

The Texas Automobile Insurance Policy, An Overview

Texas law requires that anyone driving on a public street be able to demonstrate financial responsibility. This can be done either by posting a bond with the state or by purchasing an automobile insurance policy. Most people purchase a policy. The Texas Safety Responsibility Act dictates that we carry liability coverage of at least \$20,000.00 for bodily injury per person, \$40,000.00 per accident, and \$15,000.00 in property damage. This is typically stated as 20/40/15 and is referred to as the policy's limits. Most people carry other coverages and many people carry higher limits. Some of the different coverages that are contained in the standard auto policy are:

1. **Liability** - covers bodily injuries to third parties and property damage to other's property caused by the negligence of the insured driver
2. **Collision**- covers damage done to the insured's vehicle, regardless of fault
3. **Personal Injury Protection (PIP)**- covers injuries to the occupants of the insured vehicle
4. **Uninsured Motorist (UM)**- covers the insured for injuries and property damage caused by an **uninsured driver**
5. **Under-insured Motorist (UIM)**- covers the insured and his occupants for injuries and property damage that are in excess of the limits of the at-fault driver's liability coverage
6. **Medical Payments** (Med pay)- Similar to PIP except for one big difference- medpay benefits must be paid back to the insurance company if a recovery is made from the third party.
7. **Coverage other than collision**- this used to be called Comprehensive coverage - covers property damage to your vehicle caused by incidental causes such as when an object on the road is thrown and causes damage to your vehicle
8. **Rental Reimbursement** - covers the insured in the event a short-term replacement vehicle is required

SPECIFIC COVERAGES OF THE TEXAS AUTOMOBILE INSURANCE POLICY

A Detailed Look

LIABILITY

If you are involved in an accident that is the other driver's fault, it is the other driver's liability coverage, and only his liability coverage that covers your injuries and property damage. (NOTE: If you are the passenger of the at-fault driver, then you can recover from his liability coverage as well as his PIP). Tort law allows you to make a claim for compensation to recover your medical expenses and the cost of any medical equipment made necessary by your injuries. In addition, you can be compensated for lost wages, loss of wage-earning capacity, impairment, disfigurement, future medical needs, pain, suffering and mental anguish. You cannot be compensated, however, for your attorney fees. This is available only in contract cases and other special actions, but not in tort law. This is why attorneys that handle personal injury cases do not charge an hourly fee nor a retainer. They handle these cases on what is called a "contingency". In other words, whether or not the attorney gets paid for his work is contingent upon any recovery from the third party. This means that the attorney gets paid a percentage of any amount recovered. If there is no recovery, you owe the attorney nothing for his time and expenses. Most

attorneys receive 33 and 1/3 percent of the gross recovery. In some cases, the fee is 40%. Some attorneys' contracts even call for a fee of 50% if the case must be appealed to a higher court. At Goldapp-Rodriguez, P.C., our contract for an auto case is always a flat 33 and 1/3%.

Why **hire an attorney** if you cannot recover attorney fees? The short answer is because you net more money, even after allowing for the attorney's fee. It is important to remember that the insurance company is represented by a trained professional to handle their end of the claim. The adjuster's loyalty is to his insurance company not to you. While he does owe his insured (the guy who ran into you and caused your injuries) a duty to fairly and reasonably resolve the claim, it is a duty owed to his insured, not to you. Remember that his insured's interests are adverse to yours. In most cases the at fault party tries to minimize his fault and minimize your injuries when talking to his adjuster. He will usually say things such as: "I just bumped into her", and: "she was walking around at the scene of the accident and did not look hurt to me." I've seen this happen even when the property damage was severe and my client was taken from the scene by ambulance. I've seen cases where my client's bumper and trunk were completely destroyed and the at fault party still claimed he was only going five miles an hour when he hit her. Lastly, the insurance adjuster's job is to save his company as much money as possible on each claim. He is not your agent and he does not owe you any duty of good faith and fair dealing.

Protecting your rights and getting full value for your claim is a job best left up to the experts. At Goldapp-Rodriguez, we have handled thousands of **automobile accident cases** over the years. Our staff is highly trained so that we can handle our cases efficiently and professionally while still giving personal attention to every one of our clients. I have two goals with every one of my clients:

1. Make sure my client recovers as fully as possible from his/her injuries; and,
2. Make sure I put my client in a position to recover as much money as possible.

HELP WITH MEDICAL CARE:

How can I help my clients recover as fully as possible from their injuries? After all, I am not a doctor. To begin with, I review medical records on a daily basis. Part of my job is to summarize medical records, understand my client's injuries and treatments, and discuss them knowledgeably with the insurance adjuster. I have probably read more operative reports and diagnostic reports dealing with injuries than your average family doctor. I have also seen more types of injuries from trauma than most family doctors. These range from broken bones to closed head injuries, to torn tendons. This insight enables me to guide my clients through the maze of diagnostic and treatment procedures and help them get the best medical care possible.

For example, one of my clients had suffered some cuts to her face and had some pieces of glass embedded in her forehead. She had the glass removed at the emergency room on the day of the accident. However, a year after the accident, she told me that her forehead still hurt in the area where the glass pieces had been removed and she could feel a bump there. I advised her to go back to her PCP and tell him what she had told me. She did in fact go back to her PCP but after examining her, he told her that there was nothing wrong with her and that this sort of pain was normal and would resolve with time. When she relayed this to me, I told her that it was not normal to still have pain there a year after the accident and that I suspected she still had glass under the skin of her forehead. I recommended her to a plastic surgeon who immediately determined that she had pieced of glass under her skin and removed them.

I can also help in my client's medical care because of my familiarity with different medical specialists and diagnostic companies. Many times my clients do not have health insurance and are not able to pay for medical care. I am usually able to find a doctor who will agree to treat

without my client having to pay at the time of service. Instead, the doctor will agree to receive payment after the case is settled. Sometimes, it is necessary for me to pay for my client's surgery or other necessary medical treatment.

HELP IN MAXIMIZING MONETARY RECOVERY:

Making sure that my client receives the full value for his or her claim requires a full understanding of both sides of the equation - the income side and the outgo side. In other words, I rely on my knowledge and experience to not only get the highest offer from the adjuster, but also to make sure my client gets to keep as much of that money as possible. Over the years, I have learned to document my client's damages so that an adjuster or a jury can easily understand and appreciate the full extent of these damages. The client's damages must follow a logical trail of a quest for relief from pain, not a quest for a jury recovery. I have also learned how to reduce expenses by knowing how to handle liens and subrogation claims. Here at Goldapp-Rodriguez, we deal on a daily basis with subrogation claims, ERISA claims, worker's compensation liens, hospital liens, as well as medicare and medicaid liens. Because we know that every dollar a subrogation claim or lien gets reduced is another dollar directly into our client's pocket, we put much time and effort into this part of our cases. We have been very successful in reducing these claims and paying only what is fair, reasonable, and clearly related to the injuries received in the particular accident.

OTHER TIDBITS WITH REGARD TO LIABILITY COVERAGE:

If you have to file a suit in a car wreck case, you cannot name the at-fault driver's insurance company. You can only sue the at-fault driver. In trial, the rules of evidence require that the jury cannot be informed that the at-fault driver had insurance. The logic behind this rule is that a jury would be more inclined to award money to the plaintiff if they knew that the money was not coming out of an individual's pocket, but out of a big insurance company. Therefore, the thinking goes, it would not be fair to the Defendant if the jury knew he had insurance that is responsible for paying any damages they award. Meanwhile, the defendant's attorney will be an attorney hand-picked by his insurance company and paid for by the insurance company. In fact most insurance companies have what is referred to as "captive counsel". These are law firms that work exclusively for the insurance company. The firm's salaries, staff, supplies, equipment, expenses, and rents are paid by the insurance company. Unless the defendant that you sued can prove a conflict of interest, he is stuck with the attorney provided by his insurance company and cannot have any say in changing lawyers. In all of my career, I have never seen an insurance company allow an insured to have any say in picking a lawyer nor in preparing his defense.

It should be noted that liability coverage includes not only the policy limits, but also the cost of defense. There is no set limit for the amount of money an insurance company will pay to defend a case. It is possible that an insurance company will refuse to settle a claim for \$10,000.00 but spend \$20,000.00 in attorney fees defending the claim. As a matter of fact I am seeing this happen more and more all the time. It is quite common for the Plaintiff's lawyer to offer to settle for \$5,000.00 only to have the insurance refuse the offer and spend more than that to defend it, and then pay even more in damages if the jury awards more than \$5,000.00.

WHEN MORE THAN ONE LIABILITY POLICY IS AVAILABLE

Can you recover damages from more than one insurance policy? Yes, if the driver of the car that caused the accident was not in his own vehicle at the time of the accident. Let's say you borrow your friend Joe's car to go pick him up at the airport. If you run a stop sign and cause injuries, the injured person must first look to Joe's policy and collect on the liability coverage. If his injuries are greater than Joe's limits, he can then collect from the policy that covers your own vehicle. The insurance policy on the vehicle is always primary and the driver's policy is always secondary, but both policies are available to cover the damages.

UIM and PIP:

YOUR DAMAGES ARE GREATER THAN THE COVERAGE

Frequently, my client's injuries are severe and the medical expenses are greater than the at-fault driver's policy limits. A typical scenario occurs when my client's medical expenses amount to \$50,000.00 and the at-fault driver's insurance policy limits are \$20,000.00. Assuming that there is no other liability policy that will cover (see "More than one liability Policy" above) we then look to our client's own auto policy. If he was carrying UIM (Under-Insured Motorist Coverage), we make a claim on that policy for additional compensation. There are certain rules that must be followed, however, in order to do this successfully. The client's company will need to see proof of the at-fault driver's limits, complete documentation of his damages (medical records, bills, etc.), and, most importantly, his company must give our client permission to settle for the at-fault driver's limits before our client can accept money from and release the at-fault driver from liability. This "permission to settle" requirement is found in every policy and is there so that the UIM company can make certain the at-fault driver has no other assets that can be used to pay the claim other than his insurance policy. The UIM company will do an assets search of the at-fault party before they will give permission to settle for his policy limits.

Can you receive benefits from more than one UIM policy and more than one PIP policy? Yes, under the following circumstances: Let's say you are in a friend's car, either as a passenger or a driver. Let's say another driver runs a stop sign and causes you severe injury. In that case, you can recover the at-fault driver's policy limits, the UIM and PIP policy limits on your friend's policy, and the UIM and PIP policy limits on your own vehicle. Remember, the accident does not have to occur while you are in your own vehicle in order for you to recover under your UIM and PIP coverages. This is true even if you are not even in a car when you are injured. If you are injured as a pedestrian or while riding your bicycle, you can still collect from your UM, UIM, and PIP coverages.

What if your damages are greater than the at-fault party's policy limits and you do not have UIM coverage? In that instance, you have two choices:

1. Accept the policy limits and close the case forever (the at-fault driver's insurance company will not pay its limits, or any money for that matter, unless you first sign a release absolving the at-fault driver from any further liability). In other words, you cannot accept the at-fault driver's insurance money and still sue him. OR,
2. You can sue the at-fault driver. However, if you opt to sue, be aware that no matter how much money the jury awards you for your damages, the defendant's insurance company will still only pay you his policy limits and you will have to look to the defendant himself for the rest of the money the jury awarded you. Because most defendants are judgment proof (they do not have any assets you can collect to enforce a judgment) you will likely never see a penny of the amount over his limits.

PIP COVERAGE:

Many of my clients are reluctant to file a claim on their own insurance company. A typical complaint that I hear is:

“Why should I file a claim against my own insurance company when it was the other driver’s fault?” First of all, you have no business trying to protect your insurance company. They are huge corporations whose CEO’s get millions of dollars in compensation. They are not about to lose money and you do not need to feeling sorry for them. A PIP claim, because it is not a fault-based claim, should not result in higher premiums. I have filed tens of thousands of PIP claims and I have never had a client tell me that his rates went up because of it. Lastly, why have you paid premiums for PIP coverage all these years if you do not intend to use that coverage? Unless you are fabulously wealthy, or you think the insurance company needs \$2,500.00 more than you do, file the claim!

If you have been sold Med Pay instead of PIP, you have been duped. This is because you must pay back the Med Pay benefits as soon as you recover from the at-fault party. In essence, these benefits are nothing but a short-term loan and the premiums you paid for this coverage amount to a steep interest rate on the loan. The only time you get to keep the Med Pay benefits is when you do not recover from the at-fault party. I strongly recommend you spend your premium dollar on PIP and avoid Med Pay.