



April 9, 2013

To: The Honorable Henry T. Perea, Chair
The Honorable Curt C. Hagman, Vice Chair
Members, Assembly Insurance Committee

Re: OPPOSED: AB 862 (Wieckowski) Automobile Insurance: Underinsured Motorist Coverage

The American Insurance Association (AIA), the Association of California Insurance Companies (ACIC), the Civil Justice Association of California (CJAC), the California Chamber of Commerce, the National Association of Mutual Insurance Companies (NAMIC), the Pacific Association of Domestic Insurance Companies (PADIC), and the Personal Insurance Federation of California (PIFC) respectfully **oppose AB 862 Automobile Insurance: Underinsured Motorist Coverage by Assemblymember Wieckowski.**

AB 862 would give insurance companies the option to offer consumers a “non-setoff” policy and require insurers to provide an explanation to the consumer of the benefits of a non-setoff Uninsured Motorist (UIM) policy, as well as an explanation of any additional costs the insured would incur by purchasing that policy.

AB 862 is unnecessary. At this time there is no legitimate public interest or public policy argument to support introducing this type of coverage into the marketplace, especially when it is likely to confuse insurance consumers. Nothing in current law, or the marketplace, prevents a consumer from purchasing higher coverage. AB 862 needlessly requires insurers to spend money on relabeling their current UM/UIM coverage product and creates an administrative burden that may actually prevent insurers from developing and marketing such a product. AB 862 is also fraught with litigation risks: paving the way for a litigation gold mine on behalf of the consumer attorneys. Although the bill makes the UM/UIM coverage the insurer offers “optional,” the obvious goal of the plaintiff's bar is to increase the amount of money available in automobile lawsuits so that awards, including attorney's fees, are more lucrative.

Our collective experience with offering this type of coverage in other states is that such offers invariably result in the filing of meritless lawsuits by consumer attorneys on behalf of consumers who claim that their insurance agent did not offer the coverage or that such coverage was not adequately explained to them as a purchase option. AB 862 will not only increase the cost of insurance, it would encourage more lawsuits with more dubious claims.

We believe that AB 862 will also have a detrimental impact on our agents. The disclosure requirements of the bill will create additional liability exposure for agents and insurers, require the creation, processing, and retention of new legal paperwork and administrative procedures, and lead to lawsuits by consumers who complain, after-the-fact, that they were not adequately briefed on the type of coverage options available to them. Finally, we know AB 862 will inject new costs to the California auto insurance market, and we are concerned that what is currently an “option” will morph, either legislatively, or as a result of the practical reality associated with having to document that a thorough explanation of the non-set-off UIM coverage was provided to the policyholder and knowingly rejected by the consumer, into a mandate or de-facto mandate over time.

For the reasons stated above we **oppose AB 862 Automobile Insurance: Underinsured Motorist Coverage by Assemblymember Wieckowski and urge your “nay” vote.** If you have any questions regarding our position, please contact either Steve Suchil at (916) 442-7617, Armand Feliciano at (916) 440-1117, Katherine Pettibone at (916) 443-4900, Christian Rataj at (303) 907-0587, or Michael A. Gunning at (916) 442-6646.

cc: Assemblymember Bob Wieckowski, Author
Mark Rakich, Chief Consultant, Assembly Insurance Committee
Kevin Hanley, Consultant, Assembly Republican Caucus
Gareth Elliot, Secretary of Legislative Affairs, Office of the Governor

Background and Key Facts Regarding Uninsured and Underinsured Motorist Coverage

California law requires that motorists have automobile liability coverage insurance so as to provide some assurance that the driver will be financially responsible for damages and injuries caused by the at-fault driver in an accident. The bare minimum liability coverage insurance limits allowed by law are \$15,000 per person per accident, to a total of \$30,000 per accident (regardless of the number of persons injured and the total amount of their damages), and property damage coverage of at least \$5,000. By law, the negligent driver's insurance is responsible for the damages resulting from the accident.

What is Underinsured Motorist Coverage?

AB 862 concerns an auto insurance coverage known as "Underinsured Motorist Coverage" (UIM). This coverage protects a driver who is hit by an at-fault driver with inadequate auto liability coverage to pay for the damages. UIM is a completely separate type of insurance from "Uninsured Motorist" (UM) coverage, which is only triggered when an at-fault driver has zero insurance. The UM/UIM coverage is purchased together and protects a driver from the negligence caused by others.

When buying UIM coverage, a driver selects the total amount of damages protection they want available to them if they are injured by an at-fault underinsured motorist. The UIM coverage level is not a guarantee of how much the driver's own insurance company will pay after an accident; rather, it is the total amount of insurance coverage that will be available between 1) the at-fault driver's auto liability policy plus 2) the driver's own UIM policy. These two sources of money will be combined to achieve the consumer-selected damages coverage limit.

UIM coverage is affordable precisely because it relies first on the underinsured driver's automobile liability policy. Once the at-fault driver's liability policy pays its maximum, the UIM insurer would then pay the difference between the UIM policy limits and what has been paid under the liability policy. Thus, the consumer receives the exact level of damages coverage he selected and purchased. This provides a stable and affordable limit that is consistent with the reasonable expectations of consumers. If a driver wants more guaranteed total damages protection, the driver has the option of buying additional coverage. The important feature to remember is that each driver has the option of choosing the amount of guaranteed protection that will be available between the at-fault party's liability policy and the driver's own UIM policy limits.

The Sponsors

AB 862 is sponsored by the Consumer Attorneys of California (CAOC). Consumer attorneys are paid a percentage of the amount recovered on behalf of their clients. AB 862 would reap the COAC higher fees than they receive on the exact same claim were it to happen today. The CAOC claim that injured parties are not getting the "full benefit" of the UIM coverage for which they are paying. That is simply not true.

Since 1984, the goal of UIM coverage, and what consumers pay for it, is based on the difference between the injured party's UIM policy limits and the negligent driver's liability coverage limits. More interestingly, the CAOC sponsored the legislation that established today's UIM law. The COAC proposed the current system in 1984 when other legislation which would have eliminated the fault-based auto insurance system was gaining popularity. They crafted a system which kept the current liability fault-based system (with the ability of drivers to purchase additional UIM coverage from their own insurers in order to establish a guaranteed level of total damages protection) in place by adding the at-fault driver's liability policy and the driver's own UIM policy. Insurers are mandated to offer the coverage, and the set-off system was agreed upon as a way to maintain affordability of the coverage and to address the consumer's desire to be able to purchase a set damages protection limit that took into consideration the liability coverage of the at-fault driver and the UIM coverage.

Now the CAOC is claiming the system they created to preserve the fault-based liability system is unfair and deceptive. This is inaccurate. The proponents of AB 862 will say that Californians are not being "fully compensated" for their losses or being made whole. **According to the legislative history from 1984, the Legislature intentionally created the UIM system not to guarantee that a victim is made "whole," but instead to ensure that each consumer has access to an underinsurance benefit system that allows them to select the amount of damages protection they want available to them if an insured has not recovered equivalent amounts from an at-fault party liable for the damages.** The current system has worked for over 25 years and, particularly during these difficult economic times, does not need to become more expensive, confusing, and rife with litigation abuse.