

THE REAL WORLD GUIDE

TO BUYING CAR AND
MOTORCYCLE INSURANCE
IN WISCONSIN

Atterbury, Kammer & Haag, S.C.

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Foreword

Too many times we have sat across the table from clients who have been involved in horrific accidents in which there insufficient insurance coverage—or none at all. Too many times we have heard clients tell us that no one ever explained their insurance policies to them. Too many times clients of ours have expressed frustration AFTER an accident when they realize how little coverage they actually had. Unfortunately, people often decide to buy insurance on line with the belief that they are saving some money. While that goal certainly makes sense, it leaves people in the position of making insurance decisions without the advice of a professional insurance agent. This in turn often leads to people being under insured when a tragic event takes place. This guide is our attempt to address this problem and give people some straight talk about insurance coverage.

1. What is an Insurance Policy?

Simply put, an insurance policy is a written agreement between you and your insurance company. While complex, it is a contract like any other that you may be familiar with. In return for your payment of a policy premium, your insurance company agrees to provide certain coverages and protections as set forth in the insurance policy.

What typically complicates an insurance policy are the exclusions and definitions contained in the policy itself. These things can be very difficult to understand. They are couched in language that, quite frankly, confuses most lawyers. This challenging language can be further complicated by the fact that there are many laws here in Wisconsin that further impact how an insurance policy is interpreted.

It is important to remember that not all insurance companies are in the business of making sure their customers fully understand their policies at the time of purchase. If you have questions, make sure you ask your agent about what exactly is covered and what is not covered under the policy. If ever you are denied coverage from your insurance company, you should contact legal counsel to determine whether or not the insurance company's position is appropriate.

2. A Few Comments on Terminology

As stated above, the language used in insurance policies is often very confusing. Following are a few terms that come up again and again in insurance policies. Consider this a sort of a glossary.

DAMAGES – This is used in insurance policies as a specialized term. If you are injured in a car accident, damages that can be recovered from an insurance policy include medical bills, lost wages and fringe benefits, pain and suffering, inconvenience, disability (both temporary and permanent), loss of enjoyment of life (such as recreational activities and family activities), scarring and disfigurement, and the ability to earn wages in the future. This list is not necessarily complete, but it should give you an idea of all of the ramifications to you or a family member should you be injured in an automobile collision.

LIABILITY LIMIT – This is the amount of money an insurance company will pay when their insured is at fault in an accident and has caused damages. Liability insurance is what protects you if you are an at-fault driver. Your insurance company will defend you and pay up to the limits of liability if you are held to be responsible. Liability limits are often expressed simply as a number like \$100,000. However, insurance policies often state limits as a split limit. For example, \$50,000 per person/\$100,000 per occurrence. This means that each person injured in an

accident has limits available to them up to \$50,000. This also means that the most that the insurance company will pay, regardless of how many people are injured in the accident and how badly they are injured, is \$100,000.

UNINSURED MOTORIST COVERAGE (UM) – Sadly, we meet many clients every year who have been injured in accidents in which the at-fault driver did not have any insurance. Uninsured motorist coverage is intended to step in under these circumstances. This is coverage that you buy yourself, to protect you and your family in the event that you are involved in an accident with an uninsured driver. In essence, your own uninsured motorist coverage steps into the breach and takes the place of where a liability policy should have been. This is one of the most important coverages available. This coverage also applies in a “miss and run” situation where an unidentified driver forces you off of the road or into an accident, although there are strict requirements you must follow immediately after the accident in order to make such a claim.

UNDERINSURED MOTORIST COVERAGE (UIM) – There are a lot of things for people to spend money on every year other than insurance. Considering our everyday cost of living, that makes sense. The unfortunate side effect of this is that often people drive vehicles that have very limited insurance policy limits. As with uninsured motorist coverage, underinsured motorist coverage protects you and your passengers in the event you are injured by an at-fault driver with insufficient insurance coverage. Currently, the minimum required automobile liability policy is \$25,000. Considering current healthcare costs and considering that an injured person may miss substantial time

from work, \$25,000 does not go very far. Underinsured motorist coverage is intended to remedy that problem. It steps into the gap created by the at-fault driver's insufficient coverage. This is coverage that you purchase yourself, to afford greater protection to yourself and your family. For example, if you are hit by a driver who only has \$25,000 in liability limits and you have \$250,000 in UIM coverage, you now have access to a pool of \$275,000 in potential coverage. Along with uninsured motorist coverage, underinsured motorist coverage is among the most important kinds of coverage to have in your insurance policy.

UIM REDUCING CLAUSES – The previous discussion of UIM coverage, and the examples that follow later in this book, are based on the premise that “reducing clauses” are invalid. You may be wondering, “What is a reducing clause?” Simply put, it is a clause in the insurance policy that reduces your Underinsured Motorist coverage limits by the amount of money available from any other responsible party. For example, suppose you have a relatively popular limit of \$100,000 for UIM coverage. You are hit by another driver who is at fault for running a stop sign while texting on his phone. The at-fault driver has \$100,000 in liability limits. You have horrific injuries and will be out of work for a long time. Your damages easily exceed \$500,000. You might assume (as the other examples in this book do) that you can collect \$100,000 from the at-fault driver, and then recover another \$100,000 pursuant to the \$100,000 in UIM coverage you have been paying for. Unfortunately, once the current law (Truth in Auto) is repealed, for policies issued after November 1, 2011, that is not the case.

The law pertaining to reducing clauses in Wisconsin has changed back and forth recently due to politically charged debates revolving around the consumer's right to get the coverage he is paying for, and the insurance company's interest in paying out fewer dollars on claims. Under the new law passed during Governor Walker's early days in office, the scenario described above will leave you with zero dollars available in UIM coverage. That is because the UIM coverage you have is "reduced" by the amount of coverage available from the negligent driver. In short, you take your \$100,000 in coverage and subtract the at-fault driver's limits of \$100,000, leaving you with nothing. It may not seem fair given that you have been paying the premiums for that amount of coverage, and under no circumstances will you ever be able to use the full amount of that coverage, but that will be the law into the foreseeable future.

Barring any future changes in the law, this reality makes it even more paramount for you to purchase a lot of UIM coverage. The goal is to make sure that your coverage amount exceeds the amount of coverage held by any at-fault driver who would cause injury to you or your family, within reason of course. If the at-fault driver has \$1,000,000 in limits, then the vast majority of the time the UIM coverage will not be an issue. But, if the at-fault driver has \$25,000 or \$50,000, or \$100,000, all of which are common coverage amounts, you absolutely want to have enough UIM coverage so that after subtracting those limits from your own, you still have significant coverage available. If you believe that \$1,000,000 is more than you can afford or need, then you should seriously consider purchasing at least \$500,000. With the repeal of Truth in Auto allowing insurance companies to include reducing clauses in their policies, it is not

prudent to carry any less for UIM coverage. It is inexpensive coverage and if you ever need it, you will be thankful that you made that minimal investment.

UMBRELLA COVERAGE – Umbrella coverage provides added protection to you in the event your underlying liability limits are exhausted by an injury claim made against you. In other words, if you make a mistake with your vehicle and you cause a lot of damage, umbrella coverage gives you the additional coverage you need to make sure that you and your family are not held personally liable for those damages. Importantly, umbrella coverage can also contain additional UM/UIM coverages. Because UM and UIM coverages are literally the most important coverages to own for your and your family’s protection, you simply cannot have enough of it. And, while umbrella coverage brings you and your family a good deal more in the way of protection, it can be surprisingly inexpensive. Let’s assume that you have a liability policy limit of \$100,000. Assume also that you have UM/UIM coverage of \$100,000 each as well. If you negotiate the purchase of \$1 million in umbrella coverage, the cost is often approximately equal to the cost of the first \$100,000 in coverage. Purchasing umbrella coverage is an excellent idea.

MEDICAL PAYMENTS COVERAGE – Medical payments coverage pays medical expenses for the operator as well as passengers involved in a car accident. While the first thought may be “but I have health insurance,” medical payments coverage is not subject to the same limitations as your health insurance. For example, medical payments coverage can be used for out of network providers. It can be used for physician and prescription co-pays. It can be used for braces, splints or other devices

not covered by your health insurance. Further, the reality is that many people do not have health insurance at all. If that is the case, it is doubly important to have medical payments coverage. This is a very useful type of coverage and highly recommended by our firm.

COLLISION INSURANCE – Collision insurance provides coverage for you if you collide with another vehicle or object. Typically, collision coverage will pay for damage to your vehicle. Collision coverage usually involves some type of deductible often in the amount of \$250 to \$1,000. Collision coverage pays without regard to whether or not you are at fault for the incident or whether someone else is at fault.

COMPREHENSIVE INSURANCE – Comprehensive coverage pays for damages caused by some type of an event other than a collision. Such events would include vandalism, hail, theft, or fire damage. Typically, comprehensive coverage is also involved if you strike a deer. This type of coverage is usually involved if your vehicle is stolen as well. Like collision coverage, a deductible is often applied to comprehensive collision insurance.

3. What are the Coverages That I Absolutely Cannot Afford Not to Have in My Insurance Policy?

As mentioned above, the two most important coverages, which are too often sadly under purchased in Wisconsin motorists' insurance policies, are uninsured motorist coverage and underinsured motorist coverage. Unfortunately, there are a lot of uninsured drivers on Wisconsin roads. In Wisconsin, insurance is currently not mandatory.

If you are hit by an uninsured driver, uninsured motorist coverage steps in and takes the place of the spot where a liability policy should have been. In other words, where there was no liability coverage from the at-fault driver, your policy steps in its place and affords you and your family that protection. All too often we have seen people very badly injured in accidents that were not their fault with the unfortunate combination of the at-fault driver not having any insurance and the victim of the accident not having adequate uninsured motorist coverage. There is very little we can do to help someone in that situation. There is no coverage to help pay for medical bills, offset wage loss, and compensate the innocent victim for the severe injuries he or she sustained.

Along the same lines, underinsured motorist coverage is equally important. Often times, Wisconsin drivers will buy insurance

policies with low limits such as \$25,000 or \$50,000. Considering current costs of medical care, this does not provide much in the way of coverage. We strongly recommend that all Wisconsin motorists buy as much underinsured motorist coverage as they can reasonably afford. Underinsured motorist coverage potentially provides additional coverage to that of the at-fault driver. So, for example, let's assume an at-fault driver only has a \$25,000 liability policy and the injured victim has \$100,000 of underinsured motorist coverage. If there is a reducing clause in the victim's policy (discussed previously on p. 5) the innocent driver would have a total of \$75,000 in coverage ($\$100,000 - \$25,000 = \$75,000$). If there was no reducing clause in the victim's policy, the innocent victim would have a total of \$125,000 of coverage ($\$100,000 + \$25,000 = \$125,000$) at his or her disposal.

It is very important to understand that uninsured motorist coverage and underinsured motorist coverage protects you *even if you are not in your own car*. You can be in someone else's car, on a bike or even walking down the street and if you are hit by either an uninsured motorist or an underinsured motorist, you have coverage.

We have handled many cases throughout the years in which innocent Wisconsin motorists did not have enough coverage to protect them in these situations. Following are just a few examples of cases that we have seen recently in our offices.

1. We handled a claim for a very nice couple who were driving just across the Wisconsin/Iowa border on the Iowa side near Prairie du Chien. The husband had recently retired and his wife was set to retire from her banking job

in two weeks' time. Husband was driving and his wife was a front seat passenger. As they were proceeding down the highway, an oncoming pick-up truck suddenly swerved into their lane, apparently attempting to make a left-hand turn. A severe head-on collision resulted. The long and short of it was that they both sustained very severe orthopedic injuries that required multiple surgeries and lengthy hospital stays with some short-term nursing home care to follow. Both are left with permanent injuries and deficits. In fact, the wife will likely have to use a walker for the rest of her life. It is important to note that before this accident, both were perfectly healthy and active people getting ready to start their retirements. The defendant driver only had \$100,000 in liability coverage. While this may sound like a lot of money, both of our clients had well in excess of that in medical expenses alone. Unfortunately, our clients only had very limited underinsured motorist coverage. We were only able to collect the at-fault driver's policy limits, which was not even enough to pay for their medical expenses. This does not even address their other losses such as pain, suffering and the loss of enjoyment of life.

2. A different unfortunate example is a case out of the Stevens Point area. We represented a young woman who was a passenger in her own car. She had allowed an acquaintance to drive the car and this young man did so recklessly resulting in an accident and serious facial injuries to the young woman. As fate would have it, both she and the driver had purchased discount car insurance policies on line. Each policy had only a \$50,000 limit. Her medical

expenses alone were nearly three times that amount due to the many reconstructive procedures. She was left with nothing in way of compensation for her tragic disfigurement.

3. Another claim we handled dealt with a doctor injured while on his bicycle. This doctor was an avid cyclist. He was cycling one day down a Madison roadway when a car turned left in front of him, apparently trying to turn into a driveway. He was struck squarely and flipped over the hood of the car. He was seen at the emergency room and they found that he had broken a few ribs as well as his scapula. While those are bad injuries, his more serious injury was not initially caught. As he started to recover and get up and around more and more, he found that he was experiencing a lot of low back pain. An MRI revealed a serious back injury. This was particularly problematic for him as his job as an anesthesiologist required him to be on his feet for many hours at a time as well as to stand in a somewhat hunched position for extended periods. Because surgery was no guarantee, he tried to live with it. He found that he simply could not work the same amount of hours as he had pre-accident. As a result, he had to go to part time. This resulted in a substantial economic loss for his family. The defendant driver had \$300,000 in liability coverage. His future economic losses alone far exceeded the available coverage. Keep in mind that this was a generally well-insured individual. He had an umbrella policy. He was extremely upset to learn that his umbrella did not contain UIM coverage. While as a part-time anesthesiologist he makes a reasonable living, the available coverage

did not come even close to compensating him for his and his family's losses.

4. A further example involves a claim that we handled involving a young man, 16, who was run down in his high school parking lot by a fellow student. This happened in the Wisconsin Dells area. As a result of the hit, he sustained a very severe brain injury. He had a surgery in an attempt to relieve the pressure on his brain from the swelling secondary to the trauma. While he survived the accident, he is left with permanent brain damage. Obviously, this young man's life will never be the same. The at-fault driver had a \$250,000 liability limit under his parents' coverage. Our client's medical bills alone were over \$500,000. This was a real tragedy as he is left with having to rely on Social Security Disability and the little coverage we were able to obtain for him.

5. We represented a young girl who was a guest passenger in a car driven by a friend. This incident happened on a rural road south of Janesville. The friend lost control of the car and rolled the vehicle. Our client sustained very severe and life-threatening internal injuries. She had several surgeries and spent nearly one month in the hospital. Unfortunately, her family not only had no health insurance, but also no UIM coverage at all. The parents of the driver had a \$100,000 liability policy. We were then left to try and resolve over \$600,000 in medical bills with only \$100,000. This girl's life was changed forever and there was not enough coverage to help soften the landing.

The above are all very unfortunate outcomes as a direct result of inadequate coverage. However, we offer the following example of a case with good coverage and the difference it made.

We had a claim recently that involved a man who was run down in a cross walk in Evansville by a drunk driver. This guy was a carpenter at a school district. He sustained serious injuries to both of his shoulders and in fact had a total of six surgeries in an attempt to get himself put back together. He had over \$130,000 in bills and \$60,000 in wage loss. He missed nearly two years of work. This sort of event would bankrupt the average individual. However, he had the good sense to have a \$1,000,000 in UIM coverage. The defendant driver only had a minimal \$100,000 policy. We were able to recover over \$600,000 for him getting him back on his feet and on with life. His own coverage made all of the difference in the world.

4. What Limits Do We Recommend You Obtain on Your Automobile Policy?

What do the above examples teach? Well, that having enough insurance coverage for you and your family is a must. Based on what we see every day in trying to help people whose lives have been turned upside down because of a car accident that was not their fault, we recommend that you purchase \$1,000,000 in coverage for liability, for uninsured motorist coverage, and for underinsured motorist coverage. Check with our insurance agent. You will see that the cost to increase your coverage to these high limits is minimal. If you wish to save money on your insurance premium, the best way to do that is on your collision and comprehensive coverage on your vehicle. By going with a high deductible such as \$500 or \$1,000, you will probably save more money than you will spend on the higher coverages for liability, uninsured, and underinsured coverage.

Atterbury, Kammer & Haag, S.C.

Atterbury, Kammer & Haag, S.C., is a personal injury firm that handles cases Statewide with offices in Madison, Wisconsin. There is never a charge for any initial call, visit or inquiry. We only charge a fee if we are successful and you are compensated. The firm's practice focus is exclusively in the areas of personal injury litigation including car, truck, and motorcycle accidents, insurance company misconduct, products liability, construction site accidents and class action litigation.

Atterbury, Kammer & Haag, S.C., provides legal representation for individuals from all walks of life who have been injured. Our firm is committed to getting people back on their feet and fairly compensated after such an unfortunate event.

About the Authors



Lee R. Atterbury

Mr. Atterbury was born in Newark, New Jersey in 1948. He received his undergraduate degree from Lawrence University in 1970 and received his Juris doctorate at the University of Wisconsin Madison in 1974. He is a member of the Dane County Bar Association, State Bar of Wisconsin, The Association of Trial Lawyers of America, Wisconsin Academy of Trial Lawyers and is certified as a Civil Trial Advocate by the National Board of Trial Advocacy. His practice focuses on personal injury, product liability and medical malpractice. Mr. Atterbury's e-mail address is *latterbury@wiscinjurylawyers.com*.



Alexander Scott Kammer

Mr. Kammer is a partner with the law firm of Atterbury, Kammer & Haag S.C. He practices in the areas of plaintiff's personal injury, wrongful death, bad faith litigation and traumatic brain injuries. Mr. Kammer has lectured and written on a variety of topics dealing with plaintiff's personal injury issues. He received his B.A. degree from the University of Wisconsin and his J.D. degree from Northern Illinois University, cum

laude. Mr. Kammer is a member of the Wisconsin and Dane County bar associations, the Wisconsin Association for Justice, the American Association for Justice, Public Justice and the National Crime Victim Bar Association. He is also a member of the Brain Injury Association of Wisconsin as well as the International Brain Injury Association. Mr. Kammer is listed in Best Lawyers of America, has been recognized in Wisconsin Super Lawyer Magazine each year from 2006 to the present and is listed as one of the top 100 Trial Lawyers in Wisconsin by the American Association of Trial Lawyers. Mr. Kammer's e-mail address is akammer@wiscinjurylawyers.com.



Eric J. Haag

Mr. Haag is a partner at Atterbury, Kammer & Haag, S.C., after spending the first fifteen years of his career working for another plaintiffs' litigation firm. Mr. Haag did his undergraduate studies at Duke University in Durham, NC, where he was a four year varsity letterman in Cross-Country and Track. He obtained his law degree from the University of Wisconsin, Madison in 1996. Eric has tried cases to verdict in multiple different State and Federal Courts throughout Wisconsin.

He has represented clients in various courts of appeals in Wisconsin and the Supreme Court of Wisconsin. He has argued before the United States Court of Appeals for the Seventh Circuit on at least three occasions. He is admitted to practice in all courts of the State of Wisconsin, in addition to the United States District Courts for the Eastern and Western Districts of Wisconsin, as well as federal courts outside of Wisconsin.

Eric is a member of the Wisconsin Association for Justice which is a large organization of trial lawyers from all over the State. He was invited to serve on the Board of Directors for WAJ and has done so for several years. He was a past Program Chair for the same organization. He is a member of the American Association for Justice, the State Bar of Wisconsin, and the Dane County Bar Association. He has lectured multiple times at various personal injury seminars and speaking engagements. Mr. Haag's email address is *ehaag@wiscinjurylawyers.com*.

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