

Uninsured Motorist (UM) Insurance in Florida

I. Duty of Insurer (Approximately 10 minutes)

- A. Pursuant to *Florida Statutes*, section 627.727, every motor vehicle liability insurance policy issued in Florida which provides bodily injury liability coverage must include an equal amount of uninsured motorist vehicle coverage, unless the insured makes a specific rejection of that UM coverage.
- B. If an insurer fails to comply with the statutory requirement that uninsured/underinsured motorist coverage be offered and either accepted or properly rejected by a “named insured” when an insurance policy which provided liability coverage is issued or delivered in this state, UM/UIM coverage is provided by the contract as through the required coverage had been offered and accepted by the named insured as a matter of law. *Tobin v. Michigan Mut. Ins. Co.*, 948 So.2d 692 (Fla. 2006).

II. Purpose of UM Insurance (Approximately 10 minutes)

- A. UM is a legislative creation intended to allow an insured the same recovery that he would have been entitled to had the tortfeasor been insured to the same extent as the UM coverage. *Dewberry v. Auto-Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).
- B. Uninsured motorist statute is intended to protect injured people and is not intended to benefit insurance companies or motorists who cause damage to other people. *Varro v. Federated Mut. Ins. Co.*, 854 So.2d 726 (Fla. 2nd DCA 2003).
- C. Because the UM statute was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist, it is not to be whittled away by exclusions and exceptions. Where a provision in a policy is ambiguous, it should be construed in favor of the insured. *Flores v. Allstate Ins. Co.*, 819 So.2d 740 (Fla. 2002)

III. Definition of UM Insurance (Approximately 40 minutes)

- A. Includes an uninsured motor vehicle when the liability insurer:
 - 1. Is unable to make payment with respect to the legal liability of its insured within the policy limits because of *insolvency*;
 - 2. Has provided limits of bodily injury liability for its insured which are less than the total damages sustained by the person legally entitled to recover damages (*underinsured motorist*); or
 - 3. Excludes liability coverage to a nonfamily member whose operation of an insured vehicle results in injuries to the named insured or to a relative of the named insured who is a member of the named insured’s household
- B. Uninsured Motorist v. Underinsured Motorist
 - 1. Underinsured motorist included within the definition of “uninsured motor vehicle.”
 - 2. For purposes of Fla. Stat. § 627.727 which provides that the term “uninsured motor vehicle” includes an insured’s vehicle when the liability

insurer has provided liability limits which are less than the limits applicable to the injured person which were provided under “his uninsured motorist’s coverage,” the legislature did not intend for the words “his uninsured motorist’s coverage” to be construed in a manner which would make rules for recovery of underinsured coverage different from those of uninsured coverage, but, rather, the words simply refer to any uninsured motorist coverage which is otherwise available to the injured party. *Cox v. State Farm Mut. Auto. Ins. Co.*, 378 So.2d 330 (Fla. 2nd DCA 1980).

C. Phantom/Hit and Run Driver

1. A “hit and run” accident requires either physical contact with another vehicle OR the presence of a phantom vehicle. In the instance of a phantom vehicle, that phantom vehicle must cause another vehicle to wreck, without actual contact; i.e. where another vehicle is forced off the road to avoid a head-on collision. *Sims v. American Hardware Mut. Ins.*, 429 So.2d 21 (Fla. 2nd DCA 1982).
 - a. Purpose of the physical contact requirement is to prevent fraudulent claims by proving the accident occurred as the insured claims it did.
 - b. Physical contact may not actually be necessary if the jury finds that the accident occurred as the insured claimed it did. *Brown v. Progressive Specialty Ins. Co.*, 249 So.2d 429 (Fla. 1971).
 - c. The “corroboration” provision, which required competent testimony other than the testimony of the injured claimant if there was no physical contact with a hit and run vehicle, of UM policy was deemed unenforceable because it conflicted with the UM statute. *Massa v. Southern Heritage Ins. Co.*, 697 So.2d 868 (Fla. 4th DCA 1997).
 - d. Ex. 1: Hit and run provision of UM policy did not apply to a cinder block where there was no competent evidence as to origination of cinder block and it would be mere speculation to claim it fell off a vehicle. *Allstate Ins. Co. v. Bandiera*, 512 So.2d 1082 (Fla. 4th DCA 1987).
 - e. Ex. 2: However, when a steel beam fell off an unidentified truck, causing the insured’s accident when another driver hit the beam lying on the highway and forced the beam to strike the insured’s vehicle, the unidentified truck constituted a hit and run vehicle within the scope of the policy’s definition of an uninsured motor vehicle. *Denoia v. Hartford Fire Ins. Co.*, 843 So.2d 285 (Fla. 3rd DCA 2003).
2. Notice to Insurer of “Hit and Run” Accident
 - a. The policy requirements dictating notice of a hit and run accident within 24 hours have been interpreted to be “as soon as practicable.” *Tiedtke v. Fid. & Cas. Co.*, 222 So.2d 206 (Fla. 1969).

- b. Prejudice to insurer is presumed where notice of a hit and run accident is not given to police or appropriate government authority within 24 hours of the accident. However, if insured can demonstrate that insurer was not prejudiced by such lack of notice, insurer will not automatically be relieved of liability.
 - c. Insurer can waive late notice for proof of loss requirements if insurer fails to raise late notice and takes inconsistent action. *American Bankers v. Terry*, 277 So.2d 563 (Fla. 3rd DCA 1973).
- D. Self-insured Driver
 - 1. A self-insured motorist is not a “liability insurer” within the meaning of the definition found in *Florida Statutes*, section 627.727. As such, a self-insurer with a certificate of self-insurance providing limits of liability lower than the damages sustained by the injured person is not an “underinsured motorist.” Rather, a self-insured motorist is an “uninsured motorist.” *Young v. Progressive Southeastern Ins. Co.*, 753 So.2d 80 (Fla. 2000), rehearing denied.
 - 2. Self-insurance is not a “policy” of insurance. Self-insured employer was not required to provide UM coverage on vehicle used by employee and was not required to offer the employee coverage. *Lipof v. Florida Power & Light*, 558 So.2d 1067 (Fla. 4th DCA 1990).
- E. Under Florida law, UM coverage under an automobile insurance policy is not available if the claim is made against the same policy which provides liability coverage to the automobile in question and if the policy says that an insured automobile cannot be considered an uninsured automobile. *Gares v. Allstate Ins. Co.*, 365 F.3d 990 (11th Cir. 2004)

IV. Rejection of UM Coverage by Insured (Approximately 30 minutes)

- A. Although uninsured motorist provision of Fla. Stat. § 627.727 prohibits delivery or issuance in Florida of automobile liability insurance unless uninsured motorist protection has the same limits as liability insurance, insured is allowed to reject coverage and select lesser coverage; unless insured selects lesser coverage, uninsured motorist coverage is by operation of law equal to general liability coverage. *Lancaster Oil Co., Inc. v. Hartford Acc. and Indem. Co.*, 486 F.Supp 399 (N.D. Fla 1980).
- B. The insurer must obtain a written rejection from the insured of UM coverage, otherwise the insured is entitled to UM up to the limit of the bodily injury liability coverage provided by the policy. *Bell v. Progressive Specialty Ins. Co.*, 744 So.2d 1165 (Fla. 1st DCA 1999).
 - 1. Ex. 1: Adding new vehicle to existing automobile insurance policy was extension or change for which insurer was not required to again obtain express rejection of UM coverage equal to liability limits. Addition of vehicle is governed by statute stating that, when named insured has initially selected limits of UM coverage lower than bodily injury limits, high UM limits need not be provided in or supplemental to any other

policy which renews, extends, changes, supersedes, or replaces the existing policy. *Gov't Employees Ins. Co. v. Stafstrom*, 668 So.2d 631 (Fla. 5th DCA 1996).

2. Ex. 2: Likewise, an insured who has once rejected full coverage under UM portion of automobile insurance policy need not again reject that coverage when he buys a replacement vehicle. *Gasch v. Harris*, 808 So.2d 1260 (Fla. 4th DCA 2002).
- C. Form for Rejection - rejection of UM coverage or selection of lower limits must be on a form approved by the insurance commissioner. Fla. Stat. § 627.727(1) (2007).
1. The form must fully advise the insured of the nature of the coverage and state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected.
 2. The heading of the form must state in 12-point bold type: "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully."
 3. The insurer must notify the named insured at least annually of his options as to UM coverage. This notice must be part of, and attached to, the notice of premium. Additionally, this notice must provide a mechanism for the insured to request UM coverage in a manner approved by the department of insurance.
 4. The insured's signing of this form creates a conclusive presumption that there was an informed, knowing, rejection of coverage or election of lower limits on behalf of all insureds.
- D. Fraud, forgery, or trickery - Absent such exigent circumstances as "fraud, forgery, or trickery," an insured is deemed to be bound by his signature on an informed rejection form applicable to UM coverage. *State Farm Mut. Auto Ins. Co. v. Parrish*, 873 So.2d 547 (Fla. 5th DCA 2004).
- E. Oral Rejection - Oral waiver of UM insurance by named insured will satisfy requirements of *Florida Statutes*, section 627.727. *Liberty Mut. Ins. Co. v. Ledford*, 691 So.2d 1164 (Fla. 2nd DCA 1997).

V. Coverage Under UM Policy (Approximately 85 minutes)

- A. Vehicles
1. Automobile owned by resident relative, but NOT insured under policy
 - a. A Class I insured is entitled to coverage regardless of the circumstances when bodily injury is inflicted through the negligence of an uninsured motorist. UM coverage applied to son of insured who was riding a motorcycle owned by insured but not actually insured under the policy when he was injured by an uninsured motorist. *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So.2d 229 (Fla. 1971).

- b. Regardless of the fact that the insured's policy would not have provided liability coverage if he had been at fault for the accident, the insured was entitled to UM coverage. *Omar v. Allstate Ins. Co.*, 632 So.2d 214 (Fla. 5th DCA 1994).
- 2. Taxis: exclusion disallowing coverage for the insured when riding in a public conveyance is impermissible. *Forbes v. Allstate Ins. Co.*, 210 So.2d 244 (Fla. 3rd DCA 1968).
- 3. Motorcycles: coverage depends on definitions used within policy
 - a. The word "automobile," as used in an insurance policy which provided benefits for "accidental bodily injury sustained while driving or riding within any automobile, truck, or bus for business or pleasure" was not synonymous with the term "motorcycle." As such, the insured, who was killed while riding a motorcycle, was not protected under such policy. *Loftus v. Pennsylvania Life Ins. Co.*, 314 So.2d 159 (Fla. 4th DCA 1975).
 - b. The term "automobile" as found within a liability policy of a motorcycle owner defining an automobile as a land motor vehicle or trailer not operated on rails or crawler treads, meant all land vehicles except those specifically excluded. As such, coverage was extended to motorcycle passenger for injuries received in collision with an uninsured motorist. *Dorrell v. State Farm Fire & Cas. Co.*, 221 So.2d 5 (Fla. 3rd DCA 1969).
- 4. Mopeds
 - a. A moped is not a "motor vehicle" under statutory definitions. A pedestrian injured in an accident in which the alleged tortfeasor was operating a moped was not entitled to personal injury protection or UM benefits under automobile policy. *Prinzo v. State Farm Mut. Auto. Ins. Co.*, 465 So.2d 1364 (Fla. 4th DCA 1985).
 - b. However, where automobile involved in an accident was not covered by insurance and the moped upon which insured was riding was not owned by the insured or the named insured and neither of them owned any other uninsured automobile, the attempt to exclude coverage because the moped had less than four wheels was in actuality an attempt to exclude UM coverage based solely on the mode of transportation which is impermissible. *Progressive American Ins. Co. v. Glenn*, 428 So.2d 367 (Fla. 3rd DCA 1983).
- 5. Off road vehicles:
 - a. While an uninsured motorcycle is typically considered an uninsured motor vehicle, an insurer may exclude "off-road" motorcycles. *Grant v. State Farm Fire & Cas. Co.*, 638 So.2d 936 (Fla. 1994).
 - b. Additionally, an insurers exclusion from coverage of a "dune buggy" designed primarily for off-road use is not void as against public policy. *State Farm Fire & Cas. Ins. Co. v. Bercraft*, 501

So.2d 1316 (Fla. 4th DCA 1986).

B. Persons

1. *Class I insured*: named insured, named insured's spouse and his or her relatives living in the same house covered under UM policy, even when covered automobile not involved in accident from which the injuries arose (insured's cohabitant not included within this definition).
 - a. Resident Relatives - whether an individual is residing in the same household is most often determined by looking at the totality of the circumstances.
 - 1) Generally, the relationship between the insured and the injured party must either be a legal or blood relationship under UM coverage. *Allstate Ins. Co. v. Hilsenrad*, 462 So.2d 1202, (Fla. 3rd DCA 1985).
 - 2) Factors to be considered in determining status as a resident relative include continuous residence, physical presence, personal items maintained at the residence, and the intent of the parties. The insured's son was considered a resident relative even though he was stationed at a naval base. The son had resided continuously with his parents prior to enlisting, continued to maintain a majority of his personal effects at his parents home, and continued to use his parents address as his permanent mailing address while in service. *Trezza v. State Farm Mut. Auto. Ins. Co.*, 519 So.2d 649 (Fla. 2nd DCA 1988).
 - 3) Insured's son was not a resident of insured's household at time of automobile accident where, although son was living with insured at time of accident, there was no evidence that he had an intention to continue living there, and after the accident he returned to Indiana where he had resided with his wife prior to being laid off from his job. As such, the policy issued to the mother providing uninsured motorist coverage and other benefits for relatives if they resided in insured's household did not apply to the son. *Whitten v. Allstate Ins. Co.*, 476 So.2d 794 (Fla. 1st DCA 1985).
 - 4) A child of divorced parents can be deemed to be a resident relative of both of his parent's households, so long as both parents clearly intend the child to maintain relationships with both parents and the child spends regular time at both households. *Alava v. Allstate Ins. Co.*, 497 So.2d 1286 (Fla. 3rd DCA 1986).
 - b. UM Coverage applies to Class I insureds whether the insured is injured in his own vehicle, someone else's vehicle, or as a pedestrian.
2. *Class II insured*: permissive user or passenger in the insured vehicle. Class

II insureds are covered only as to the vehicle they are driving or occupying.

C. Injuries

1. Causation: Injury complained of must have some causal connection with uninsured vehicle for coverage under policy to exist by reason of statutory UM provision. *Aetna Cas. and Sur. Co. v. Goldman*, 374 So.2d 539 (Fla. 3rd DCA 1979).
 - a. Ex.1: Provision of policy extending UM coverage to injuries caused by accident and arising out of ownership, maintenance or use of an uninsured or underinsured vehicle did not extend UM coverage to insured for injuries sustained by him when, as a passenger in his taxicab pulled a gun and demanded money, insured grabbed for gun and as a result, sustained injuries to his left hand from the gun barrel or a bullet coming from the gun. *Pena v. Allstate Ins. Co.*, 463 So.2d 1256, (Fla. 3rd DCA 1985).
 - b. Ex. 2: Physical connection to vehicle may be a factor. Discharge of shotgun which was still mounted to a permanently affixed gun rack attached to the vehicle amounted to a sufficient causal connection between the use of the vehicle and the injury so as to fall within the UM provision. *Quarles v. State Farm Mut. Auto Ins. Co.*, 533 So.2d 809 (Fla. 5th DCA 1988).
 - c. Ex. 3: Three prong test of whether injury would fall within “use” coverage of automobile policy created in *Government Employees Insurance Company v. Batchelder*: (1) whether accident arose out of inherent nature of automobile; (2) whether accident arose within natural territorial limits of automobile, with actual use not having terminated; and (3) whether automobile merely contributed to cause condition which produced injury or whether automobile itself produced injury. *Gov’t Employees Ins. Co. v. Batchelder*, 421 So.2d 59 (Fla. 1st DCA 1982)
2. Injuries occurring outside of the motor vehicle
 - a. While alighting from the vehicle, the injured party is still considered occupying the motor vehicle. *Fid. & Cas. Co. Of New York v. Garcia*, 368 So.2d 1313 (Fla. 3rd DCA 1979).
 - b. Sitting in the back of a pick up truck is considered occupying a motor vehicle. *U.S. Fid. & Guar. v. Daly*, 384 So.2d 1350 (Fla. 4th DCA 1980)
 - c. An insured changing his own tire may be covered. *Indus. Fire & Cas. Ins. Co. v. Collier*, 334 So.2d 148 (Fla. 3rd DCA 1976). However, an insured changing a tire on a disabled vehicle after leaving his own vehicle is not covered. *Davis v. Firemans Fund*, 463 So.2d 1191 (Fla. 2nd DCA 1985).
3. Odd Circumstances Surrounding Injuries: Dog bites, rocks, trees, and bulls
 - a. Ex. 1: Hit and run provision of UM policy did not apply to a cinder

block where there was no competent evidence as to origination of cinder block and it would be mere speculation to claim it fell off a vehicle. *Allstate Ins. Co. v. Bandiera*, 512 So.2d 1082 (Fla. 4th DCA 1987).

- b. Ex. 2: While driving through high crime area, passenger struck by large rock thrown through windshield by unidentified person. Because injury did not arise out of the operation, maintenance, or use of the uninsured vehicle, passenger not entitled to UM benefits. *Denbaum v. Allstate Ins. Co.*, 374 So.2d 44 (Fla. 3rd DCA 1979).
- c. Ex. 3: While being loaded into an uninsured motor vehicle, tree limb fell. No UM benefits because injury did not arise out of the operation, maintenance, or use of the motor vehicle. *Pomerantz v. Nationwide Mut. Fire Ins. Co.*, 575 So.2d 1311 (Fla. 3rd DCA 1991).
- d. Ex. 4: However, when a steel beam fell off an unidentified truck, causing the insured's accident when another driver hit the beam lying on the highway and forced the beam to strike the insured's vehicle, the unidentified truck constituted a hit and run vehicle within the scope of the policy's definition of an uninsured motor vehicle. *Denoia v. Hartford Fire Ins. Co.*, 843 So.2d 285 (Fla. 3rd DCA 2003).
- e. Ex. 5: Dog bite must be found in connection to the operation of motor vehicle to allow for UM benefits. *See National Indem. v. Corbo*, 248 So.2d 238 (Fla. 3rd DCA 1971).
- f. Ex. 6: Trailer carrying bulls was struck by an uninsured motorist, releasing the bulls. Insured was injured while running from the released bulls. UM allowed because the court reasoned that the injuries were set in motion by the crash. *Carpenter v. Sapp*, 569 So.2d 1291 (Fla. 2nd DCA 1990).

VI. Stacking of Coverage or Multiple Coverages (Approximately 25 minutes)

- A. Stacking of UM coverage is presumed unless there is a written rejection of UM coverage.
- B. Stacking of UM coverage allows the coverage of two or more motor vehicles to be added together to determine the limit of insurance for UM coverage available to an injured person for any one accident. *Kenilworth Ins. Co. v. Drake*, 396 So.2d 836 (Fla. 2nd DCA 1981).
- C. In view of fact that an underinsured motorist is included within statutory definition of an uninsured motorist and that insured may aggregate total uninsured motorist coverage which he has purchased, where insured maintained three separate policies on three vehicles, each with \$10,000 uninsured motorist coverage, insurer was obligated to insured for difference between allegedly negligent motorist's maximum coverage of \$10,000 and insured's aggregate uninsured motorist coverage of \$30,000. *State Farm Mut. Auto. Ins. Co. v. White*,

330 So.2d 858 (Fla. 2nd DCA 1976).

- D. In general, Class I insureds may stack while Class II insureds may not.
- E. *Florida Statutes*, section 627.727(9) allows for nonstacked coverage. It requires a minimum 20% reduction from stacked UM coverage.
 - 1. Insurer must inform insured on a form approved by the Department of Insurance of the limitations imposed under this sub-section and that such coverage is an alternative to coverage without such limitations.
 - a. If the named insured, applicant or lessee, signs the form, it creates a conclusive presumption that there was an informed, knowing acceptance of the limitations.
 - b. While this statute requires an insurer to explain to the insured the limitations of non-stacked coverage, it does not require the insurer to explain the positives of stacking. *Mangual v. State Farm Mut. Auto. Ins.*, 719 So.2d 981 (Fla. 5th DCA 1998).
 - c. Initial acceptance applies to all subsequent policies unless the insured requests otherwise.
 - 2. Policy language may include:
 - a. Coverage as to two or more vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident
 - b. UM coverage available for injured person is the maximum coverage available to that injured person.
 - c. If injured person is occupying a motor vehicle which is not owned by him, or by a family member residing with him, the injured person is entitled to the highest limits of UM coverage afforded to any one vehicle as to which he is a named insured or insured family member.
 - d. UM coverage provided by the policy does not apply to named insured or family member residing in household or injured while occupying any vehicle owned by insured for which UM coverage was not purchased.
 - e. If injured person is not occupying a motor vehicle at the time of the accident, the injured person is entitled to select any one limit of UM coverage for any one vehicle afforded by a policy under which he is the named insured or a resident of the named insured's household.

VII. Settlement (Approximately 15 minutes)

- A. If an insured wishes to settle with an underinsured tortfeasor, the procedure outlined in *Florida Statutes*, section 627.727(6) must be followed to preserve rights to proceed against a UIM carrier. This statute provides in pertinent part: "written notice of the proposed settlement must be submitted by Certified or Registered Mail to all underinsured motorist insurers that provide coverage. The underinsured motorist insurer then has a period of thirty days after receipt thereof

- to consider authorization of the settlement or retention of subrogation rights.”
- B. If the UIM carrier authorizes the settlement or fails to respond, the injured party may execute a full release in favor of the underinsured motorist liability insurer and the insured.
 - C. Right of Subrogation: If the UIM carrier chooses to preserve its subrogation rights by refusing permission to settle, the UIM carrier must, within thirty days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. After final resolution of the UIM claim, the UIM carrier is entitled to seek subrogation against the underinsured motorist and the liability insurer for amounts paid to the injured party.

VIII. Set offs (Approximately 15 minutes)

- A. PIP and Medpay benefits are set off against UM benefits. *Aetna Cas. & Sur. Co. v. Langel*, 587 So.2d 1370 (Fla. 4th DCA 1991).
- B. UM coverage is over and above Worker's Compensation benefits. However, a UM carrier is entitled to set off if it can show duplication of benefits. *Centennial Ins. Co. v. Fulton*, 532 So.2d 1329 (Fla. 3rd DCA 1988).
 - 1. *Florida Statutes*, section 627.727(1) states in pertinent part: “The coverage describe in this section shall be over and above, but shall not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protections benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage shall cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section.”
- C. Because Medicare is social insurance enacted by Congress for general welfare and it cannot be analogized to medical insurance or a medical reimbursement plan as outlined in the UM statute, these types of benefits are not set off from a UM award. *Atkins v. Allstate Ins. Co.*, 382 So.2d 1276 (Fla. 3rd DCA 1980).
- D. UM carrier is not entitled to off set for future benefits, such as PIP and Medpay benefits still available but not yet incurred. *Allstate Ins. Co. v. Rudnick*, 761 So.2d 289 (Fla. 4th DCA 1998).
- E. Unless UM carrier consents to settlement and waives subrogation rights, that carrier is entitled to set off for payment by a tortfeasor. *Quinn v. Amerisure Ins. Co.*, 568 So.2d 1277 (Fla. 4th DCA 1990).

IX. Time Limitations on UM Claims (Approximately 10 minutes)

- A. Because courts have likened UM coverage claims to contract disputes, the statute of limitations for a UM claim is five years, rather than the four years for a typical tort claim. *Woodall v. Travelers Indem. Co.*, 699 So.2d 1361 (Fla. 1997).

- B. The statute of limitations begins to run at the time of the accident. *State Farm Mut. Auto Ins. v. Kilbreath*, 419 So.2d 632 (Fla. 1982).

X. Exclusions and Restrictions (Approximately 20 minutes)

- A. In general: Exclusions which are not authorized by statute are contrary to public policy. They are deemed inapplicable and disregarded. The policy is then enforced as if it were in compliance with the statutory requirements. *Reeves v. Miller*, 418 So.2d 1050 (Fla. 5th DCA 1982).
- B. Family Exclusion:
1. Generally, in absence of a statutory provision, provisions of an automobile liability policy excluding from coverage members of an insured's family or household are valid. *Reid v. Allstate Ins. Co.*, 344 So.2d 877 (Fla. 4th DCA 1977), approved 352 So.2d 1172.
 2. A household exclusions provision in an automobile insurance policy successfully insulated insurer from liability for negligence of driver with respect to fatal injuries received by passenger who resided in same household as driver where driver operated vehicle with consent of its owner. *Linehan v. Alkhabbaz*, 398 So.2d 989 (Fla. 4th DCA 1981).
- C. Intentional Act Exclusion: Acts committed in the course of a robbery and amounting at minimum to assault, were intentional and not negligent. Therefore, these acts fell within the scope of automobile insurance policy's intentional act exclusion clause. *Bosson v. Uderitz*, 426 So.2d 1301 (Fla. 2nd DCA 1983).
- D. Cross Employee Exclusion: Exclusions applying to injuries by an employee to claims for negligence of a fellow employee are valid. *Liberty Mut. Ins. Co. v. Jones*, 427 So.2d 1117 (Fla. 3rd DCA 1983).
- E. Ambiguous Exclusion: Where exclusion in UM coverage held to be ambiguous, it is invalid. *Schutt v. Atlantic Cas.*, 682 So.2d 684 (Fla. 5th DCA 1996).
- F. Business Use Exclusion: Held to be valid when vehicle is being used for business purposes. *Almendral v. Sec. Nat'l.*, 704 So.2d 728 (Fla. 3rd DCA 1998).
- G. Impermissible or Invalid Exclusions:
1. Attempt to limit or subtract from statutory coverage is void. *American Indem. Co. v. Comeau*, 419 So.2d 670 (Fla. 5th DCA 1982).
 2. Attempt to exclude coverage limited to injuries received in particular vehicle are void as against public policy. *Hines v. Wausau Underwriters Ins. Co.*, 408 So.2d 772 (Fla. 2nd DCA 1982).
 3. Exclusions as to any Class I insured is void. *Mullis v. State Farm Mut. Ins.*, 252 So.2d 229 (Fla. 1971).
 4. Exclusion for government owned vehicles is void. *United Services Auto. Ass'n v. Phillips*, 740 So.2d 1205 (Fla. 2nd DCA 1999).

XI. Bad Faith and UM (Approximately 15 minutes)

- A. Multiple Claimants
1. "Injured person" language of statute defining "uninsured motor vehicle"

based on limits of bodily injury liability less the limits applicable to injured person under uninsured motorist's coverage applicable to injured person does not preclude aggregation of claims in multiple injured insureds when determining uninsured motorist coverage. *Michigan Millers Mut. Ins. Co. v. Bourke*, 607 So.2d 418 (Fla. 1992).

2. Ex. 1: Tortfeasor's vehicle that was covered by liability limits of \$200,000 per person and \$325,000 per accident was "uninsured motor vehicle" with respect to uninsured motorist coverage in aggregate of \$400,000, even though uninsured motorist coverage available to passengers on per person basis was \$100,000. *Michigan Millers Mut. Ins. Co. v. Bourke*, 607 So.2d 418 (Fla. 1992).
- B. Duty to Settle: Automobile liability insurer owed a duty to insured to investigate the facts of accident that killed driver and severely injured passenger, give fair consideration to a reasonable settlement offer for the policy limits, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. *Berges v. Infinity Ins. Co.*, 896 So.2d 665 (Fla. 2004), rehearing denied.

XII. UM and the Sovereign Immunity Cap (Approximately 20 minutes)

- A. In accordance with Art. X, § 13 of the Florida Constitution, the state, its agencies, and subsidiaries have waived sovereign immunity for liability for torts. However, this waiver of sovereign immunity was as limited by *Florida Statutes*, section 768.28:
1. Specifically, this waiver includes a "cap" for damages of \$100,000 per person and \$200,000 per accident.
 2. Typically, a claimant's only redress beyond the \$200,000 limit is by special legislative act.
 3. Notwithstanding the limited waiver of sovereign immunity provided by this statute, the state or an agency or subdivision thereof may within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased its limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the \$100,000 or \$200,000 waiver.
- B. An uninsured motorist carrier can typically assert whatever substantive defenses or immunities that would be available to the uninsured motorist. *Allstate Ins. Co. v. Boynton*, 486 So.2d 552 (Fla. 1986).
- C. However, plaintiffs are not barred from asserting a claim by this statute which requires a claims bill for tort recovery against government in amount greater than \$200,000. *Martin v. National Union Fire Ins. Co. of Pittsburgh, P.A.*, 616 So.2d 1143 (Fla. 4th DCA 1993).
1. A tort-feasor's sovereign immunity defense to claims in excess of

\$100,000 per person and \$200,000 per accident is not absolute and is not available to an uninsured motorist carrier in opposing payment of uninsured motorist benefits. The immunity statute does not prohibit judgment against a tort-feasor, allowed claims bill with legislature, and stated discretionary limits that could be increased if insurance coverage was provided, and, thus, insureds were legally entitled to recover against tort-feasor. *Michigan Millers Mut. Ins. Co. v. Bourke*, 607 So.2d 418 (Fla. 1992).

2. § 768.28 authorizes the rendition of a judgment in excess of the amount the State can be required to pay due to sovereign immunity. Furthermore, the legislature has determined that, in addition to allowing discretionary recovery through a legislative claims bill, the limits of the sovereign immunity statute may be exceeded when insurance coverage is available. The immunity defense available under § 768.28 is not absolute within the meaning of the term “legally entitled to recover” so as to allow such a defense to be raised substantively by an insurance carrier. *Michigan Millers Mut. Ins. Co. v. Bourke*, 607 So.2d 418 (Fla. 1992).

XIII. UM and Employment (Approximately 20 minutes)

- A. In general: An employer is not required to provide uninsured motorist coverage to his employee, even if employer provided proof of financial responsibility for purpose of showing compliance with no-fault law, and thus had obligations of insurer specified by statute; statutory obligations did not include offering uninsured motorist coverage. *Lipof v. Florida Power & Light*, 558 So.2d 1067 (Fla. 4th DCA 1990).
- B. Employer owned vehicles driven during the course and scope of employment
 - A. Where police vehicle in which police officer was riding as passenger was not covered by liability policy for particular occurrence giving rise to officer's injuries while riding as passenger in course and scope of his regular employment, vehicle was an “uninsured motor vehicle,” so that officer was entitled to recover benefits under his own uninsured motorist policy. *Stack v. State Farm Mut. Auto. Ins.*, 507 So.2d 617 (Fla. 3rd DCA 1987).
 - B. Employee injured in automobile accident occurring in course and scope of his employment while operating an automobile owned by his employer was entitled to underinsured motorist benefits from his employer's insurance carrier. *State Farm Mut. Auto. Ins. Co. v. Colonial Penn Ins. Co.*, 379 So.2d 1036 (Fla. 3rd DCA 1980).
- C. Employee owned vehicles driven within the course and scope of employment:
 1. A vehicle owned by insured's employee and used by him in course and scope of his employment was not “specifically insured or identified” by insured's policy, and therefore the policy did not need to provide uninsured motorist (UM) coverage for that vehicle. *Hooper v. Zurich Ins.*

- Co.*, 789 So.2d 368 (Fla. 2nd DCA 2001).
2. Under Florida law, uninsured motorist (UM) endorsement to employer's business auto insurance policy, which defined insureds as "you," "family members" of named insured individuals, or persons occupying covered auto, did not provide UM coverage for employee for accident occurring while she was driving her personal auto to work. *Wassau Underwriters Ins. Co. v. Baillie*, 281 F.Supp 2d 1307 (M.D. Fla. 2002).