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## MEMORANDUM

**Date:** April 26, 2011

**To:** The Honorable Jose Solorio, Chair  
The Honorable Curt Hagman, Vice Chair  
Members, Assembly Insurance Committee

**From:** Rex D. Frazier, President  
Michael A. Gunning, Vice President  
Kimberley Dellinger Dunn, General Counsel  
Manolo P. Platin, Legislative Advocate

**Re:** AB 1063 (Bradford): Automobile insurance: underinsured motorist coverage  
As Introduced February 18, 2011

### **Assembly Insurance Committee – Hearing May 4, 2011 PIFC Position: Oppose**

The Personal Insurance Federation of California, representing six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) and one national trade association (National Association of Mutual Insurance Companies) who collectively write a majority of the personal line auto and home insurance in California, **opposes AB 1063 by Assembly Member Bradford.**

AB 1063 would force customers to pay more for Uninsured/Underinsured (UM/UIM) auto insurance coverage or reduce their level of protection just to keep the cost of the coverage the same. The mandate this bill imposes will increase the cost of UM/UIM coverage for all drivers in California, and will disproportionately increase cost for the lowest income drivers who purchase minimal coverage levels. This effort to force more coverage in the marketplace is spearheaded by the Consumer Attorneys of California (CAOC), who overlook the increased burden on consumers to increase the amount of insurance proceeds available for their lawsuits. Indeed, CAOC's initiative here is particularly difficult to understand considering it was their legislation more than 25 years ago that created the very system that they are now criticizing as unfair.

#### **What is Underinsured Motorist Coverage?**

AB 1063 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 damage. UIM is a

completely separate type of insurance from “Uninsured Motorist” (UM) coverage, which is only triggered when the 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 protection they want available after being hit by an 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 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 UIM policy limit.

UIM coverage is affordable precisely because it relies first on the underinsured driver's 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. This provides a stable and affordable limit.

### **How UIM Works**

An example helps to illustrate how the UIM policy works: An individual purchases UIM limits of \$100,000. The individual is in a crash with a negligent driver and suffers \$100,000 in damages. Unfortunately, the at-fault driver only purchased the minimum \$15,000 in liability limits, so the injured driver can turn to his/her UIM policy to ensure a guaranteed level of protection of \$100,000 total from all sources. Once the liability payout of \$15,000 is paid, then the UIM insurer pays the \$85,000 necessary to get to the UIM policy limits.

If a driver wants more guaranteed total protection, the driver has the option of buying additional coverage. But, 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.

### **Impact of AB 1063**

AB 1063 would change the way that UIM policies work and make them much more expensive, particularly for the poorest drivers who buy lower policy limit policies, by at least 50 percent. Under AB 1063, the “setoff” feature (which helps to keep the cost of UIM coverage low) would be eliminated and the UIM policy would be triggered in many more circumstances than current law. The impact of this is an increase in the number of claims that would have to be opened. Forcing payouts in new situations may be a good thing for the small number of drivers (and their lawyers) which would get the additional benefits due to AB 1063, but the legislation would increase the price of UIM for all drivers who purchase the coverage, including those who are perfectly happy with the current system.

Drivers might be compelled to drop UM and UIM, as optional coverages, due to AB 1063's more expensive system. This would disproportionately harm low-income drivers because oftentimes UM and UIM coverage serve as the only private health care coverage that a low-income driver has after a car crash. California law should encourage affordable UM and UIM coverage for as

many people as possible and not force everyone to pay more when individuals are free to choose their own particular level of guaranteed protection. AB 1063 is not good public policy.

### **The Sponsors**

As mentioned above, AB 1063 is sponsored by the Consumer Attorneys of California. Consumer attorneys are paid a percentage of the amounts recovered on behalf of their clients. So, AB 1063 would reap them higher fees than they receive on the exact same claim were it to happen today. CAOC claims 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 limits. More interestingly, the CAOC sponsored the legislation that established today's UIM law. They proposed the current system in 1984 when other legislation which would have eliminated the fault-based auto insurance system was gaining popularity, so 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 to establish a guaranteed level of total protection, 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.

Now the sponsors of AB 1063 are claiming their own system which they created to preserve the fault-based liability system is unfair or deceptive, which is inaccurate. The proponents 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 where they could select the amount of protection they wanted available when an insured has not recovered equivalent amounts from an at-fault party liable for the injury.** The current system has worked for over 25 years and, particularly during these difficult economic times, does not need to become more expensive.

For the foregoing reasons, **PIFC opposes AB 1063** and urges your “**nay**” vote. If you have any questions regarding PIFC's position, please contact Michael A. Gunning at (916) 442-6646.

cc: Assembly Member Steve Bradford, Author  
Mark Rakich, Assembly Insurance Committee  
Kevin Hanley, Assembly Republican Caucus  
Gareth Elliott, Secretary of Legislative Affairs, Office of the Governor  
Randall Ward, Director, Office of the Insurance Advisor