Country Club

Thursday, **November 18**  
**Seattle**  
Best Western Executive Inn

Enclosed is an RSVP form. Plan to attend this informative seminar!

- All Seminars: 12:30 – 2:00 pm
- Complimentary Lunch Will Be Served
- This Seminar is for Doctors, Therapists, and their staff!
- Doctors of Chiropractic, Massage Therapists and Physical Therapists will earn 1.5 CE credits
- Seating is limited so register early!





**W**e 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 M. Graham  
 Scott F. Lundberg  
 Brian J. Peschel  
 Kenneth B. Golden  
 John A. Hoglund  
 Cydney Campbell Webster  
 Sean A. Ayres  
 Kenneth Barry Dore  
 Tara L. Eubanks  
 Susan Murgatroyd  
 John D. Webber  
 \*John M. Williams  
 Rodney G. Zerr

\*admitted in Ohio only

**Our Paralegals**

Rebecca Berdan  
 Patricia Clanton  
 Patti Cryder  
 Judy Hanson Earle  
 Grace Stephens  
 Diana Tennison  
 Catherine Torkelson  
 Lisa Traudt  
 Heather Webb

**Our Administration**

Diane Daniel  
 Trish Driver  
 Ann Harris  
 Heather Kelly  
 Martha McDonald  
 Becky Moilanen  
 Lucinda Pieczatkowski  
 Tom Reger  
 Erin Roudybush

**What is Coverage?, from page 2**

of most insurance policies. Often, there will be coverage available under more than one specific coverage, i.e., PIP and UM.

Each separate coverage has its own definitions, exclusions and limitations which must be reviewed under that specific area and must be read in conjunction with the more general coverage requirements. Lastly, all riders and addendums must be examined to

determine if there are additional provisions which may either limit, expand or exclude coverage.

Despite the insurance companies use of "Easy Reader" and "Straight Talk" to describe their insurance policies, it is important to realize that these policies contain language that is complicated and sometimes unclear and ambiguous. It is best to seek the advice of a qualified legal professional if in doubt.

**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**
- Olympia . . . . . 360-786- 1717**
- 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, Mason & Thurston Counties  
**800-273-5005**

or visit us online...  
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