

2016 Changes to Oregon UIM and PIP Laws

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Oregon Senate Bill 411

- Signed March 12, 2015.
- Significant changes to Oregon Uninsured / Underinsured Motorist and Personal Injury Protection law.
- Effective date: Policies *issued or renewed* on or after January 1, 2016.
- Expect increased litigation to determine implementation of new law by courts.

Key Definitions Modified

- “Uninsured Vehicle” means, in part, a vehicle “That provides recovery to an insured in an amount that is less than the ~~limits for uninsured motorist coverage of the insured~~ **sums that the insured * * * is legally entitled to recover as damages for bodily injury or death that is caused by accident and that arises out of owning, maintaining, or using an uninsured vehicle.**” ORS 742.504(2)(k)(E).
- Injury caused by accident and arising out of “ownership, maintenance or use” now arises out of “owning, maintaining or using” a motor vehicle.
- “General and Special” removed from damages: “[T]he insurer will pay all sums that the insured * * * is legally entitled to recover as ~~general and special~~ damages from the owner or operator of an uninsured vehicle. * * *.” ORS 742.504(1)(a).

Timing

- Changes apply only to policies *issued* or *renewed* after January 1, 2016.
- Double check to make sure whether policy renewed or issued – some policies will take time to renew.
- Claims arising out of accidents before Jan. 1 – will be adjusted under old law.
- Claims arising out of accidents after Jan. 1 – will be adjusted under new or old law depending on when policy renewed.

UIM Changes - Stacking

OLD LAW:

- UIM coverage was a “gap filler.” At-fault driver not considered “uninsured” unless limit of his liability policy was less than limit of insured’s UIM policy.
- No right to UIM benefits when limit of at-fault driver’s liability limit was same as or greater than UIM limit.

UIM Changes – Stacking, *cont'd*

NEW LAW:

- UIM excess to at-fault driver's liability policy.
- Liability limits can now stack with UIM limits.
 - Stacks even when liability & UIM are paid under same policy. ORS 742.504(7)(b) offset removed.

UIM Changes – Stacking, *cont'd*

New ORS 742.502(3)

- “[U]ninsured motorist coverage ~~shall~~ **must** include underinsurance coverage for bodily injury or death **that is** caused by accident and arises out of owning, maintaining or using a motor vehicle with motor vehicle liability insurance that provides recovery in an amount *that is less than* the ~~insured’s uninsured motorist coverage sums~~ **that the insured * * * is legally entitled to recover as damages for bodily injury or death that is caused by accident and that arises from owning, maintaining or using an uninsured vehicle.**”

What This Means

- “Sums that the insured * * * is legally entitled to recover as damages” = what is recoverable from owner or operator in civil action. ORS 742.504(j).
- Test for whether tortfeasor is uninsured: limit-to-*damages* comparison.
- Ins’d has UIM claim if his dmgs. exceed tortfeasor’s liability limit.
- UIM coverage no longer “gap filler”; it now “floats on top” of tortfeasor’s limit.
- Full amount of UIM limit is available however small the UIM limit, and however large the BI limit.

UIM Changes – Stacking, *cont'd*

- UIM on vehicle still primary to passenger's coverage.
- ORS 742.504(9) provisions re. passengers also modified to allow stacking.
- ORS 742.504(9)(b) deleted – damages no longer capped by higher limits of primary or excess policy.

UIM Changes – Stacking, *cont'd*

- END RESULT: UIM carriers can no longer deny claims on the ground that the UIM limit was not greater than tortfeasor's liability limit.

UIM Changes – Questions Remain

- Internal stacking?
 - Multiple policies that provide UIM coverage.
 - Probably allowed for pedestrians, passenger in non-covered auto.
- Does removing “general and special” and leaving just “damages” open door to UM/UIM claims covering punitive damages?
 - Unlikely. Punitives are designed to punish.

UIM Changes – Questions Remain, *cont'd*

- Are offsets still allowed?

- ORS 742.504(1)(a): “Insurer will pay all sums that the insured * * * is legally entitled to recover as damages * * *.”

- Once insured has recovered liability limits, he’s only “legally entitled to recover” damages beyond those limits.

- Probably still an offset of damages, otherwise plaintiff would be made more than whole.

- Workers comp offset still present under new law.

PIP Changes

- Increases time for medical expenses incurred from one year to within two years after date of injury.
- Reimbursement under ORS 742.544 now compares benefits to both economic and non-economic damages.
 - Old ORS 742.544 provided that PIP insurer could recover its PIP payments only if total amount of benefits paid to insured (including PIP, UM, or UIM benefits, and payments by tortfeasor) exceed the amount of insured's economic damages (medical bills, lost wages, etc.).

PIP Changes, cont'd

- New ORS 742.544: PIP insurer cannot recover PIP payments unless total amount of benefits paid to insured exceed amount of all of the insured's damages, both economic and non-economic.
- This means insured will have to recover more from tortfeasor before PIP insurer can get paid back.

PIP Changes, cont'd

Under Old Law

Incurs \$10K medical bills

Receives \$10K in PIP

Settles for \$25K liability limits

Total recovery of \$35K exceeds economic damages of \$10K

→ PIP insurer can recover its PIP payments.

Under New Law

Ins'd will probably argue \$25K settlement went to his non-economic dmgs., and his total recovery of \$35K does not exceed his total damages, both economic (\$10K) and non-economic (\$25K).

Key is how much of settlement is attributed to non-economic vs. economic dmgs. In settlement agreement?

Unclear how issue will be resolved.