

Nevada

By Michael C. Mills

Uninsured Coverages

Is UM coverage mandatory or discretionary?

Mandatory. An insurer must offer uninsured/underinsured (UM/UIM) motorist coverage equal to the limits of coverage of bodily injury. Nev. Rev. Stat. Ann. §687B.145(2). *Peterson v. Colonial Insurance Co.*, 100 Nev. 474, 686 P.2d 239 (1984) (insurer must offer UM/UIM coverages when policy sold to cover passenger car). However, an insured can reject UM/UIM motorist coverage or reduce the limits below the amount of the bodily injury liability coverage selected. Nev. Rev. Stat. Ann. §690B.020(1); *Phelps v. State Farm Mut. Auto. Ins. Co.*, 112 Nev. 675, 917 P.2d 944 (1996); *State Farm Mut. Auto. Ins. Co. v. Hinkel*, 87 Nev. 478, 488 P.2d 1151 (1971).

Is UM coverage governed by a statutory scheme? Are there any landmark cases?

Yes. Nev. Rev. Stat. Ann. §§687B.145 and 690B.020 require insurers to make available coverage against both UM and UIM motorists. Because UIM is a component of UM coverage, the court will enforce a policy exclusion that will prevent a claimant from collecting UM and UIM benefits from the same policy. Nev. Rev. Stat. Ann. §§687B.145(2), 690B.020. *Hall v. Farmers Ins. Exchange*, 105 Nev. 19, 768 P.2d 884 (1989). The court will also usually enforce an exclusion that prevents a claimant from collecting both liability and UIM benefits from the same policy. *Peterson v. Colonial Insurance Co.*, 100 Nev. 474, 686 P.2d 239 (1984), and *Baker v. Criterion Insurance*, 107 Nev. 25, 805 P.2d 599 (1991). However, there are exceptions to this rule under the proper circumstances. *Delgado v. American Family Ins. Group*, 125 Nev. 564, 217 P.3d 563 (2009)

Must the insured reject UM coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?

Yes. If an insurer cannot produce the written waiver demonstrating that the insured properly elected to reject or reduce UM/UIM coverage on an insured vehicle, the court will read into the contract a UM/UIM limit equal to the liability limits of the policy. *Ippolito v. Liberty Mutual Ins. Co.*, 101 Nev. 376, 705 P.2d 134 (1985). Even enforceable coverage exclusions will be set aside to provide coverage sufficient to satisfy the minimum amount of UM/UIM coverage required by law. Nev. Rev. Stat. Ann. §690B.020. *Continental Ins. Co. v. Murphy*, 120 Nev. 506, 96 P.3d 747 (2004).

Is UIM coverage mandatory or discretionary?

UM Coverage is defined to include UIM coverage. Nev. Rev. Stat. Ann. §690B.020(3). Therefore the statutory scheme is the same for both coverages. Please see response to “**Is UM coverage mandatory or discretionary?**,” *supra*.

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Is uninsured motorist property damage (“UMPD”) coverage mandatory or discretionary?

Discretionary.

Is UMPD coverage governed by a statutory scheme? Are there any landmark cases?

No.

Must the insured reject UMPD coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?

Not applicable.

Is uninsured motorists “economic only” (“UEO”) coverage mandatory or discretionary?

There are no references to UEO coverage in Nevada case law or the Nevada statutes.

Is UEO coverage governed by a statutory scheme? Are there any landmark cases?

There are no specific references to UEO coverage in Nevada statutes or case law. It is unclear whether UEO coverage would satisfy the requirements of the statutory scheme set by Nev. Rev. Stat. Ann. §687B.145 and Nev. Rev. Stat. Ann. §690B.020. If such coverage were written in Nevada and it failed to satisfy these two statutes, the court would find that the coverage was a violation of public policy and would read into the policy coverage that complied.

Must the insured reject UEO coverage in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?

UEO is not organic to Nevada’s statutory UM/UIM structure. It is unclear whether UEO coverage would satisfy the statutory requirements set by Nev. Rev. Stat. Ann. §687B.145 and Nev. Rev. Stat. Ann. §690B.020. If it did not, it would be deemed a violation of public policy.

Does the state have any other uninsured coverages that are mandatory or discretionary?

No.

Are such coverages governed by a statutory scheme? Are there any landmark cases?

No.

Must the insured reject such coverages in writing? What happens if the insured has not rejected coverage in writing, but later seeks such coverage?

Not applicable.

Limits

Must the UM or UIM limits match the liability limits for “bodily injury”? Are there minimum UM or UIM limits?

UM/UIM limits need not match the liability limits for BI. But for any full or partial rejection of UM/UIM to be enforceable, the rejection or reduction must be documented in writing on a form approved by the Commissioner of Insurance. Nev. Rev. Stat. Ann. §687B.145(2). Once properly rejected, UM/UIM coverage need not be reoffered in any replacement, reinstatement, substitute or amended policy. However, the insured may change the UM/UIM election at that time by requesting the change in writing. This “must offer” obligation applies to private passenger vehicles. Nev. Rev. Stat. Ann. §§687B.145(2), 482.087.

If an insurer cannot demonstrate that the insured properly elected to reject or reduce UM/UIM cov-

erage on an insured vehicle, the court will read into the contract a UM/UIM limit equal to the liability limits of the policy. *Ippolito v. Liberty Mutual Ins. Co.*, 101 Nev. 376, 705 P.2d 134 (1985). Even enforceable coverage exclusions will be set aside to provide coverage sufficient to satisfy the minimum amount of UM/UIM coverage required by law. Nev. Rev. Stat. Ann. §690B.020. *Continental Ins. Co. v. Murphy*, 120 Nev. 506, 96 P.3d 747 (2004).

The amount of coverage offered must not be less than the minimum for bodily injury liability coverage which is currently \$15,000 per person/\$30,000 per occurrence. Nev. Rev. Stat. Ann. §690B.020(2) and Nev. Rev. Stat. Ann. §485.3091.

Must the UMPD limits match the liability limits for “property damage”?
Are there minimum UMPD limits?

Not applicable.

Are there minimum limits for UEO coverage?

Not applicable.

Are there minimum limits for other uninsured coverages that are mandatory or discretionary in this state?

Not applicable.

When Is Coverage Available?

Under what circumstances is UM coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?

There must be physical contact between the vehicles. Under Nev. Rev. Stat. Ann. §690B.020, to recover UM policy benefits, there must be actual physical contact between the uninsured or hit-and-run automobile and the named insured or person claiming under him or her. Nev. Rev. Stat. Ann. §690B.020(3)(f)(1); *Kern v. Nevada Ins. Guar. Ass’n on Behalf of Azstar Cas. Co.*, 109 Nev. 752, 856 P.2d 1390 (1993) (physical contact requirement not satisfied in vehicular col-

lision caused by “mysterious presence” of slippery substance on interstate highway where no vehicle capable of discharging the accident causing substance was shown in the area of the collision and no causal connection could be made between a vehicle and the substance).

Under what circumstances is UIM coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?

The insured does not need to exhaust the underlying policy before bringing a claim or action for UIM coverage. The Nevada Supreme Court has held that an “exhaustion clause” violates public policy to the extent that it requires the insured to exhaust the opposing driver’s liability limits prior to permitting the insured to pursue underinsured motorist benefits. *Shaw v. Continental Ins. Co.*, 108 Nev. 928, 840 P.2d 592 (1992).

Under what circumstances is UMPD coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?

Nevada has no controlling statute or case law on this topic.

Under what circumstances is UEO coverage available? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?

Not applicable.

Under what circumstances is coverage available under other uninsured coverages? What conditions precedent must the insured satisfy? What coverage defenses can the insurer assert?

Not applicable.

Arbitrating and Litigating Disputes

Is arbitration of UM claims allowed, or specifically prohibited? UIM? UMPD? UEO? Other uninsured coverages?

Arbitration is allowed. However, an insurance carrier cannot compel binding arbitration based on any provision in an auto insurance policy. Nev. Rev. Stat. Ann. §690B.017. This would include UM/UIM coverages.

If arbitration is allowed, what procedures govern in arbitration?

The insured can agree with the company to participate in arbitration under the policy that is non-binding. The parties can also agree to binding arbitration on terms negotiated between them.

If an insured claimant obtains an arbitration award in excess of the UM, UIM, UMPD, UEO or other uninsured coverage limits, can the insurer obtain a reduction of the award to match the limits?

Because any binding arbitration is based on terms negotiated by the parties, the arbitration agreement should include a cap of recovery at the amount of the policy that may or may not be disclosed to the arbitrator. It is not clear under Nevada law how a court would treat an arbitration award that exceeds the policy limit that does not include a negotiated cap on the award.

What requirements must an insured claimant satisfy in order to file suit against, and serve, an insurer for UM coverage? UIM? UMPD? UEO? Other uninsured coverage?

There are no pre-requisites that an insured claimant must satisfy in order to file suit for damages under a UM/UIM coverage provision. The insured claimant can pursue a judgment against the tortfeasor exclusively or the insured and name the insurance company directly or both. Insureds injured by uninsured motorists are not required under Nevada law to reduce their claim to a judgment against the tortfeasor before bringing an action against their UM/UIM carrier. Nev. Rev. Stat. Ann. §690B.020; *Lee v.*

Allstate Ins. Co., 648 F. Supp. 1295 (D. Nev. 1986); *State Farm Mut. Auto. Ins. Co. v. Fitts*, 120 Nev. 707, 99 P.3d 1160 (2004).

Do any unique procedures govern such coverage litigation?

No.

If an insured claimant obtains a verdict in excess of the UM, UIM, UMPD, UEO or other uninsured coverage limits, can the insurer obtain a reduction of the award to match the limits?

This issue has not been litigated and there are not statutes as to how this result would be handled. If the insurance company is defending the tortfeasor and the insurance company is not named in the action, it would be recommended that the issue be addressed prior to trial to avoid any questions as to what might happen to with the judgment.

Final Amounts Paid or Awarded

Can offsets against the UM, UIM, UMPD, UEO or other uninsured coverage limits be taken?

Yes.

Are offsets taken from the UM, UIM, UMPD, UEO or other uninsured coverage limit—or from total damages?

Nevada follows the “excess-type” UIM Model. Nev. Rev. Stat. Ann. §687B.145(2). Thus any payment made by the tortfeasor will reduce the total damages, not the amount of coverage available on the insured’s UIM policy. *See Mid-Century Ins. Co. v. Daniel*, 101 Nev. 433, 705 P.2d 156 (1985).

Because Nevada refuses to enforce UIM policy clauses that require the insured to “exhaust” the tortfeasor’s policy before the UIM policy will be available, if the insured fails to exhaust the tortfeasor’s liability policy, the total amount of the available offset will be the tortfeasor’s liability limit rather than the amount paid in settlement by the tortfeasor. *Shaw v. Continental Ins. Co.*, 108 Nev. 928, 840 P.2d 592 (1992).

Can the insurer take offsets for medical payments, workers' compensation or no-fault insurance? Are any other offsets allowed in the state?

Offsets or credits are allowed against UM or UIM settlements for medical payments so long as the insurance contract allows it and the contract language is clear and understandable. *Ellison v. CSAA*, 106 Nev. 601, 797 P.2d 975 (1990). Offset provisions reducing UM coverage by amounts paid or payable under worker's compensation, disability or similar laws are enforceable. *Phelps v. State Farm Mut. Auto. Ins. Co.*, 112 Nev. 675, 917 P.2d 944 (1996). However, offset provisions are unenforceable as to benefits received from privately purchased disability insurance. *Id.*, but see *St. Paul Fire & Marin Ins. Co. v. Employers Ins. Co. of Nevada*, 122 Nev. 991, 146 P.3d 258 (2006) (Under Nev. Rev. Stat. Ann. §616C.215(3) governing workers' compensation carrier subrogation rights against UM/UIM insurance purchased by employer, workers' compensation carrier has independent right of action against UM/UIM carrier irrespective of claims made against UM/UIM coverage by the insured).

What liens, if any, can be asserted against the insured claimant's recovery of UM? UIM? UMPD? UEO? Other uninsured coverages?

A workers' compensation insurer has an independent right to seek subrogation against UM/UIM coverage purchased by an insured employer but that right may be restricted by the UM/UIM carrier. *St. Paul Fire v. Employers Ins. Co. of Nev.*, 122 Nev. 991, 146 P.3d 258 (2006).

Can different limits be stacked? If yes, which limits? Does a specific procedure apply?

An insurance company must stack UM/UIM benefits available to the insured from multiple policies or from a single multi-vehicle policy unless the company has satisfied Nevada's anti-stacking requirements as listed in Nev. Rev. Stat. Ann. §687B.145(1). The burden is on the insurer to demonstrate that all of the anti-stacking requirements have been satisfied. *Bove v. Prudential Insurance Co.*, 106 Nev. 682, 687, 799 P.2d 1108, 1109 (1990).

The anti-stacking law includes three requirements. The policy language must be (1) clear and (2) prominently displayed. Finally (3) insurer must demonstrate that the insured did not purchase separate coverage on the same risk and did not pay a premium calculated for full reimbursement under that coverage. Nev. Rev. Stat. Ann. §687B.145(1). Various companies have demonstrated that their policy's language satisfies the requirements of the statute. *Bove v. Prudential Insurance Co.*, 106 Nev. 682, 687, 799 P.2d 1108, 1109 (1990) and *Serrett v. Kimber*, 110 Nev. 486, 874 P.2d 747 (1994). However, the Nevada Supreme Court has refused to enforce the anti-stacking provisions where the company did not show that the insured had not paid a full separate premium for each coverage. *Serrett v. Kimber*, 110 Nev. 486, 874 P.2d 747 (1994) and *Mid-Century Ins. Co. v. Daniel*, 101 Nev. 433, 705 P.2d 156 (1985).

In UIM claims, can the UIM insurer substitute its settlement payment for the insured's settlement with the other vehicle's/underinsured driver's liability insurer? What is the applicable procedure? What rights does the UIM insurer then have (for example, subrogation)?

No. Any payment made by the UIM carrier prior to the insured's settlement with the tortfeasor would apply a credit of the full amount of the underinsured tortfeasor's policy to the total value of the claim. *Shaw v. Continental Ins. Co.*, 108 Nev. 928, 840 P.2d 592 (1992). The UIM carrier has no right of subrogation against the underinsured driver. Nev. Rev. Stat. Ann. §687B.145(4).

Bad Faith

Does the State recognize a cause of action for bad faith in the UM context? UIM? UMPD? UEO? Other uninsured coverages?

Yes. Insureds regularly plead extra-contractual claims in the same complaint that includes a cause of action for negligence against the tortfeasor and breach of the UM/UIM contract. *Pemberton v. Farmers Ins. Co.*, 109 Nev. 789, 858 P.2d 380 (1993). In fact, even an additional insured may qualify to bring an

extra-contractual complaint. *Bergerud v. Progressive Cas. Ins.*, 453 F. Supp. 2d 1241 (D. Nev. 2006).

Decisions out of the U.S. District Court for Nevada have allowed the extra-contractual claims to be held in abeyance until the UM/UIM coverage case is resolved. *Martin v. State Farm Mut. Auto, Ins. Co.*, 960 F. Supp. 233 (D. Nev. 1997). Recently, other courts have questioned the validity of this question. *Schmall v. Gov't Empl. Ins. Co.*, No. 2:16-cv-00073-RCJ-CWH, 2016 U.S. Dist. Lexis 30777 (D. Nev. Mar. 8, 2016) and *Oliver v. Geico Gen. Ins. Co.*, No. 2:15-CV-204 JCM (CWH), 2015 U.S. Dist. Lexis 86618 (D. Nev. July 2, 2015).

Other

Are there any particular issues in UM, UIM, UMPD, UEO, or other uninsured coverages that are unique or specific to the state?

Insureds will often interpret Nevada Administrative Code 686A.675 to read that an insurance company

must immediately pay any “undisputed amount” of the claim, leaving the disputed portion of the claim to be litigated. An administrative decision by the Division of Insurance indicates that this is a misinterpretation of the Code. However, there may be advantages to the insurance company paying the undisputed amount (*see Nelson v. Safeco Ins. Co. of Ill.*, 2:10-CV-241 JCM (LRL) 2011 U.S. Dist. Lexis 23820 (D. Nev. Mar. 8, 2011) where the court found that by paying the undisputed amount, the company was acting reasonably in the handling of the claim).

If the at-fault driver is uninsured, the law allows the UM carrier to be subrogated to the amount that it paid to the insured for the UM loss. Nev. Rev. Stat. Ann. §690B.020(5).

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