

March Madness

Basketball and reinsurance

Carl Younger, President

March for most sports fans means the NCAA basketball tournament -- a time of excitement, joy and heartache for many of us in North Carolina. As a diehard Carolina fan, I share my emotions with my family of Tar Heels -- even my daughter in Australia who woke up at 5:00 a.m. to watch the Tar Heels play.

March for Lawyers Mutual is when we begin our reinsurance season in earnest. Reinsurance is "insurance for insurance companies". We seek participation from reinsurers in order to spread our claims risk and to secure higher levels of coverage for our insureds.



Carl Younger
President

However, we strongly feel that other factors need to be added to any balancing. Where possible, we believe that premium changes should be gradual. Although our recent experience would indicate a significant rate increase is justified, we will only increase our base rates by 4% on July 1, 2005.

Challenges for Others During Recent Seasons

We study the performance not only of our team but also of other firms. We have worked hard to protect YOU from dramatic changes in the cost of professional insurance. However, the "other" insurance world has been different. The February 14, 2005 edition of National Underwriter stated that for the last several years "even the standard, non-high risk attorneys saw their rates soar at least 50 percent". The article further noted that malpractice insurance for "hard-to-place lawyers -- those involved in high-risk areas of law or that have a history of severe or frequent claims -- can now cost up to \$10,000 per lawyer."

Lawyers Mutual has followed a different approach and philosophy because we are YOUR mutual insurance company. We work hard to protect you, not simply from the consequences of an individual claim but also from the soaring costs of professional liability insurance, such as those rates being charged by other carriers. Like the tournament, the greatest thrill comes from winning. Winning is keeping YOUR Company strong both now and in the future. Help us make 2005 a winning year by being careful in your practice, by advising us at the earliest possible time if a claim exists, and by diligently helping us resolve any claims that are made against you.

April 2005

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Playing Good Defense

While our ACC teams have the capability of outscoring most opponents, common wisdom is that defense wins championships. Good defense for Lawyers Mutual is attempting to limit the number of claims and reduce the overall financial impact of the claims we receive. Unfortunately, 2004 was not a championship year. We had our worst claims year ever both in terms of number and projected cost of claims. During 2005 we need our team -- YOU -- to help us reduce claims.

Our reinsurers are now considering our most recent season. In many ways they are our "fans", since their financial success depends on the success of the companies to whom they provide reinsurance. They remind us that rates and claims expenses need to be balanced.

Long-Term Care Insurance Endorsed by the North Carolina Bar Association

All North Carolina Bar Association members, spouses, parents, grandparents and adult children are eligible for **tax-qualified discounted long-term care insurance** through John Hancock Life Insurance Company. You can now visit a new, step by step tutorial on long-term care and long-term care insurance at www.sssltc.com or link to this new site from the www.lawyersinsuranceagency.com site. Contact Misty Smith at 866-582-5260 (359-9910 local to Raleigh) or copy and fax this page to 919-550-1678 to receive information on the plan.

Member _____ DOB _____ Spouse _____ DOB _____

Address _____

Telephone (Business) _____

I am interested in coverage information for Myself Spouse Parents Grandparents

I currently have long-term care coverage and would like a comparison of benefits and cost

I have been declined for long-term care coverage in the past but remain interested

Protecting Your Client's UIM Claim

Familiar Territory Revisited

Mark Scruggs, Claims Counsel

In 1985 G.S. § 20-279.21(b)(4) was amended to include a statutory procedure whereby an insured might settle his claim against an underinsured tortfeasor while preserving his claim against a UIM carrier. In April 1997, the North Carolina Court of Appeals decided *North Carolina Farm Bureau Mutual Insurance Company v. Bost*, 126 N.C. App. 42, 483 S.E.2d 452, disc. rev. denied 347 N.C. 138, 492 S.E.2d 25 (1997). The court allowed an insured to proceed against her UIM carrier after following the settlement procedures provided in G.S. § 20-279.21(b)(4) and consummating the settlement with the underinsured tortfeasor by way of a "Settlement Agreement and Limited Release", oftentimes referred to as a "Bost" release.

No doubt the procedure for settling with the underinsured tortfeasor and his carrier, while preserving the client's UIM claim, is now well understood by every personal injury lawyer in North Carolina. Nonetheless, at Lawyers Mutual we handle several claims each year in which a "general release" is used in lieu of a "limited release" or "covenant not to enforce judgment," thus cutting off the client's UIM claim. This is so

because the UIM carrier is liable to the insured/plaintiff only if the insured is legally entitled to recover from the owner or driver of the underinsured motor vehicle. Once the plaintiff releases all claims against the underinsured tortfeasor, there is no basis on which to hold the UIM carrier liable under the terms of the policy.

Avoiding a malpractice claim arising out of the unintentional waiver of the client's UIM claim begins with the initial client interview. Ask the client to provide information on all potential policies providing UIM coverage. Remember that in addition to the client's own policy, other potential sources of UIM coverage might be available through the client's employer (if the client was operating a vehicle owned by the employer within the course and scope of the employment), the owner of the vehicle the client was using or occupying at the time of the injury, and each of the client's family members who reside with the client and own, lease or otherwise insure a motor vehicle. Think broadly and explore with the client every potential source of UIM coverage.

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Assuming your client has a potential UIM claim, don't fall into the trap of permitting your client to execute a general release of the underinsured tortfeasor. Should the primary carrier tender its limits, and subsequently send you a check and release, be sure to review the release carefully. In a recent claim, the primary carrier sent a general release along with the settlement check. Our insured was busy with



Mark Scruggs
Claims Counsel

other matters when the release came in, and the general release was signed by the client. The UIM carrier took the position that the UIM claim was barred by the general release. In another recent claim, the primary carrier sent our insured a document titled "Covenant," but it read a lot like a general release. Again, the UIM carrier took the position that the UIM claim was barred.

Be careful as well with policies issued in other states. In one recent claim, the client, a resident of another state, had UIM coverage provided by a personal automobile policy issued in his state of residence. Our insured's standard UIM release given to the primary carrier and purporting to preserve the claim for UIM benefits arguably did not comport with the other state's statute specifying the requirements for a limited release that preserved the claim for UIM benefits. The UIM carrier took the position that our insured's UIM release was in contravention of the policy and the statute, and the UIM claim was barred.

It is clear that mistakes can happen, and your client may face a denial of her UIM claim, due to the form of the release that was given to the primary carrier in exchange for the primary coverage limits. If it happens to you, all may not be lost. In *North Carolina Farm Bureau Mutual Insurance Company v. Edwards*, 154 N.C.App. 616, 572 S.E.2d 805 (2002), the Court of Appeals held that the insureds' claims against their UIM carrier were not barred by the execution of a limited release in favor of the tortfeasor, even though the release contained neither a covenant not to enforce nor express provision reserving their rights against the insurer. This was so because the insureds' intent to limit release of liability to that of the tortfeasor was clear from handwritten alterations contained in the release, and the release embodied the insureds' attention to, and awareness of, their right to seek UIM benefits from the insurer and their intent to exclude liability of the UIM carrier from the release. This case may help you

overcome a defense to your client's UIM claim based on the form of the release.

In addition, we have had some success assisting our insureds in reforming a problematic release, with the cooperation of the primary carrier, and in essence replacing the old release with a limited release or covenant not to enforce judgment.

We have also had situations where a general release was signed by the client and a copy was sent to the UIM carrier. However, the original release had not yet been returned to the primary carrier and the check for the primary coverage limits had either not been negotiated or had not been disbursed. When faced with the UIM carrier's denial of the UIM claim based on the general release, our insured was able to make the argument that the settlement with the underinsured tortfeasor and his carrier had not been consummated. Instead of attempting to reform the general release, our insured had his client execute a proper covenant not to enforce judgment and sent it to the primary carrier concluding the settlement with the appropriate release that preserved the UIM claim.

In summary, to avoid a malpractice claim by your client arising out of the failure to preserve his UIM claim: (1) Identify all potential sources of coverage; (2) If a UIM claim exists, carefully review the form of any release given to the underinsured tortfeasor and primary carrier before it is executed by your client and returned to the primary carrier and UIM carrier; and (3) If a problem develops, call us immediately. We might be able to assist you in a "claim repair."



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Understanding Underwriting

Q. Do I have a grace period to pay my premium when renewing my policy?

A. No, you do not have a grace period for either paying in full or if you are paying on the Premium Payment Plan. Payment should be received before the expiration of your policy.

Q. Can I pay my premium on line or by credit card?

A. No, Lawyers Mutual is not set up for either payment type. We can only accept checks or money orders.

ALERT: Your new Declaration is now being sent to you in a Navy Blue Folder marked POLICY.

LMI TODAY

The contents of this newsletter are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is not the intent of this newsletter to establish a standard of due care for any particular situation. Rather, it is our intent to advise our policyholders to act in a manner that might well be above the standard of care in order to minimize a firm's malpractice risk.

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A publication for policyholders of
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