

AB 1063: True Underinsured Motorist Coverage

So much of what drives corporate conduct in the United States has nothing to do with the role of selling goods or services at a price the market will bear, but instead by seeking exorbitant profits by leveraging advantages in state or federal law – inevitably at the expense of consumers. The past year witnessed corporate executive greed on a tear. Insurance companies and banks not merely blocked, ignored or made impotent meaningful legislation, but funneled billions of taxpayer dollars into the bonus checks of their insurance executives. Here in California, the insurance industry sought to grab whatever it could. Consumer Attorneys of California and our allies fought back hard to protect the rights of Americans to help themselves when they've been harmed by the greedy insurance industry. They did this by not merely blocking legislation to cripple Americans' right to protect themselves in court, but also by blocking cynical attempts at manipulating the political system through ballot initiatives.

The insurers are tough to tackle, whether on the political field or when negotiating a claim. Many of our most epic battles against the insurance industry are waged in Sacramento.

On three occasions last year, Governor Arnold Schwarzenegger vetoed CAOC-sponsored legislation that would have brought more money into the State by giving Medi-Cal lien claimants greater rights against at-fault drivers. Despite estimates of more than \$200 million a year in increased revenue and the obvious benefits to the citizens of California, those bills received bare majorities of support and only with heavy lobbying that included non-traditional allies in the medical and public entity community.

While we are weighing the possibility of another run at Medi-Cal lien reform, this year CAOC opened the 2011-2012 legislative session with a bill directly impacting an insurance sacred cow: the Uninsured/Underinsured motorist statute.

California is one of 29 states that only gives consumers partial credit for their underinsured motorist coverage because it requires an offset by the amount of other insurance. This means the consumer rarely receives the full benefit of the policy he or she bought.

Our sponsored bill, AB 1063 (Bradford), will create true underinsured motorist coverage by permitting consumers to recover the full benefit of their UM/UIM policy whenever damages equal or exceed the available policy limits.

AB 1063 will ensure that consumers "get what they paid for." Consumers are unaware that when they purchase a UM/UIM policy, their recovery will actually be offset by the at-fault driver's insurance coverage. They typically don't learn about the set-offs until after they have been injured. This is particularly distressing to learn when one is suffering from catastrophic injuries and sky-high medical bills.

Merely ensuring that people get what they pay for seems like a modest goal with which everyone would agree. Of course, the insurance industry, eager to quash even the most reasonable legislation, went on the attack. Within hours of the bill's introduction, the office of its author, Assembly Member Steve Bradford, was swamped by no less than 20 insurance industry lobbyists demanding he drop the bill.

The proposed law will lead to increased UM/UIM payouts for Californians. This is not only a good result, but the best way to deliver these benefits. UM/UIM coverage is the cheapest coverage that can be purchased on an auto

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insurance policy and averages about \$15-25, depending on the amount of coverage the consumer chooses to purchase. It is the only coverage that a consumer can purchase to protect from a collision with an uninsured or underinsured at-fault driver. The Department of Insurance calculated that the changes brought about by AB 1063 would result in miniscule increased costs – just \$1.50 to \$2.50 a policy. Based on a best-effort estimate, department staff believe an average rate increase of 10% in UM/UIM coverage would be likely. The average base rate for UM/UIM is commonly around \$20 - \$50 for limits of \$15,000 per person /\$30,000 per accident, so the increased cost to the base rates would be about \$2 - \$5. Those consumers who carry higher limits or have accidents or violations already pay more and would probably receive increases slightly more than 10%.

CAOC met with insurance industry representatives to better understand the nature of their opposition. Big Insurance's big concern: costs will go up and insurance companies fear they will be unable to increase rates to cover the increased costs. They also worry that approaching the Department of Insurance for a rate increase could backfire in a big way.

Here's why. Under Proposition 103, an insurance company can always

obtain a rate increase if it shows that it is justified. But that is where the problem lies for many insurance companies. The insurers fear that if they petition the Department of Insurance, it will examine not only the UM/UIM portion of the rate filing, but also the balance of the auto liability policies – and find the rates excessive. Under Proposition 103, no rate can remain in effect if it is "excessive." The department must order a rate reduction if it finds the rate excessive. Because the insurers fear exposing their books to the department, they will have to absorb the increased UIM costs.

Dave Jones has never been afraid to take on a powerful interest when justified. Last year, the industry tried to buy themselves a different insurance commissioner. At the last minute, insurance firms strategically dumped \$4.6 million into the campaign of Republican Mike Villines – an enormous sum in that election. Democrat Jones, among the very best protectors of the American civil justice system while in the Legislature, nonetheless sailed to victory with the last minute help of Consumer Attorneys and our allies. His victory assured that the California Department of Insurance would remain one of the few regulatory bright spots in the nation at a particularly critical time when politicians at the federal level are increasingly bow-

ing to insurance company interests.

In his new post, Jones has already demonstrated he'll take a tough stand on insurance company profiteering. In February, Jones contacted several medical malpractice insurers to raise concerns about excessive rates and request that they make a rate filing with the California Department of Insurance. Jones vowed to pull each of the companies in to justify their rates.

Auto insurers took note of Jones' stand and immediately went into high gear to ensure that AB 1063 does not pass and they can hold onto their profits. They have now enlisted their surrogates, the insurance agents, by activating a grassroots campaign against the bill. Agents are now swamping legislative representatives' district offices with false charges against the bill. Lacking credible arguments, they've shifted their focus and are regurgitating tired old attacks on trial lawyers.

One might expect that such a flimsy and transparent opposition would not prevent the bill from quickly making its way to the Governor's desk. Think again. This battle will be an epic one. We will need your help. We will need you to meet with your elected officials. And please bring your clients. Just like a trial, our case is always told best through the real life experience of those you represent. **TBN**

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Judicate West
Mediator



Craig Higgs, Esq.
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Mediator



Scott S. Markus, Esq.
PMA Dispute Resolution
Mediator

Wednesday, May 25th 2011 | 11:45AM - 1:15PM
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Third Floor Conference Room

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- Whether to speak with the mediator before the mediation
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- Whether to participate in a joint session
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- How to select the mediator
- When to hold the mediation
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