

**AN ANALYSIS OF OHIO UNINSURED AND
UNDERINSURED MOTORISTS LAW AND COVERAGE
WITH ITS IMPLICATIONS FOR AUTOMOBILE
INSURERS**

BY

**Gerald F. Deneen CPCU
Employers Reinsurance Corporation**

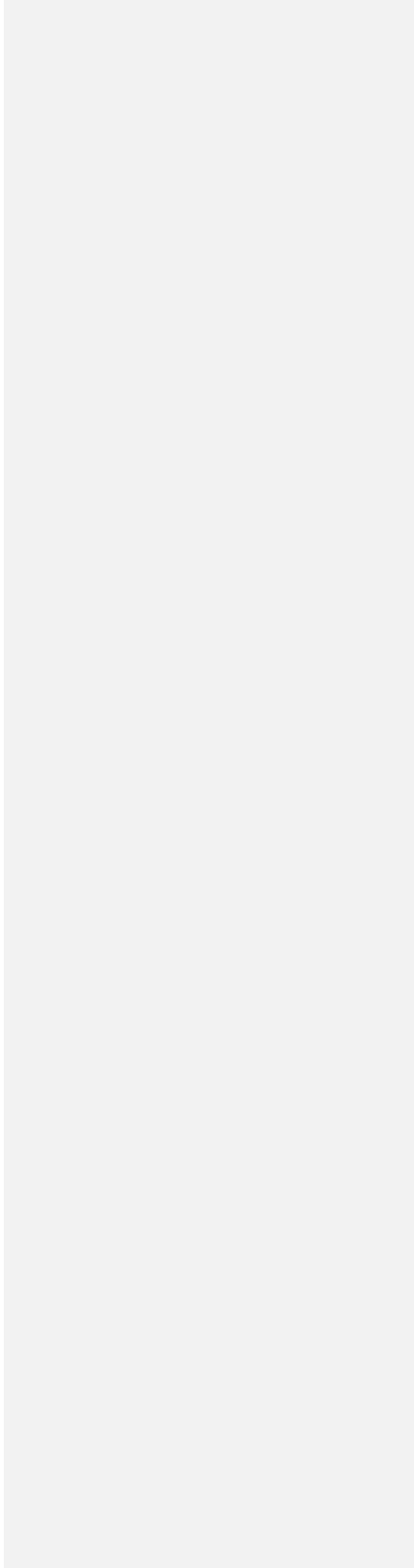
&

**Dr. George Flanigan CPCU
Insurance Industry Professor
College of Business
Katie Insurance School
Illinois State University**

INTRODUCTION	4444
DISCLAIMER	4444
HISTORY OF OHIO LEGISLATURE VERSUS THE OHIO SUPREME COURT OVER UM/UIM	5555
OHIO'S UNINSURED MOTORIST AND UNDERINSURED MOTORIST STATUTE	6666
RAMIFICATIONS OF DIVISIONS (A) – (C).....	7777
SUMMARY OF DIVISIONS (D) – (L).....	7777
RAMIFICATIONS OF DIVISIONS (D) – (L).....	8888
<i>Policy Language</i>	8888
<i>Legislative Relief</i>	8888
<i>Umbrella Policies are considered Motor Vehicle Liability Policies</i>	9999
<i>Umbrella Exclusion for UM/UIM</i>	9999
COURT CASES	10101010
SCHAEFER V. ALLSTATE INSURANCE COMPANY (1996), ___ OHIO ST.3D ___].	10101010
<i>Legislative Response</i>	11111111
SCOTT-PONTZER V. LIBERTY MUT. FIRE INS. CO. (1999), 85 OHIO ST.3D 660.....	11111111
<i>ISO's Response</i>	13131313
<i>Recommendations</i>	13131313
LINKO V. INDEMN. INS. CO. OF N. AM. (2000), 90 OHIO ST.3D 445.....	14141414
<i>ACORD's Response</i>	18181818
<i>Recommendations</i>	18181818
IMPACT OF SCOTT-PONTZER IN CONJUNCTION WITH LINKO.....	20202020
<i>Reserve strengthening</i>	21212121
MILLER V. PROGRESSIVE CAS. INS. CO. (1994), OHIO ST.3D.....	22222221
<i>Policy Language Recommendation</i>	23232323
SELANDER V. ERIE INS. GROUP (1999), 85 OHIO ST.3D 541.....	23232323
<i>Underwriting Rule Change</i>	24242424
DAVIDSON V. MOTORISTS MUTUAL INSURANCE COMPANY (2001), 91 OHIO ST.3D 262.....	24242424
DOES GENERAL LIABILITY POLICY NEED TO OFFER UM/UIM COVERAGE BECAUSE OF COVERAGE FOR MOBILE EQUIPMENT?.....	25252525
MOORE V. STATE AUTO. INS. CO. (2000), 88 OHIO ST.3D 27.....	27272726
IMPLEMENTING CHANGES REQUIRED BY LINKO AND SCOTT-PONTZER	28282828
PROCEDURE.....	28282828
PRICING.....	29292929
<i>Personal Umbrella</i>	30303029
<i>Commercial Umbrella and Personal Umbrella</i>	30303029
RECOMMENDATIONS OR IDEAS	31313131
COMMERCIAL AUTO.....	31313131
COMMERCIAL UMBRELLA.....	33333333
COMMERCIAL GENERAL LIABILITY AND BUSINESSOWNERS POLICIES.....	35353535
PERSONAL AUTO.....	38383838
PERSONAL UMBRELLA.....	40404040
HOMEOWNERS/FARMOWNERS.....	41414141
APPENDIX A	43434343
OHIO SUPREME COURT DECISIONS AND OHIO LEGISLATIVE REACTIONS.....	43434343
APPENDIX B	49505049

- Formatted: French (France)
- Formatted: French (France)
- Field Code Changed
- Formatted: French (France)
- Field Code Changed
- Formatted: French (France)
- Formatted: French (France)

UNINSURED AND UNDERINSURED MOTORISTS COVERAGE UMBRELLA EXCESS FORM	<u>49505049</u>
APPENDIX C	<u>51525251</u>
ISO CA 21 33 01 01 OHIO COMMERCIAL AUTO UM/UIM COVERAGE FORM	<u>51525251</u>
APPENDIX D	<u>52535352</u>
ACORD 61 OH 2-2001 OFFER/SELECTION/REJECTION OHIO FORM	<u>52535352</u>
APPENDIX E	<u>53545453</u>
§ 3937.18 MANDATORY OFFERING OF UNINSURED AND UNDERINSURED MOTORIST COVERAGE AS OF DATE WHITE PAPER WAS CREATED.	<u>53545453</u>



Ohio Uninsured and Underinsured Motorist Coverage

INTRODUCTION

Are you tired of attorneys advertising for people who were severely injured by motorists without insurance for the last 15 years? Unless you are living in the state of Ohio, you probably haven't heard or seen such an ad. Thanks to two recent Ohio Supreme Court cases, *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660; and *Linko v. Indemn. Ins. Co. of N. Am.* (2000), 90 Ohio St.3d 445; the good citizens of Ohio have heard and seen plenty of them. *Scott-Pontzer* was handed down in October of 1999 and *Linko* in December of 2000.

The February 5, 2001, Property & Casualty edition of the National Underwriter reported that Cincinnati Financial will set up \$110 million in reserves as IBNR for uninsured motorists claims as a result of these two recent decisions. Prior to this reserve action, Cincinnati Financial had already incurred \$40 million in claims as a result of the *Scott-Pontzer* ruling. The April 27, 2001, edition of Business First, a business journal for Columbus, Ohio, reported that in late January the Travelers Insurance Group decided to stop writing commercial auto policies in Ohio. Their sources said that Liberty Mutual Group, Amerisure Mutual Insurance Co., Monroe Guaranty Insurance Co., and St. Paul Cos. have followed Travelers' lead. These rulings are obviously impacting the insurance and reinsurance industry's bottom line.

With this White Paper we hope to give a little history of the Ohio uninsured motorist (UM) and underinsured motorist (UIM) situation (UM/UIM insurer problems have existed in this state for years) and how to address certain Ohio Supreme Court decisions—particularly the *Scott-Pontzer* and *Linko* decisions. The ideas or recommendations in this White Paper will focus primarily on policies providing commercial auto and commercial umbrella coverage and how they are impacted by these two decisions. The plethora of Ohio Supreme Court decisions and legislative responses that primarily impacted personal lines will be mentioned, but not discussed in as much detail (except for the impact of the *Linko* decision and other decisions of more recent vintage) in order to limit the scope of this paper.

DISCLAIMER

Our recommendations are really ideas that address:

- Certain Ohio Supreme Court decisions;
- Ohio UM and UIM statutory language written by the Ohio Legislative Branch;
- Insurance Services Offices, Inc., policy language; and
- ACORD's Offer/Selection/Rejection UM and UIM form for Ohio.

A response by all four of these entities to UM/UIM concerns can literally occur daily. A response or reaction by each of the entities is often a result of an action taken by one of the other three. To say that this situation is fluid would be an understatement of biblical

proportions. We are simply trying to make our best suggestions based on the information we possess as of the date of this White Paper. Because the situation is so fluid, we can't even guarantee that the information we have as of the date below is current. Also, unfortunately, we can't guarantee that our ideas or recommendations will achieve their desired intent. That will ultimately be up to the trier of the fact—which could ultimately be the Ohio Supreme Court. Based on their reactions, the entities in the other three bullet points have continued to be surprised by the actions and interpretations of the Ohio Supreme Court. As such, it wouldn't totally surprise us if the Ohio Supreme Court could interpret our recommendations so that our desired intent isn't achieved. We believe that trying to achieve a desired result serves a useful purpose—even if it is only educational. After reading this paper, an employee of the insurance industry may decide that even attempting to achieve a desired result isn't worth the gamble. Based on the cumulative UM/UIM decisions by the Ohio Supreme Court, even the most optimistic student of this situation would be hard-pressed to say that such a conclusion is unreasonable.

The words underlined represent an electronic link. If reading this paper electronically, these links will connect you directly to a related section of this White Paper or a webpage on the internet. All webpage links were originally connected through the State of Ohio's website. We have tried to supply as many electronic links as possible so that the reader can read the same court case and statute we used to develop our idea or recommendation. We strongly recommend that the reader read such court case or statute and draw their own conclusions as to how to proceed in addressing any Ohio UM or UIM situation.

Finally, at the Recommendations section of the White Paper we have organized our recommendations by line of business to aid the reader when referencing this article. Most of the recommendations were discussed in greater detail in the body of the paper.

History of Ohio Legislature versus the Ohio Supreme Court over UM/UIM

Until *Scott-Pontzer*, but *Linko* in particular, we viewed UM/UIM problems as primarily personal lines in nature. The contentious issues with UM/UIM are legion in Ohio and just about any other state. There has been much litigation over the years as respects stacking of policy limits, limit or damage reduction for UIM, the owned but not insured exclusion, does UM/UIM need to be offered in the umbrella policy, etc. The answer to any UM/UIM issue varies by state. We find that UM/UIM issues don't surface as prominently for commercial auto and commercial umbrella because the named insured often rejects these coverages. The primary reason for such rejection is that the employer (the commercial auto and commercial umbrella insurance buyer) has already protected his/her employees for a work-related accident with workers compensation insurance, group health insurance and group disability insurance.

When we discuss the impact of *Scott-Pontzer* and *Linko* together we'll mention why nearly all such rejections for the last 15 years are invalid. The point we want to make is that while many writers of commercial auto and commercial umbrella insurance were probably surprised by the Ohio Supreme Court's decisions in *Scott-Pontzer* and *Linko*, the writers of personal auto insurance in Ohio probably weren't all that surprised. A

review of [Appendix A](#) shows a myriad of adverse (from the insurer's perspective) Ohio Supreme Court UM/UIM decisions. *Savoie v Grange Mut*, *Derr v Westfield*, *Holt v Grange Mut*, *Schaefer v Allstate* and *State Farm v Alexander* all produced results that were as surprising and unintended to personal lines writers as *Scott-Pontzer* and *Linko* were to commercial lines writers.

As a result, a personal lines writer of insurance might even view *Scott-Pontzer* and *Linko* as "par for the course".

Ohio's Uninsured Motorist and Underinsured Motorist Statute

The current UM/UIM situation in Ohio, as in any state, results primarily in how the state Supreme Court interprets their UM/UIM statute. As many court cases will also attest, how the Supreme Court interprets certain policy language in conjunction with the UM/UIM statute also has a major impact on UM/UIM coverage. With this section we'll review Ohio's UM/UIM statute.

The offer of uninsured motorists (UM) coverage and underinsured motorist (UIM) coverage in Ohio is mandated by [Required Statutory Code 3937.18](#).

As [Appendix A](#) indicates, this statute has been modified extensively in response to various Ohio Supreme Court decisions¹. The original code was put into effect 9/15/1965, mandating a minimum limit of \$12,500/\$25,000/\$7,500, with a required offer, in writing, of limits equal to the bodily injury and property damage limit on the auto policy. We interpret the current code to require the automobile liability (AL) or motor vehicle liability (MVL²) insurer to offer UM/UIM coverage limits that are equivalent to the AL or MVL coverage limits. The offer of UM/UIM coverage limits also must be equivalent to the AL or MVL coverage limits. When a named insured or applicant wants UM or UIM coverage limits equal to the AL or MVL coverage limits division (A) of this statute doesn't state that such offer has to be in writing.

Division (2)(C) of the statute allows a named insured or applicant to reject coverage for both UM and UIM, or to select UM or UIM coverage limits less than the coverage limits for AL or MVL, with important caveats:

¹ The statute is directly from the State of Ohio's website. Therefore, we are assuming it is current. Because the statute is subject to modification, we have attached as part of the Appendix the full text of 3937.18 when we wrote this White Paper. The State of Ohio has a contract with Anderson Publishing to provide Ohio statutes over the web. [Appendix A](#) lists various Ohio House and Senate Bills that were proposed or passed by either or both of the chambers of the Ohio Legislative Branch. How or even if such Bills became statutory language is beyond the scope of this paper. The content of any Bill could have been modified or deleted with a subsequent Bill. As such, unless otherwise written, we recommend relying on statutory language contained in the website rather than the language of the Bill.

² We realize that many readers may question why we always include MVL when we mention AL because you can't buy MVL insurance, but you can buy AL insurance. We hope our discussion of two court cases, [Selander](#) and [Davidson](#), sheds light as to why we feel including MVL separately is important when discussing Ohio UM/UIM.

- Such rejection or selection must be in writing and signed by the named insured or applicant.
- Any UM/UIM coverage limits that are less than the AL or MVL limits must be selected from a schedule of limits approved by the superintendent of insurance.
- Unless a named insured or applicant rejects UM or UIM coverages, the lowest UM or UIM coverage limits offered by an insurer shall not be less than the financial responsibility limits as set forth in [§4509.20](#)—Requirements of insurance or bond necessary to excuse deposit of security.

RAMIFICATIONS OF DIVISIONS (A) – (C)

All insurers providing AL or MVL coverage who wish to offer UM/UIM coverage limits:

- less than the AL or MVL coverage limit, or
- allow the named insured or applicant to reject UM/UIM coverage entirely

must file a schedule of UM/UIM coverage limits (presumably with premium charges associated with each limit) with the Ohio Superintendent of Insurance for approval. Otherwise, all policies providing coverage for AL or MVL will have a UM/UIM coverage limit equal to the AL or MVL coverage limit—presumably whether or not the insurer received premium for UM/UIM coverage³. Division (C) is also very specific that a rejection or acceptance of limits lower than the AL or MVL limit by a named insured is binding on all other insureds. This part of the statute has important implications in our discussion of *Linko*. See [Linko Q3\(a\)](#).

SUMMARY OF DIVISIONS (D) – (L)

The following is a brief summary of the UM/UIM issues that divisions (D) through (L) address:

- Division (D): Phantom vehicles⁴;
- 1) Division (E): Subrogation rights of the UM/UIM insurer;
- 2) Division (F): Offset for workers compensation recoveries as a result of the same auto or motor vehicle accident;
- 3) Division (G): Stacking of policy limits;

Formatted: Indent: Left: 0", Hanging: 1.25", Bulleted + Level: 1 + Aligned at: 0" + Tab after: 0.25" + Indent at: 0.25"

³ Our reasoning is because the statute clearly says that an insurer must offer UM and UIM coverage limits equal to the AL or MVL coverage limit. For an exception to this statutory requirement, certain actions, stated in the statute, are required by the insurer and the named insured or applicant if the insurer wishes to provide UM/UIM coverage limits less than the AL or MVL coverage limits or allow for the rejection of them. If the insurer and/or the name insured or applicant didn't act according to such requirements, then we feel it is likely that a court will say that such exception is invalid.

⁴ A common UM problem that exists when an insured files a UM claim stating that the damages were caused by a motorist that can't be identified nor were there any witnesses to any contact.

- 4) Division (H): Derivative claims and the per person UM/UIM policy limit⁵;
 - 5) Division (I): Inclusion of UIM coverage with UM coverage;
 - 6) Division (J): Valid UM/UIM policy exclusions;
 - 7) Division (K): Qualifications of an UM/UIM vehicle;
 - 8) Division (L): Qualifications of what constitutes an AL or MVL policy. This is important because only AL or MVL policies need to provide UM/UIM coverage. Division (L)(2) states that umbrella or excess liability policies are considered AL or MVL policies and are, therefore, subject to the provisions of this statute.
- 9) SECTIONS 3 and 4 of Senate Bill 267 (148 v--) were incorporated into the statute. We are sure that the reason is that the Ohio legislature wanted to specifically state their intent to the Ohio Supreme Court. This will be discussed further in the ramifications section below.

RAMIFICATIONS OF DIVISIONS (D) – (L)

In order to limit the scope of this paper, we won't discuss each division separately. Below are our general observations about these divisions and their impact on the commercial auto and commercial umbrella policies.

Policy Language

The Ohio Supreme Court in some court cases (See [Appendix A](#)) found reasons for stacking of UM coverage limits even though the policy language allegedly contained language to the contrary. In 1994, the Ohio Legislature passed specific statutory language expressing its intent to allow anti-stacking policy language. The degree of specificity in this statute is extraordinary relative to other state's UM/UIM statutes. The same with statutory language addressing derivative claims involving wrongful death. Also, SECTION 3 and SECTION 4 of the statute just added are clearly addressed to the Ohio Supreme Court. We are not aware of any other statute in any other state where specific Supreme Court cases are mentioned in statutory language. For this sub-section, we simply recommend that any policy language that you do create incorporate the specific type of policy language allowed by the statute.

Legislative Relief

Because some statutory language appears to specifically address what insurers believe to be adverse aspects of Supreme Court decisions, we believe the Ohio Legislative Branch is sympathetic to some of the insurance industry's UM/UIM concerns. For commercial lines insurers, we would expect to see some legislative relief for either *Scott-Pontzer* and/or *Linko* just as the Legislature wrote in response to UM/UIM Supreme Court

⁵ A derivative claim would be where a relative of the claimant is suing a tortfeasor for damages that the relative incurred as a result of the injuries to the claimant—even though such relative wasn't in the accident. Typically, such damages would be for loss of consortium. If such a tortfeasor is uninsured, the Ohio Supreme Court allowed such a relative to recover under the claimant's UM policy (See [Holt v Grange Mut](#)). The Ohio Supreme Court in the same case said that such relative didn't have to be a resident of the same household for reasons outlined in their opinion. Also, this same court decision said that such relative was entitled to a separate per person UM/UIM coverage limit from the claimant's UM/UIM policy. This division of the statute attempts to state that UM/UIM coverage terms and conditions excluding recovery for some of these scenarios are valid and enforceable.

decisions that have adversely effected personal lines insurers. We recommend supporting insurance industry lobbying efforts and closely monitoring legislative developments in this area.

Umbrella Policies are considered Motor Vehicle Liability Policies.

The effect of this statutory language is that umbrellas are subject to all the requirements contained in the UM/UIM statute. Usually, when this issue is addressed by statute, there is no such requirement. We rarely review umbrella policy forms with UM/UIM coverage parts. We believe that such coverage part is necessary because the insuring agreement of many umbrella policies is along these lines:

“We will pay damages for ‘personal injury’ for which an insured becomes legally obligated to pay. . . .”

UM/UIM coverage is first party coverage, not third party. You can’t be legally obligated to pay damages to yourself. Therefore, the coverage granted by the above insuring agreement doesn’t provide UM/UIM coverage. We’ve attached a sample UM/UIM coverage form for an umbrella policy as [Appendix B](#). Adding this coverage part might make it necessary to modify your umbrella policy and declarations page—not an easy task. Adding this coverage part to umbrella policies should not be limited to umbrella policies issued to Ohio residents and businesses. Any state whose UM/UIM statute requires that UM/UIM coverage limits be offered up to the bodily injury limit for any insurance policy providing motor vehicle liability coverage should have a separate UM/UIM coverage part for umbrella policies.

Field Code Changed

Umbrella Exclusion for UM/UIM

Many insurance professionals feel that a UM/UIM exclusion in a personal or commercial umbrella policy precludes the need to offer UM/UIM coverage limits. We strongly disagree in Ohio and in many other states as well. Most states are like Ohio where the offer of UM/UIM coverage is mandated by statute. In this area, the critical difference between the states is that some UM/UIM statutes require offers of UM/UIM up to the coverage limit for automobile or motor vehicle bodily injury liability, while other states just mandate an offer of UM/UIM coverage up to the financial responsibility limit. The states that are in the former category are the states where an underwriter of umbrella liability needs to be careful. A fundamental rule for writers of insurance policies is that policy language can’t be contrary to a statute or public policy. A UM/UIM exclusion without making such an offer would violate such rule. A court in all likelihood would rule such an exclusion unenforceable when an offer was never made.

Also, without a UM/UIM coverage part such exclusion is meaningless. Since the insuring agreement of an umbrella policy limits coverage to “...damages an insured is legally obligated to pay”, and you can’t be legally obligated to pay damages to yourself, no contractual obligation for the insurer to provide an insured with UM/UIM coverage exists with or without such exclusion. One could make the argument that it signifies insurer intent, and that might have meaning in a future court case. While we think that statement has merit, we think reliance on it is very unwise.

Court Cases

We will now give a summary of some of the more high-profile UM/UIM motorist cases in Ohio. We will include in the discussion of each case, when appropriate, the response by the Ohio Legislature, ISO and ACORD as well as our specific recommendation. We will place specific emphasis on *Scott-Pontzer* and *Linko*.

Schaefer v. Allstate Insurance Company (1996), Ohio St.3d .]
<http://www.sconet.state.oh.us/ftp/opinions/1996/950269.doc>

We discuss this case first because the opinion explicitly mentions the Ohio Supreme Court's approach to interpreting UM/UIM policy language and the Ohio UM/UIM statute. This is a unique case in the Ohio Judiciary process. The Court declared policy language unenforceable and it also overrode two similar cases (*Dues v. Hodge* (1988), 36 Ohio St.3d 46, 521 N.E.2d 789, and *Tomlinson v. Skolnik* (1989), 44 Ohio St.3d 11, 540 N.E.2d 716) decided earlier by the Ohio Supreme Court. Jeanette and David Schaefer were involved in a November 5, 1985, auto accident that was not their fault. Jeanette Schaefer was physically injured in the accident. A claim was made against Allstate, who had UM/UIM coverage on a personal auto policy for the Schaefers with limits of \$100,000 per person and \$300,000 per occurrence. Allstate tendered the \$100,000 for Jeanette's injuries. Subsequently, David filed a claim for loss of consortium. He contended that his claim for loss of consortium was a separate compensable injury subject to its own per person limit. The Ohio Supreme Court agreed and awarded him \$100,000.

The decision is important because the court explicitly stated that a basic tenet in interpreting policy language was that the purpose of UM coverage and its mandatory offering is "to protect persons from losses which, because of the tortfeasor's lack of liability coverage, would otherwise go uncompensated." The court also said that the UM/UIM statute is remedial legislation and must be interpreted liberally in order to achieve its legislative purpose. The court also said that an insurance policy provision will be deemed unenforceable if the provision is contrary to the statute and its purpose. Considering that this "tenet" is not mentioned in the statute, this opinion is pretty telling about the mindset of the majority justices. The court reasoned that since in a prior case (*Savoie v. Grange Mut. Ins. Co.* (1993), 67 Ohio St.3d 500, 620 N.E.2d 809⁶) they already allowed multiple per person recoveries because of a single wrongful death, they saw no reason why this principal shouldn't apply to loss of consortium claims. Any policy language that reached a contrary conclusion would be deemed unenforceable⁷.

⁶ See <ftp://ftp.sconet.state.oh.us/Opinions/1993/OP920952.txt>

⁷ We would classify the language in question as typical Limit of Liability Language:

"Limits of Liability

"The coverage limit stated on the declarations page for:

"(1) 'each person' is the total limit for all damages arising out of bodily injury to one person in any one motor vehicle accident.

"(2) 'each accident' is the total limit for all damages arising out of bodily injury to two or more persons in any one motor vehicle accident."

We are presuming that the Court classifies the UM/UIM statute as remedial because it remedies situations where innocent victims of motor vehicle accidents aren't compensated for their injuries. State Supreme Court opinions in other states have also used this reasoning in using either liberal or strict interpretations of statutory wording or policy language in order to find UM/UIM coverage for innocent victims.

Legislative Response.

The good news for insurers was that the court found the policy language unambiguous, albeit unenforceable. Better news for the insurance industry was that the Legislative Branch made their intent on this matter crystal clear when they quickly rewrote division (H) of the statute after the publication of *Schaefer*. See [R.C. 3937.18](#). It will be very difficult for an Ohio court in the future to say that the Allstate language in question is contrary to the statute and its purpose because the language in the statute practically mirrors Allstate's language. See [Ohio Uninsured Motorist and Underinsured Motorist Statute](#) and [Appendix A](#).

Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660

<http://www.sconet.state.oh.us/ftp/opinions/1999/980442.doc>

A major case in Ohio was *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* On July 10, 1994, an underinsured motorist, carrying \$100,000 per person bodily injury limits, killed Christopher Pontzer in an auto accident. Pontzer was driving his wife's, Kathryn Scott-Pontzer, automobile. The other driver was at fault. Mr. Pontzer was employed by Superior Dairy, which carried a commercial automobile liability policy through Liberty Mutual Fire Insurance Company ("Liberty Fire"). The commercial auto policy carried a provision for UIM coverage. In addition to the liability policy provided by Liberty Fire, Superior Dairy also had in effect at the time of Pontzer's death an "umbrella/excess" insurance policy with Liberty Mutual Insurance Company ("Liberty Mutual"). Liberty Mutual's policy did not contain an UM/UIM provision. Although Mr. Pontzer was not driving a company auto at the time of the accident, nor was he acting in the course of his employment, the Ohio Supreme Court not only found coverage under the commercial auto policy, but also under the commercial umbrella policy.

There were three main issues in this case. First, the court addressed whether or not Mr. Pontzer was insured under the commercial auto policy. The court found an ambiguity of who was a "named insured" under the UIM coverage as respects the commercial auto policy. The language in question was as follows:

The declarations page of the Liberty Fire policy named Superior Dairy, Inc. as the named insured. The business auto coverage form of that policy states that "throughout this policy the words you and your refer to the named insured shown in the declarations." The policy also contained an Ohio UIM coverage form that defines an "insured" for purposes of UIM coverage as follows:

“B. Who Is An Insured

“1. You.

“2. If you are an individual, any family member.

“3. Anyone else occupying a covered auto or a temporary substitute for a covered auto. The covered auto must be out of service because of its breakdown, repair, servicing, loss or destruction.

“4. Anyone for damages he or she is entitled to recover because of bodily injury sustained by another insured.”

The Court acknowledged that one possible interpretation is that Superior Dairy is the sole named insured. However, they said that this is only one possible interpretation. The Court said that UM and UIM coverage, mandated by law pursuant to [R.C. 3937.18](#), was designed by the General Assembly to protect persons, not vehicles. They cited an earlier case echoing that opinion (*Martin v. Midwestern Group Ins. Co.* (1994), 70 Ohio St.3d 478, 639 N.E.2d 438⁸).

As such, the court said it would be reasonable for them to conclude that “you,” while referring to Superior Dairy, also includes Superior’s employees, since a corporation can act only by and through real live persons. They stated that it would be nonsensical to limit protection solely to the corporate entity, since a corporation, itself, cannot occupy an automobile, suffer bodily injury or death, or operate a motor vehicle. Hence, naming the corporation as the insured is meaningless unless the coverage extends to some person or persons—including to the corporation’s employees. As such, another possible interpretation was that Mr. Pontzer was an insured. The court then went on to explain that the contract of adhesion applies—all ambiguities are construed against the drafters of the contract, so Mr. Pontzer is an insured under Liberty Fire’s auto policy as ordered by this court.

The second issue they addressed was whether or not Pontzer was an insured under Liberty Mutual’s commercial umbrella policy. Such policy did not contain an UM/UIM coverage part. Nor did Liberty Mutual offer UM/UIM coverage as mandated by statute. See [Umbrella Policies are considered Motor Vehicle Policies](#). The Court cited an earlier case; *Gyori v. Johnston Coca-Cola Bottling Group* (1996), 76 Ohio St.3d 565, 568, 669 N.E.2d 824, 827⁹; where they stated that failure by the insurer to offer such coverage results in the provision of such coverage by operation of law. Therefore, they concluded that Pontzer, as an employee of Superior Dairy, was also an insured under Superior Dairy’s umbrella/excess insurance policy and they said such policy includes UIM coverage, because such coverage is mandated by operation of law.

The third issue the court addressed was whether or not Mr. Pontzer was covered for UIM because he was not acting with-in his scope of employment at the time of accident. The Liberty Fire commercial auto policy contained no language requiring that employees must be acting within the scope of their employment in order to receive UIM coverage.

⁸ <ftp://ftp.sconet.state.oh.us/Opinions/1994/OP931178.txt>

⁹ <http://www.sconet.state.oh.us/ftp/opinions/1996/951139.doc>

Thus, they found that Scott-Pontzer was entitled to UIM benefits under the Liberty Fire policy.

Liberty Mutual's umbrella/excess insurance policy did restrict coverage to employees acting within the scope of their employment. However, the court said that they already found that Liberty Mutual had failed to offer UIM coverage through the umbrella policy issued to Superior Dairy. Thus, any language in the Liberty Mutual umbrella policy restricting insurance coverage was intended to apply solely to excess *liability* coverage and not for purposes of UIM coverage. See, e.g., *Demetry v. Kim* (1991), 72 Ohio App.3d 692, 698, 595 N.E.2d 997, 1001. Therefore, the court concluded that there is no requirement in the umbrella policy that Pontzer had to be acting during the scope of his employment to qualify for UIM coverage. Therefore, Scott-Pontzer was entitled to UIM benefits under the Liberty Mutual umbrella policy as well.

ISO's Response

The court found unintended coverage (from the insurer's perspective) because of ambiguous policy language and non-conformance with the statutory requirement to offer UIM coverage limits up to the AL or MVL coverage limits. The court expanded upon such offer requirements in the *Linko* opinion. We'll address that aspect when we discuss the implications of that case.

ISO in response to this decision revised its "Who Is an Insured" section of the UM/UIM coverage part of their Commercial Auto Policy with CA 21 33 01 01 to address the problems the court stated in *Scott-Pontzer*. [See Appendix C](#). They also added an exclusion to this same coverage part to exclude coverage for anyone occupying or using a non-owned auto while used outside the scope of the Named Insured's business with a family member exception if the named insured is an individual.

Recommendations

Our recommendations for the offering of UIM in the umbrella will be mentioned in our discussion of *Linko*. As respects policy language, we recommend making sure the UM/UIM commercial auto coverage form reads similarly to ISO's CA 21 33 01 01. If not CA 21 33 01 01 verbiage, check the "Who is Insured" section for compliance with *Scott-Pontzer*. Make sure that for partnerships, LLCs and corporations insured's are people (CA 21 33 01 01 uses "anyone") rather than "you". Also, make sure that there is an exclusion for anyone using or occupying a non-owned auto used outside the scope of the Named Insured's business.

For the commercial umbrella, make sure you have a UM/UIM Coverage Part. See [Umbrella Policies are considered Motor Vehicle Policies](#). Even though ISO recently developed their own commercial umbrella form, our experience is that there is no industry standard form. We are also not aware of an ISO developed UM/UIM umbrella/excess coverage part. We recommend follow form "Who Is An Insured" language. A snippet of such a sample is, "The following are insureds under this coverage: The Named Insured and Persons or organizations included as insureds in underlying policies" with underlying policies defined in the definitions section of the

umbrella policy. If you don't have follow-form "Who Is An Insured" language in your umbrella UM/UIM coverage part, you need to make sure it is similar to CA 21 33 01 01. Make sure that for partnerships, LLCs and corporations insured's are people (CA 21 33 01 01 uses "anyone") rather than "you". Also, make sure that it includes an exclusion for anyone using or occupying a non-owned auto used outside the scope of the Named Insured's business. Also, refer to [Appendix B](#) and the discussion in [Umbrella Policies are considered Motor Vehicle Policies](#) as a guide.

~~The *Scott Pontzer* case may have farther reaching effects than just Ohio. Similar rulings have also now occurred in Connecticut, Arizona and Oklahoma (Dr. Flanigan, do you have the name of the cases or the source of these statements?).~~

Linko v. Indemn. Ins. Co. of N. Am. (2000), 90 Ohio St.3d 445.

<http://www.sconet.state.oh.us/ftp/opinions/2000/992293.doc>

http://www.nunews.com/archives/pc_archive/2001/p02-05/p200106insurers_challenge.asp

Another major Ohio UM case is *Linko v. Indemn. Ins. Co of N. Am.* On November 13, 1996, G. Michael Linko was killed in a three-fatality automobile accident that occurred in Chautauqua County, New York. Patricia S. Linko, executor of G. Michael Linko's estate, brought an action seeking a declaration that she was entitled to UIM coverage under a business automobile policy issued by Indemnity Insurance Company of North America ("Indemnity") that included the decedent as an insured.

There was no dispute that Linko was driving a company-owned or leased car in the course of his employment with Saint-Gobain Industrial Ceramics, Inc. ("SGIC") at the time of the accident, or that Linko was an insured under the Indemnity policy. The general¹⁰ liability coverage under that Indemnity policy was subject to limits of \$3,000,000 per person/per occurrence. Linko sought UIM coverage under the Indemnity insurance policy, but Indemnity claimed that UIM coverage had been rejected on behalf of SGIC by a related corporate entity.

SGIC was part of an extended family of related companies. The policy at the heart of this case was issued to Saint-Gobain Corporation (SGC), Norton, and certain subsidiaries, all of which were named insureds. SGC and Norton were higher level corporate parents of SGIC. While all of the named insureds were subsidiaries of SGC, they maintained separate corporate identities and operations. SGIC was not a named insured, but Indemnity has never disputed that SGIC and Linko qualified as additional insureds.

The policy was amended by "selection forms" used for the rejection of UM/UIM coverage under the laws of particular states. The form used for rejection of UM/UIM coverage under Ohio law lists the named insured simply as "Norton Company." The Norton Company is one of several named insureds listed in the policy, but the Ohio

¹⁰ "General" was from the language of the actual opinion. We are presuming this is commonly known in the insurance industry as auto liability.

selection form refers to none of the other named insureds. Verne M. Hahn on behalf of the Norton Company signed the selection form. Hahn was an employee of SGC.

The Ohio Supreme Court decided this case ON ORDER CERTIFYING A QUESTION OF STATE LAW from the United States District Court for the Western District of New York, No. 98-CV-129S. During the course of legal proceedings, Patricia Linko filed an amended motion to certify questions to the Ohio Supreme Court, which the district court certified on December 21, 1999. The Ohio Supreme Court determined that it would answer questions 1, 2, and 3. Question 3 had multiple parts. It's important to note that the Ohio Supreme Court was answering questions for a Federal Court. As of the date of this White Paper, we don't know the Federal Court's opinion of this case. We will use the question and answer format for the Ohio Supreme Court's response to the Federal District Court's questions:

Q1: Can an insured under an automobile liability policy challenge the authority of a signatory to an UM/UIM coverage rejection form when such signatory's authority is not disputed by the named insureds or insurer?

A: The Ohio Supreme Court answered in the affirmative. As was the case with the plaintiff in *Gyori*¹¹, Linko was not a named insured, but sought a declaration of whether the employer expressly and knowingly rejected UM/UIM coverage for its employees. The validity of the employer's alleged rejection is at the heart of both cases. Because the Ohio Supreme Court had already ruled that the plaintiff in *Gyori* had standing to bring an action to resolve that issue, they said Linko also had standing.

Q2: Does the language of the UM/UIM motorist coverage rejection forms accompanying the subject automobile liability policy satisfy the offer requirements required by Ohio's UM/UIM statute?

A2: To answer this question, the Ohio Supreme Court looked to *Gyori* and three Ohio Appellate Court Cases (*Murray v. Woodard* (1997), 120 Ohio App.3d 180, 697 N.E.2d 265 (interpreting the offer requirement of R.C. 3937.181); *Gibson v. Westfield Natl. Ins. Co.* (July 14, 1998), Monroe App. No. 788, unreported, 1998 WL 404201; *Weddle v. Hayes* (Sept. 5, 1997), Belmont App. No. 96-BA-44, unreported, 1997 WL 567964.) to determine the requirements for an acceptable offer. In *Gyori*, the Ohio Supreme Court held that "there can be no rejection pursuant to R.C. 3937.18(C) absent a written offer of UM coverage from the insurance provider." They said that *Gyori* stands for the proposition that a court cannot know whether an insured made an express, knowing rejection of UIM coverage unless there was a written offer and written rejection. It only follows that a valid rejection requires a meaningful offer, i.e., an offer that is an offer in substance and not just in name.

They then said, based on the appellate court decisions, that the required elements of a valid offer are as follows:

¹¹ <http://www.sconet.state.oh.us/ftp/opinions/1996/951139.doc>

- 1) a brief description of the coverage,
- 2) the premium for that coverage, and
- 3) an express statement of the UM/UIM coverage limits.

Indemnity's offer didn't comport to these requirements so they declared Indemnity's offer invalid.

Q3(a) Does each of several separately-incorporated named insureds need to be expressly listed in the UM/UIM rejection form in order to satisfy the requirement that the waiver be made knowingly, expressly, and in writing by each named insured?

A3(a): In answering this question, the court acknowledged that Ohio's UM/UIM statute gives the power to the named insured to accept or reject coverage. In 1997, [HB 261](#) was incorporated into the UM/UIM statute with the following pertinent statutory language:

"A named insured's or applicant's written, signed rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's written, signed selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section, and shall be binding on all other named insureds, insureds, or applicants." See [R. C. 3937.18](#), [Appendix A](#), and [HB 261](#).

However, in *Linko*, the court cited a prior case (*Abate v. Pioneer Mut. Cas. Co.* (1970), 22 Ohio St.2d 161, 51 O.O.2d 229, 258 N.E.2d 429) that said UM/UIM coverage can be removed from an insurance policy "only by the express rejection of that provision by the insured." They then said that they found by necessary implication that an incorporated entity that is a named insured must be specifically offered the insurance itself before its authorized representative can refuse coverage. They also said an offer to the parent does not *per se* constitute an offer to the subsidiary. They ruled that without the name of the entity on the selection form, no offer of UM/UIM coverage has been made to that entity. In other words, they answered this question in the affirmative.

It's important to note that the accident in question occurred November 13, 1996, so the original UM/UIM offer and rejection form as presented to SGC was made before that date. [HB 261](#) was effective September 3, 1997. We believe that the statute as currently written clearly answers this same question in the negative. The Ohio Supreme Court *may* simply be basing their ruling on the UM/UIM statute as it existed before the incorporation of [HB 261](#). In an earlier case, *Ross v Farmers Ins. Group of Cos.* (1998), 82 Ohio St. 3d 281 29, ___ N. E. 2d ___,¹² the Court clearly stated that the statutory law in effect at the time of entering contract for automobile liability insurance contracts controls the rights and duties of contracting parties. As such, we strongly believe that the Court, if presented with a offer/selection/rejection UM/UIM form that was signed and dated by the insured after September 3, 1997, would have ruled in the negative on this issue, rather than the affirmative.

¹² See [ftp://ftp.sconet.state.oh.us/Opinions/1998/970402.doc](http://ftp.sconet.state.oh.us/Opinions/1998/970402.doc), *Balatgek v. State Farm Ins. Co.* (1998), [Ohio St.3d](#) ___ and *Hillyer v State Farm Mut. Auto Ins. Co.* (1998), [Ohio St.3d](#) ___ .

In any event, there is nothing in the opinion of *Linko* that we could find that gives us guidance on why the Court ignored the statutory language we cited in the second paragraph of this answer. Albeit unnecessary, we expected them to cite both [HB 261](#) and *Ross* for the benefit of the Federal Court.

We recognize that without a Supreme Court case supporting a negative answer to this same question, one is operating completely on faith. We are merely *assuming* that after [HB 261](#) was incorporated into the UM/UIM statute the Ohio Supreme Court would agree that only one named insured need to sign an offer/selection/rejection UM/UIM form to be binding on all other insureds. We acknowledge that operating on this assumption could prove to be very expensive if a court rules otherwise. If one wants to “play it safe” and operate on an affirmative answer to this question, we’ll try to address the issues that go with this option.

Q3(b): When, on its face, a rejection form was signed by the employee of only one of several separately-incorporated named insureds listed in the policy, does the four corners of the insurance agreement control in determining whether the waiver was knowingly and expressly made by each of the named insureds, or does the parties’ intent, established by extrinsic evidence, control?”

A3(b): The Supreme Court said it’s the four-corners of the contract that controls, and not the parties’ intent established by extrinsic evidence. Again, the court cited *Gyori*¹³, which required a *written* offer and a *written* rejection of UM/UIM coverage. In *Gyori*, they said the court made it clear that the issue of whether coverage was offered and rejected should be apparent from the contract itself. By requiring an offer and rejection to be in writing, they said they impliedly held in *Gyori* that if the rejection is not within the contract, it is not valid. They then ruled that extrinsic evidence is not admissible to prove that a waiver was knowingly and expressly made by each of the named insureds.

Q3(d): Q3(b) answers made it unnecessary to answer Question 3(c) that was before the court. Q3(d) asked, “Does a parent corporation have implied authority to waive coverage on behalf of its separately-incorporated subsidiary corporation when the subsidiary corporation did not provide written authorization to waive UM/UIM coverage benefits on its behalf prior to commencement of the policy?”

A3(d): Again, the court looked to *Gyori* for an answer to this question. In *Gyori*, the court ruled that unwritten representations evade [R.C. 3937.18](#)’s mandate that rejections of UM/UIM coverage must be expressed and knowing. The court required in *Gyori* that both offers and rejections of UM/UIM coverage be in writing. They said they would contradict *Gyori* if they were we to allow a corporate parent to claim a rejection of UM/UIM coverage by its subsidiary through the subsidiary’s implied, unwritten assent thereto. Thus, they ruled in the negative on this question.

¹³ <http://www.sconet.state.oh.us/ftp/opinions/1996/951139.doc>

See our answer to [Q3\(a\)](#). We assume that after H.B. 261 was incorporated into the statute, *Gyori* no longer applied, making this issue moot. Again, this is only an assumption, and the problems associated with it are the same as those expressed in our answer to Q3(a).

ACORD's Response

ACORD quickly responded with a revised UM/UIM offer/selection/rejection (O/S/R) UM/UIM form in order to be in compliant with *Linko* and Ohio's current UM/UIM statute. The requirement to have a description of UM/UIM coverage in the offer/selection/rejection form was not unique to Ohio. ACORD rejection forms for the states of Iowa, Arkansas, Oregon and Delaware already include a brief description of UM/UIM coverage. While not having done any research in this area, we do think it is unusual to have this brief description requirement for commercial auto UM/UIM versus personal auto UM/UIM. See [ACORD 61](#).

We believe that ACORD agrees with us that *Linko's* requirement that each corporate entity, when there is more than one named insured, receive and sign a separate O/S/R form for UM/UIM coverage limits is rendered moot by the incorporation of [HB 261](#) into Ohio's UM/UIM statute. Is ACORD's description of coverage adequate to meet *Linko's* brief description requirement? We think so, but the court didn't give much guidance in this area. Perhaps another Ohio Supreme Court Decision will! We think ACORD might have better addressed this issue by specifically separating UM from UIM and incorporating more statutory language descriptions of each coverage.

Recommendations

As respects the offer/selection/rejection (O/S/R) UM/UIM form:

- 1) Review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in *Linko* and/or the current UM/UIM statute. If you think it is adequate go to bullet point 3) below. See [ACORD 61](#).
- 2) If creating you own O/S/R form you need to address the following issues in order to address the issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement.
 - b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit with a blank to input the premium associated with that limit.
 - c) Make sure that there is an expressed statement of the UM & UIM coverage limits. Quite frankly, we aren't quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question indicated that there needs to be some sort of statement that UM/UIM coverage

limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the personal or commercial umbrella depending on the verbiage used). See [ACORD 61](#).

- d) Make sure that there is an area for the signature of the Named Insured or applicant.
- 3) If there is going to be more than one insured, then you need to decide if relying on the binding portion of division (C) of Ohio's UM/UIM statute is worth the gamble in light of *Linko*. If not, the following questions need to be answered by you:
 - a) Do I want each named insured to complete and sign a separate UM/UIM coverage form?
 - b) If yes to a), how do I reflect the premium charge--a separate charge for each company or do you insert verbiage in the form that clearly states the premium charged is the total charge for all named insureds under this coverage part?
 - 4) In the answer to [Question 3\(b\)](#) above the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that an Ohio Court would classify such O/S/R form as extrinsic evidence.
 - 5) If you agree with us in 4) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.
 - a) One is by endorsement wording that needs to be completed by hand and signed by the Named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also, administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.

Comment [GFD1]: Frank, the following is in the *Linko* decision, "Since *Gyori*, Ohio's appellate courts have developed a useful body of law regarding what constitutes a valid offer of UM/UIM coverage. We agree with the following required elements for written offers imposed by Ohio appellate courts: a brief description of the coverage, the premium for that coverage, and an express statement of the UM/UIM coverage limits. See *Murray v. Woodard* (1997), 120 Ohio App.3d 180, 697 N.E.2d 265 (interpreting the offer requirement of R.C. 3937.181); *Gibson v. Westfield Natl. Ins. Co.* (July 14, 1998), Monroe App. No. 788, unreported, 1998 WL 404201; *Weddle v. Hayes* (Sept. 5, 1997), Belmont App. No. 96-BA-44, unreported, 1997 WL 567964." I was wondering if in those three cases they elaborated on what constitutes an adequate brief description of coverage, and, in particular, what they mean by an "express statement of the UM/UIM coverage limits." The latter is especially unclear to me.

b) The second approach is to incorporate into the declarations page language that states the O/S/R form is attached and is considered part of the policy. Since the policy language should incorporate the declarations page we recommend this approach. ~~From an administrative standpoint, it is the easier of the two options we've encountered.~~ Of course, revising the declarations page takes time and if doing more than listing the O/S/R form as you would an endorsement, it probably needs to be filed with the state insurance department for approval. From an administrative standpoint, it is the easier of the two options we've encountered.

In any event, if the O/S/R form is not part of the policy, any rejection of UM/UIM by an insured will be deemed invalid. This would be true even if such O/S/R form meets all the other requirements of Linko as stated in 2) above. If the O/S/R form is not incorporated into the policy, insurers would still provide coverage for UM/UIM even though they received no premium for the coverage and even if the insured signed an otherwise valid O/S/R UM/UIM form signifying rejection of coverage.

Impact of Scott-Pontzer in conjunction with Linko

We believe the negative financial impact of these decisions based on the combination of them is much greater to insurers than if one or the other decision didn't exist. Because of *Scott-Pontzer*, an employee whose employer was covered for UM/UIM with an ISO commercial automobile policy can recover a UM/UIM claim for a non-work related accident even while using a vehicle that wasn't owned by their employer or wasn't being used on the employer's behalf. Because employers often reject UM/UIM for commercial auto (see [Why commercial auto UM/UIM is rejected](#)) the exposure created by *Scott-Pontzer* was greatly mitigated—until *Linko*. Until *Linko*, the vast majority of offer/selection/rejection (O/S/R) UM/UIM forms:

- didn't incorporate a description of coverage,
- didn't include premium on the form, and
- none that we are aware of were incorporated into the auto liability policy itself.

As such, *Linko* deemed ~~virtually every many~~ O/S/R UM/UIM form invalid for both commercial auto and commercial umbrella. Therefore, according to *Linko*, by operation of law, these two types of policies provide UM/UIM coverage even though insurers received no premium for this coverage. Such coverage limit, again by operation of law, would be equal to the bodily injury limit of the commercial auto policy and the limit for coverage of auto bodily injury by the commercial umbrella policy. For the same reasons, i.e.,

- O/S/R UM/UIM forms didn't incorporate a description of coverage;
- didn't include premium on the form; and
- none that we are aware of were incorporated into the auto liability or personal umbrella liability policy itself;

we believe UM/UIM coverage is also provided by operation of law for personal auto and personal umbrella policies even if insurers didn't receive premium for these coverages.

Comment [GFD2]: I don't have a problem with this change. Having said that, given all the press in Ohio of this issue, I think the concern that a plaintiff's attorney may use the conclusion of this White Paper as a sword may be an overreaction. Unless a plaintiff attorney in Ohio lives underneath a rock, I think he/she is aware that the most criticized aspect of *Linko* is that it invalidated previous UM/UIM rejections based on a standard that insurance companies could never have known to the level of detail that the Supreme Court required in *Linko*.

The UM/UIM coverage limit would be the same as the bodily injury liability limit of the personal auto policy and the limit for coverage of auto bodily injury liability by the personal umbrella policy.

Coverage of UM/UIM by insurers is done by written contract¹⁴. The statute of limitations for written contract law in Ohio is 15 years. See [R.C. 2305.06](#). The result of this decision is that ~~every Ohio resident, when they were employed during the last 15 years, had coverage for UM/UIM from their employer for just about any auto accident. This presumes that their employer bought liability insurance for automobiles or motor vehicles, whether or not an employer purchased UM/UIM coverage, employees have become the beneficiary via Linko and Scott-Pontzer of additional coverage they may not have contemplated or paid for.~~ We are sure that there are people who were using their own vehicle for personal use and were seriously injured during the last 15 years by an at-fault driver who was uninsured or underinsured. In theory, as a result of these two decisions, they could recover UM/UIM benefits from their employer's auto and umbrella insurer—even though they themselves could have been uninsured for personal automobile liability.

Comment [GFD3]: Frank, I think you toned it down too much since one of the major impact of both these decisions is that employees have UM/UIM coverage whether or not the employer purchased it. Again, I don't think we would be revealing anything to plaintiff attorneys in Ohio that they aren't already aware of UM/UIM coverage limits

Just as seriously for personal lines insurers who issued personal auto and umbrella policies to Ohio residents is that each policy issued during the last 15 years incorporates UM/UIM coverage up to the bodily or personal injury limit even if the insurers didn't receive premium for it. This is especially disconcerting to personal umbrella insurers because of the large UM/UIM coverage limit that they are either providing, or provided, without premium.

Reserve strengthening

How many people who fall under these categories (see preceding two paragraphs) is simply a matter of guesswork. How many people who fall in these categories who were insured by a specific insurer is even more of a guess. Until these decisions were published, we don't think anyone would have filed such a UM/UIM claim with their employer.

Until the publishing of *Linko*, if a personal auto or personal umbrella insured:

- had already rejected UM/UIM coverage, or
- selected a lower UM/UIM coverage limit

after being offered a UM/UIM coverage limit equal to their coverage limit for auto bodily injury, we think very few of these insureds in the last 15 years have filed either:

- a UM/UIM claim or
- a UM/UIM claim in excess of their selected UM/UIM coverage limit.

¹⁴ See *Miller v. Progressive Cas. Ins. Co.* (1994), Ohio St.3d <http://ftp.sconet.state.oh.us/Opinions/1994/OP930987.txt>

As a result, to quantify how much these decisions are going to cost the insurance industry and/or individual companies is fraught with uncertainty. Having said that, few people think that this won't have a major financial impact on at least some insurance companies and the industry at-large.

Miller v. Progressive Cas. Ins. Co. (1994), Ohio St.3d
<ftp://ftp.sconet.state.oh.us/Opinions/1994/OP930987.txt>

Formatted: French (France)

On August 18, 1990, Robert S. Miller, was injured when the automobile he was driving was struck in the rear by a vehicle operated by an uninsured motorist. The collision was caused by the negligence of the uninsured tortfeasor. Following the accident, a dispute apparently arose concerning the amount of uninsured motorist benefits due Miller from Progressive. The matter remained unresolved for a period exceeding one year. During that period, Miller never commenced suit against Progressive or demanded arbitration of the disputed issue(s). On September 9, 1991, Progressive denied Miller's claim for UM benefits on the basis of a provision in the policy which states:

"If an insured person and we [the insurer] have not reached an agreement (1) that the insured person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle, or (2) as to the amount of payment under this Part V [uninsured/underinsured motorist coverage], the insured person shall make written demand upon us within twelve (12) months from the date of accident that the issue be determined by arbitration. " In that event, the matter or matters upon which an agreement has not been reached shall be determined by arbitration * * *. "No lawsuit or action whatsoever or any proceeding in arbitration shall be brought against us for the recovery of any claim under this Part unless the insured person has satisfied all of the things that insured person is required to do under this policy and unless the lawsuit or arbitration is commenced within twelve (12) months from the date of the accident."

The Court of Appeals in Ohio denied Miller's claim that such policy provision was invalid and unenforceable. One of the reasons cited by the court of appeals was a prior Ohio Supreme Case, *Colvin v. Globe American Cas. Co.* (1982), 69 Ohio St.2d 293, 23 O.O.3d 281, 432 N.E.2d 167. In *Colvin*, the right to arbitration for a UM/UIM dispute was limited by the following policy language:

"Action Against the Company: No suit or action whatsoever or any proceeding instituted or processed in arbitration shall be brought against the company for the recovery of any claim under this coverage unless as a condition precedent thereto, the insured or his legal representative has fully complied with all of the terms of the policy and unless same is commenced within twelve months next after the date of the accident."

The Supreme Court of Ohio in *Colvin* held that the one-year time limitation contained in the uninsured motorist provisions of the policy was "neither in conflict with [R.C. 2305.10](#), the two-year statute of limitations for bringing actions for personal injuries, nor

in violation of the public policy as embodied in [R. C. 3937.18](#), the statute requiring the offering of uninsured motorist insurance."

For reasons outlined in *Miller*, the court expressly overruled *Colvin*, and said that Progressive's one-year limitation was invalid and unenforceable. What is equally significant in light of the 15 year statute of limitations for written contracts mentioned in our analysis of *Scott-Pontzer* and *Linko* combined (see [Impact of Scott-Pontzer in conjunction with Linko](#)), is that the court specifically stated the following:

"We do not suggest that time-limitation provisions of the type at issue in this case are altogether prohibited. Consistent with our analysis, a two-year period, such as that provided for bodily injury actions in R.C. 2305.10, would be a reasonable and appropriate period of time for an insured who has suffered bodily injuries to commence an action or proceeding for payment of benefits under the uninsured or underinsured motorist provisions of an insurance policy."

As such, it appears the Ohio Supreme Court doesn't have a problem with a time limitation for filing a UM/UIM demand for arbitration or lawsuit, it just can't be less than two years.

Policy Language Recommendation

We recommend inserting into any UM/UIM coverage form a two-year limitation using Progressive and Globe American policy language cited above as a guide, but with a two-year limitation instead of a one-year limitation. ISO CA 21 33 01 01 *doesn't* incorporate such language. We recommend filing your own form in Ohio with such a limitation. If such a limitation was in UM/UIM coverage forms the effects of *Linko* and *Scott-Pontzer* would only go back to accidents that occurred 2 years ago, not 15. See [Impact of Scott-Pontzer in conjunction with Linko](#).

Selander v. Erie Ins. Group (1999), 85 Ohio St.3d 541 <http://www.sconet.state.oh.us/ftp/opinions/1999/980289.doc>

In the *Selander v. Erie* case Eugene and Glenn Selander were involved in an auto accident on November 14, 1992. The accident was not their fault. Eugene was killed and Glenn was seriously injured. The Selanders were electricians involved in a partnership called Twin Electric. They were in the course of their employment at the time of the accident. Eugene's widow, Betty, and Glenn recovered \$103,500 from the tortfeasor's insurer. Betty received \$200,000 and Glenn \$100,000 from a commercial auto policy with \$300,000 UM/UIM coverage limits issued by Erie Insurance Company. Glenn and his wife also received an additional \$100,000 from another auto policy issued by Erie.

The Selanders filed a new claim for UIM benefits under a Fivestar General Business Liability Policy issued by Erie Insurance Exchange ("Erie") to Twin Electric. The policy contained protection limits of \$1 million per occurrence and \$2 million policy aggregate. Erie refused to pay, asserting that the Fivestar policy did not provide automobile liability coverage or UM/UIM coverage.

Erie admitted that their policy automatically provided automobile liability coverage, albeit in the limited circumstance of providing coverage for claims of vicarious liability arising out of the use of a hired vehicle or a non-owned vehicle. The Ohio Supreme Court cited various case law from lower Ohio Courts, *Speelman v. Motorists Mut. Ins. Co.* (Dec. 22, 1995), Montgomery App. No. 15362, unreported, 1995 WL 765979; *Goettenmoeller v. Meridian Mut. Ins. Co.* (June 25, 1996), Franklin App. No. 95APE11-1553, unreported, 1996 WL 362089; *House v. State Auto. Mut. Ins. Co.* (1988), 44 Ohio App.3d 12, 540 N.E.2d 738.; and an Arizona Supreme Court decision, *St. Paul Fire & Marine Ins. Co. v. Gilmore* (1991), 168 Ariz. 159, 812 P.2d 977 to support their decision that any policy that provides automobile liability coverage, even in limited circumstances, qualifies as an “automobile liability or motor vehicle policy” under R.C. 3937.18. Hence, the policy was required to offer UM/UIM coverage.

Underwriting Rule Change

Any CGL or BOP policy that also provides hired and/or non-owned auto liability coverage needs to offer UM/UIM coverage in conformance with the requirements set forth in *Linko*. This necessitates an UM/UIM coverage form, and such coverage form and offer/selection/rejection UM/UIM form needs to be incorporated in such CGL or BOP policy. This would most likely cause a change in declarations page and policy language. A lot of work. We recommend any BOP or CGL form, such as Erie’s in the *Selander* case, that automatically provides hired and non-owned coverage be revised so that such coverage is no longer included automatically. We even recommend that such coverages not even be available on an optional basis. Finally, we recommend that hired and non-owned automobile liability coverage only be made available on a commercial auto policy. This goes for all states, not just Ohio. We have said this ever since the *St. Paul v. Gilmore* decision by the Arizona Supreme Court.

The Ohio Supreme Court also added clarity to this decision when they discussed in detail the intent of *Selander* in *Davidson v. Motorists Mutual Insurance Company* (2001), 91 Ohio St.3d 262. We discuss this case next.

Davidson v. Motorists Mutual Insurance Company (2001), 91 Ohio St.3d 262. <http://www.sconet.state.oh.us/ftp/opinions/2001/000132.doc>

This is one of the few UM/UIM cases before the recent make-up of the Ohio Supreme Court where an insurer prevailed. On September 26, 1995, Gerald Davidson sustained serious injuries in an automobile collision caused by the negligence of Gary Cusick. At the time of the accident, Cusick had in effect a \$100,000 liability insurance policy issued by Farmer’s Insurance. Davidson was paid the full policy limit.

He then sought UIM coverage from his own motor vehicle insurance carrier, Motorists Mutual Insurance Company (“Motorists”). According to Motorists, Davidson made a

claim under the UM¹⁵ portion of his own automobile policy, which Motorists said it honored.

Seeking additional coverage, Davidson, along with his wife and children, turned to their homeowner's policy, issued by Motorists. Believing that there was additional coverage under their homeowner's policy because it provided incidental coverage for certain vehicles, Davidson filed a declaratory judgment action against Motorists, seeking UIM benefits.

The court denied the claim raising a distinction between *Selander's* GL policy from Erie which expressly provided hired and non-owned auto insurance against liability arising out of the use of automobiles that were used and operated on public roads and the homeowner policy in question. Such homeowner's policy provided incidental coverage to a narrow class of motorized vehicles that are not subject to motor vehicle registration and are designed for off-road use or are used around the insured's property. The court then went on to state that it makes perfect sense to allow UM/UIM coverage in *Selander*, but to restrict recovery under a homeowner's policy that provides incidental coverage for a very limited class of motorized vehicles that are neither subject to motor vehicle registration nor designed to be used on a public highway.

It then went on to state the following: "Instead, *Selander* stands only for the proposition that UM/UIM coverage is to be offered where a liability policy of insurance expressly provides for coverage for motor vehicles without qualification as to design or necessity for motor vehicle registration." We were expecting them to state that *Selander* stood for the proposition that UM/UIM coverage is to be offered where a liability policy of insurance expressly provides for coverage for motor vehicles designed for use on a public highway and subject to motor vehicle registration. That may what they mean, but we are unclear. As such, you need to judge for yourself what you think the Court meant by that sentence.

Does General Liability Policy Need to Offer UM/UIM Coverage because of coverage for Mobile Equipment?

While not a case, we think it's appropriate to discuss this issue in light of our discussion of both *Selander* and *Davidson*. Most insurance industry general liability (GL) policies provide coverage for "mobile equipment" as defined in the policy. Because of some lower Ohio Court rulings and the reasoning the Supreme Court provided in *Delli Bovi v Pacific Indemnity*¹⁶ and *Selander* (until clarified in *Davidson*), there was fear amongst some insurance professionals that the Supreme Court would eventually rule that any GL policy that provides coverage for mobile equipment needs to provide coverage UM/UIM.

The concern was the Supreme Court would state that "mobile equipment" is considered a motor vehicle and, as such, the GL policy provides motor vehicle liability (MVL)

¹⁵ From opinion itself, it either should be "UIM" or UIM is included in the definition of UM in the Motorist policy in question.

¹⁶ <http://www.sconet.state.oh.us/ftp/opinions/1998/990021.doc>

insurance. [R. C. 3937.18](#) mandates that any policy providing MVL insurance needs to offer UM/UIM coverage equal to the MVL coverage limit.

This would necessitate an offer/selection/rejection UM/UIM form which would need to be incorporated in the policy in accordance with *Linko*. This would also require a UM/UIM coverage form. This would necessitate a change in the declarations page and policy wording. A lot of work. ~~The impact of such a~~ An adverse ruling on this issue would be that any such GL policy issued in the last 15 years would provide would have also extended UM/UIM coverage to GL policies even though insurers didn't receive any premium for it. This would be true even if hired and non-owned auto liability coverages weren't provided by such GL policy.

We feel that *Davidson* has provided some clarity on this issue. It is our feeling that the Ohio Supreme Court would find fault with the reasoning in the second paragraph of this section. We believe that based on *Davidson* the Supreme Court would rule that as long as the "mobile equipment" isn't designed for use on a public highway and subject to motor vehicle registration [R. C. 3937.18](#)'s mandate to offer UM/UIM coverage isn't triggered. We acknowledge that we could be wrong in our belief. If you don't agree with our prediction on this issue, then the actions outlined in the preceding paragraph of our answer to this question are our recommendations.

Also, [SB 57](#) was incorporated into division (L)(2) of [R. C. 3937.18](#) on November 2, 1999. We believe the only clarification that was made was umbrella policies are considered a policy that provides MVL insurance and therefore is subject to all the mandates of the statute (and the Ohio Supreme Court's interpretation of such statute as well). In the case of requiring UM/UIM coverage for mobile equipment, we feel that a good argument could be made that the Ohio Legislature never intended for mobile equipment to be subject to this statute—even absent the clarification of *Selander* in *Davidson*. See division (L)(1) of R.C. 3937.18. Our reasoning is that division (L) says,

"As used in this section, "automobile liability or motor vehicle liability policy of insurance" means either of the following:

(1)Any policy of insurance that serves as proof of financial responsibility, as proof of financial responsibility is defined by division (K) of section [§4509.01](#) of the Revised Code, for owners or operators of the motor vehicles specifically identified in the policy of insurance is considered AL or MVL insurance and thus subject to the requirements of the statute." See [HB 261](#) added September 3, 1997. See also [§4509.101](#).

Division (b) of [§4509.01](#) and [§4509.101](#) imply that proof of insurance is required only for motor vehicles registered in the state of Ohio. None of the vehicles defined in a standard GL policy as "mobile equipment" are subject to motor vehicle registration. Therefore, "mobile equipment" is not subject to R.C.3937.18. This is only an argument the Ohio Supreme Court may or may not have accepted.

Field Code Changed

Moore v. State Auto. Ins. Co. (2000), 88 Ohio St.3d 27.
<http://www.sconet.state.oh.us/ftp/opinions/2000/982495.doc>

On May 28, 1996, Randy Moore died as a result of injuries sustained in an automobile accident caused by the negligence of an uninsured motorist. Alice Moore, Randy's mother, was not involved in the accident, nor did she sustain bodily injury from the accident. At the time of the accident, Alice Moore was a named insured on a policy of automobile liability insurance issued by State Automobile Mutual Insurance Company. The policy also provided uninsured motorist coverage. Randy Moore was not a named insured in Alice's policy, was not a resident of her household, and, at the time of the accident, was not occupying a vehicle that was covered by the State Auto policy in question. Alice Moore asserted that pursuant to [R.C. 2125.02](#), she was presumed to have suffered damages as a result of the wrongful death of her son. She further contended that she was entitled to receive compensation for those damages from State Auto, up to the policy limit, pursuant to the uninsured motorist provision of her policy of insurance.

The relevant policy language provided that State Auto would pay "compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of 'bodily injury': 1. Sustained by an 'insured'; and 2. Caused by an accident." State Auto contended that Alice Moore's claim did not satisfy this policy provision because Randy Moore was not an insured under the policy and Alice Moore did not sustain bodily injury as a result of the accident. Alice Moore contended that the policy limitation sought to be enforced by State Auto was contrary to Ohio law and was therefore invalid. Alice also asserted that she was entitled to recover under the terms of the policy. In this regard, she contended that the "nervous shock and psychological trauma" she suffered as a result of her son's death constituted "bodily injury."

In deciding Moore, the Ohio Supreme Court looked to a case that had nearly the same facts at issue. *Sexton v. State Farm Mut. Auto. Ins. Co.* (1982), 69 Ohio St.2d 431, 433, 23 O.O.3d 385, 386, 433 N.E.2d 555, 558. The *Sexton* court noted that R.C. 3937.18 did not specify that an insured must sustain bodily injury in order to recover damages. Accordingly, the court held that the policy's restrictions allowing recovery only when an insured suffered bodily injury were "void because they attempt[ed] to limit recovery contrary to R.C. 3937.18."

Subsequent to *Sexton*, the Ohio Legislature amended R.C. 3937.18. The Court then determined that whether those amendments altered the meaning of R.C. 3937.18 in such a way as to permit insurers to limit uninsured motorist coverage to accidents in which an insured sustains bodily injury.

The version of R.C. 3937.18 at issue then provided:

“(A) No automobile liability * * * policy of insurance * * * shall be delivered or issued for delivery in this state * * * unless both of the following coverages are provided

to persons insured under the policy for loss due to bodily injury or death suffered by such persons:

“(1) Uninsured motorist coverage, which * * * shall provide protection for bodily injury or death * * * for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy.”

The Supreme Court for reasons outlined in the opinion found the language of the statute in question ambiguous. They then tried to determine the legislative intent of the statute. The court concluded that State Auto’s interpretation of the statute would thwart the underlying purpose of uninsured motorist insurance, i.e., to protect persons who are entitled to recover damages from uninsured motorists, and would conflict with R.C. Chapter 2125, the wrongful death statute. They also said that if the Legislature had meant to supersede the Supreme Court’s holding in *Sexton* with the revision to R.C. 3937.18, the Court believes that the legislature would have made their intentions clear by referencing in the statute that they meant to supersede *Sexton*. The court felt that way because the legislature had already expressed their intention to supersede another Supreme Court case, *Savoie v. Grange Mut. Ins. Co.* (1993), 67 Ohio St.3d 500, 620 N.E.2d 809, in an earlier revision to this same statute. Since there was no mention of superseding *Sexton*, the Supreme Court justices presumed that the Ohio Legislature did not mean to have it superseded. The Supreme Court also cited other reasons supporting their holding.

The current version of the statute references that both *Sexton* and *Moore* were meant to be superseded. As such, presumably *Moore* is no longer holding in interpreting policy language and Ohio’s UM/UIM statute. Contrary to the Supreme Court, we felt the Legislature made its intention known that *Sexton* was not meant to apply after they revised the portion of the UM/UIM statute requiring bodily injury. We cite this case because we feel it demonstrates that insurers can be optimistic about obtaining legislative relief from some adverse (from the insurer’s perspective) Ohio UM/UIM Supreme Court decisions. At the same time, it also demonstrates the length that the Ohio Supreme Court will go to carry out what they believe is the intent of statute: to protect persons who are entitled to recover damages from uninsured motorists.

Implementing Changes Required by *Linko* and *Scott-Pontzer*

Procedure

Because of *Linko*, ~~we believe that virtually it is possible that all~~ Ohio commercial auto, commercial umbrella, personal auto and personal umbrella policies are providing UM/UIM coverage up to the bodily injury or personal injury coverage limits. [See Impact of *Scott-Pontzer* in conjunction with *Linko*](#). This is true even though insurers’ in many instances didn’t receive any premium for this coverage.

Once an insurer creates an offer/selection/rejection (O/S/R) form in compliance with *Linko* requirements, along with a policy form to incorporate such O/S/R form, we believe insurers should attempt to get a rejection or premium for UM/UIM coverage as soon as possible. Many employers don't want their commercial auto insurance loss experience to be effected by these rulings so most should be willing to sign as soon as possible. Commercial auto UM/UIM coverage doesn't protect the employers' financial assets, so there shouldn't be any agent E&O concerns either. Because it protects the employee rather than the employer, we view commercial auto and commercial umbrella UM/UIM as a supplementary employee benefit. With all the press coverage and lawyer advertising, we believe receiving rejections for UM/UIM from commercial insureds in light of *Scott-Pontzer* and *Linko* should be easier than one might at first believe.

Getting rejections isn't as critical for personal auto since so many insureds view this as "necessary" coverage and probably already paid premium for it. It's nice coverage for an insured with a personal umbrella, so getting a rejection form signed, especially for this line, should be more problematic than for commercial lines.

Once the O/S/R UM/UIM forms are sent, the insurer needs to set a time period for when to bill the first named insured for UM/UIM coverage if the O/S/R form is not received or completed correctly. When does the insurer send notice of cancellation, or simply notice of non-renewal, for non-payment if payment didn't accompany the O/S/R form? What does the insurer do if they received payment, but the named insured(s) didn't complete the application or filled it out incorrectly? This question is more critical absent *Linko* since the O/S/R form is part of the policy. Do you have the same procedure for all insureds or do you have different procedures dependent upon policy effective date? If so, do you have the systems in place to incorporate the O/S/R form into the policy or dec page mid-term? These are issues to think about. We don't feel comfortable making recommendations.

We do recommend a brand new policy for each insured with these new procedures. This would include a new policy number, declaration(s) and endorsement(s). The reason for this recommendation is to disconnect the new policy from the old, ~~so the Ohio Courts would find it more difficult to connect the old and the new, and find coverage under the new policy via the old.~~ We realize that this may be paranoia because the current statute specifically states that UM coverage can be amended at renewal.

Pricing.

We realize that because of *Scott-Pontzer* and *Linko*, the UM/UIM loss ratio is likely to deteriorate dramatically on a calendar year basis. However, in theory, going forward UM/UIM can still be excluded or priced appropriately if *Linko* and/or the Ohio UM/UIM statute are followed correctly, and the exposure that *Scott-Pontzer* created no longer exists with proper policy language. As such, on a future accident year basis, all other things being equal, there is no compelling reason to increase UM/UIM premiums because in theory the exposure to a UM/UIM loss hasn't increased going forward because of *Scott-Pontzer* and *Linko*.

Personal Umbrella.

The exposure to a UM/UIM loss varies greatly by territory with-in a state—and we’re sure that Ohio is no exception. The greater the percentage of drivers that are uninsured or driving with relatively lower AL coverage limits, the higher the probability the insurer will incur a UM/UIM loss. As such, rates should vary by territory. For all lines other than personal umbrella, the territorial rating factor is typically incorporated in the base rate or underlying premium charge. Because personal umbrella is often rated on “per power unit charge” for motor vehicles, this territorial variance often isn’t factored in an insurer’s pricing. When UM/UIM coverage has to be offered, we recommend that insurer’s file for approval territorial rating factors for personal umbrella.

Commercial Umbrella and Personal Umbrella

Commercial Umbrella and Personal Umbrella sit excess an underlying primary auto policy. Absent a court case to the contrary, even if the named insured or applicant rejected UM/UIM coverage in the underlying primary auto policy, we strongly feel the umbrella policy needs to receive an additional UM/UIM rejection form. Otherwise, we believe that an Ohio court will deem by operation of law that such policy provides UM/UIM coverage up to the policy limit that provides liability coverage for third party automobile bodily injury. As such, we recommend the filing of two UM/UIM rate schedules for approval with the Ohio Superintendent of Insurance—one with the underlying policy providing UM/UIM coverage and the other without. Perhaps in the offer/selection/rejection form there could be a phrase along these lines:

“The premiums listed above contemplate UM/UIM coverage provided by the underlying automobile liability policy listed in the Schedule of Underlying Insurance for the amount shown in the Declarations page for automobile bodily injury liability or for automobile bodily injury and property damage liability subject to a combined single limit. If such UM/UIM coverage

- is not provided, or
- is provided for an amount less than the amount of coverage provided for automobile bodily injury liability by the same underlying automobile liability policy

the premiums listed above are multiplied by a factor of 2.50. The resulting product is the premium charge for UM/UIM coverage provided by this umbrella/excess policy when the underlying automobile liability policy listed in the Schedule of Underlying Insurance does not provide UM/UIM coverage.”

Again, this wording may be totally inappropriate depending upon the language of the Umbrella’s Declarations page, Maintenance of Underlying Limits in the Umbrella/Excess UM/UIM coverage part, etc. In other words, an insurer needs to make sure that between the umbrella policy, the underlying automobile liability policy, the umbrella UM/UIM coverage part and the O/S/R form everything dovetails appropriately. See [Umbrella Policies are considered Motor Vehicle Liability Policies](#) and [Scott-Pontzer](#).

RECOMMENDATIONS OR IDEAS

Commercial Auto

- | ~~10~~1) Submit for approval from the Ohio Superintendent of Insurance UM/UIM coverage limits less than the maximum AL policy limit. Lowest limit that can be offered can't be less than the AL F/R limit. Make sure superintendent approves complete rejection. We discuss content of rejection form at another bullet point. See UM/UIM statute discussion concerning [division \(2\)\(C\)](#).
- | ~~11~~2) Make sure the UM/UIM Coverage Part includes policy language for: anti-stacking, application of policy limit, exclusions for owned but not insured vehicles and operating a non-owned vehicle without a reasonable belief, and a requirement that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer in accordance with UM/UIM statute. See [Policy Language](#).
- | ~~12~~3) Make sure the UM/UIM Coverage part's "Who Is An Insured" section addresses the problems illuminated in *Scott-Pontzer*. Use ISO CA 21 33 01 01 as a guide. If not CA 21 33 00 verbiage, check the "Who is Insured" section for compliance with *Scott-Pontzer*. Make sure that for partnerships, LLC and corporations insured's are people (CA 21 33 01 01 uses "anyone") rather than "you". Make sure that there is an exclusion in this same coverage part that excludes coverage for anyone occupying or using a non-owned auto while used outside the scope of the Named Insured's business with a family member exception if the named insured is an individual. See [Pontzer](#).
- | ~~13~~4) Consider filing your own UM/UIM Coverage Form based on ISO CA 21 33 01 01, but incorporating language that limits UM/UIM coverage to demands for arbitration or lawsuits filed with-in two years of the date of accident. See our discussion of [Miller v. Progressive](#).
- | ~~14~~5) Review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in Linko and/or the current UM/UIM statute. If you think it is, go to bullet point 6) below. See [ACORD's Response](#) and [ACORD 61](#).
- | ~~15~~6) If creating you own Offer/Selection/Rejection (O/S/R) UM/UIM form you need to address the following issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement. See [Linko](#).
 - b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit along with a place to input the premium associated with that limit. See [Linko](#).

- c) Make sure that there is an express statement of the UM & UIM coverage limits. Quite frankly, I'm not quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question indicated that there needs to be some sort of statement that UM/UIM coverage limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the commercial umbrella depending on the verbiage used). See [Linko](#) and [ACORD 61](#).

- d) Make sure there is an area for the signature of the Named Insured or applicant. See [Required Statutory Code 3937.18](#).

| ~~46~~7) If there is going to be more than one insured, you need to decide if relying on the binding portion of division (C) of Ohio's UM/UIM statute (See [Required Statutory Code 3937.18](#)) is worth the gamble in light of *Linko*. See [Linko](#). If not, the following questions need to be answered by you:

- a) Do I want each named insured to complete and sign a separate UM/UIM coverage form?
- b) If yes to a), how do I reflect the premium charge--a separate charge for each company or do you insert verbiage in the form that clearly states the premium charged is the total charge for all named insureds under this coverage part?

| ~~47~~8) In the answer to Question 3(b) in the discussion of the *Linko* case above (See [Linko Q3\(b\)](#)) the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that Court would classify such O/S/R forms as extrinsic evidence.

| ~~48~~9) If you agree with us in 8) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.

- a) One is by endorsement wording that needs to be completed by hand and signed by the named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also,

administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.

- b) The second approach is to incorporate into the declarations page language that states the O/S/R form is attached and is considered part of the policy. Since the policy language should incorporate the declarations page we recommend this approach. From an administrative standpoint, it is the easier of the two options we've encountered. Of course, revising the declarations page takes time and probably needs to be filed with the state insurance department for approval.

Commercial Umbrella

- 1) Submit for approval from the Ohio Superintendent of Insurance UM/UIM coverage limits less than the maximum umbrella policy limit. Lowest limit that can be offered can't be less than the AL F/R limit. Make sure superintendent approves complete rejection. Discuss content of rejection form at another bullet point. See UM/UIM statute discussion concerning [division \(2\)\(C\)](#).
- 2) Make sure you have a separate Commercial Umbrella UM/UIM Coverage Part. If you don't already have one, you may have to revise your Commercial Umbrella Policy form and Declarations Page to incorporate this Coverage Part. Pricing and Underwriting Rules for this coverage part will also have to be developed. See [Umbrella Policies are considered Motor Vehicle Liability Policies](#).
- 3) Consider incorporating in your own UM/UIM Coverage Form language that limits UM/UIM coverage to demands for arbitration or lawsuits filed with-in two years of the date of accident. See our discussion of [Miller v. Progressive](#).
- 4) Make sure the UM/UIM Coverage Part includes policy language for anti-stacking, application of policy limit, exclusions for owned but not insured vehicles and operating a non-owned vehicle without a reasonable belief, and a requirement that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer in accordance with UM/UIM statute. See [Policy Language](#).
- 5) For the UM/UIM Coverage Part, we recommend follow form "Who Is An Insured" language. If you don't have follow-form "Who Is An Insured" language, you need to make sure it is similar to ISO's CA 21 33 01 01. If not CA 21 33 00 verbiage, check the "Who is Insured" section for compliance with *Scott-Pontzer*. Make sure that for partnerships, LLC and corporations named insured's are people (CA 21 33 01 01 uses "anyone") rather than "you". Make sure that such non-ISO coverage form includes an exclusion for anyone using or occupying a non-owned auto used outside the scope of the Named Insured's business. See [Pontzer](#).

- 6) Review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in *Linko* and/or the current UM/UIM statute. If you think it is, and you're an ACORD subscriber, go to bullet point 8) below. See [ACORD's Response](#) and [ACORD 61](#).
- 7) If creating you own Offer/Selection/Rejection (O/S/R) UM/UIM form you need to address the following issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement. See [Linko](#).
 - b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit along with a place to input the premium associated with that limit. See [Linko](#).
 - c) Make sure that there is an express statement of the UM & UIM coverage limits. Quite frankly, we aren't quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question indicated that there needs to be some sort of statement that UM/UIM coverage limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the commercial umbrella depending on the verbiage used). See [Linko](#) and [ACORD 61](#).
 - d) Make sure there is an area for the signature of the Named Insured or applicant. See [Required Statutory Code 3937.18](#).
- 8) If there is going to be more than one insured, you need to decide if relying on the binding portion of division (C) of Ohio's UM/UIM statute (See [Required Statutory Code 3937.18](#)) is worth the gamble in light of *Linko*. See [Linko](#). If not, the following questions need to be answered by you:
 - a) Do I want each named insured to complete and sign a separate UM/UIM coverage form?

- b) If yes to a), how do I reflect the premium charge--a separate charge for each company or do you insert verbiage in the form that clearly states the premium charged is the total charge for all named insureds under this coverage part?
- 9) In the answer to Question 3(b) in the discussion of the *Linko* case above (See [Q3\(b\)](#)), the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that Court would classify such O/S/R forms as extrinsic evidence.
- 10) If you agree with us in 9) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.
- a) One is by endorsement wording that needs to be completed by hand and signed by the named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also, administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.
- b) The second approach is to incorporate into the declarations page language that states the O/S/R form is attached and is considered part of the policy. Since the policy language should incorporate the declarations page we recommend this approach. From an administrative standpoint, it is the easier of the two options we've encountered. Of course, revising the declarations page takes time and probably needs to be filed with the state insurance department for approval.

Commercial General Liability and Businessowners Policies

- 1) Any CGL or BOP policy that also provides hired and/or non-owned auto coverage needs to offer UM/UIM coverage in conformance with the requirements set-forth in *Linko*. This necessitates an UM/UIM coverage form, and such coverage form and offer/selection/rejection UM/UIM form needs to be incorporated in such CGL or BOP policy. A lot of work. We recommend any BOP or CGL form, such as Erie's in the *Selander* case, that automatically provides hired and non-owned coverage be revised so that such coverage is no longer included automatically. We even recommend that such coverages not even be available on an optional basis. Finally, we recommend that Hired and Non-Owned Automobile coverage only be made available on a commercial auto policy. This goes for all states, not just Ohio. We have said this ever since the *St. Paul Fire & Marine Ins. Co. v. Gilmore* (1991), 168 Ariz. 159, 812 P.2d 977, case by the Arizona Supreme Court was published. See [Selander](#).
- 2) If policy provides Hired and/or Non-owned auto coverage, even on an optional basis, submit for approval from the Ohio Superintendent of Insurance UM/UIM coverage

limits less than the maximum AL policy limit. Lowest limit that can be offered can't be less than the AL F/R limit. Make sure superintendent approves complete rejection. Discuss content of rejection form at another bullet point. See UM/UIM statute discussion concerning division (2)(C). See [division \(2\)\(C\)](#) and our discussion of [Selander](#).

- 3) If policy provides Hired and/or Non-owned auto coverage, make sure the UM/UIM Coverage Part includes policy language for anti-stacking, application of policy limit, exclusions for owned but not insured vehicles and operating a non-owned vehicle without a reasonable belief, and a requirement that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer in accordance with UM/UIM statute. See [Policy Language](#).
- 4) If policy provides Hired and/or Non-owned auto coverage, make sure the UM/UIM Coverage Part's "Who Is An Insured" section addresses the problems illuminated in *Scott-Pontzer*. If not CA 21 33 00 verbiage, check the "Who is Insured" section for compliance with *Scott-Pontzer*. Make sure that for partnerships, LLC and corporations insured's are people (CA 21 33 01 01 uses "anyone") rather than "you". Make sure there is an exclusion in this same coverage part that excludes coverage for anyone occupying or using a non-owned auto while used outside the scope of the Named Insured's business with a family member exception if the named insured is an individual. Use ISO CA 21 33 01 01 as a guide. See [Pontzer](#).
- 5) If policy provides hired and/or non-owned auto coverage, consider filing your own UM/UIM Coverage Form based on ISO CA 21 33 01 01, but incorporating language that limits UM/UIM coverage to demands for arbitration or lawsuits filed with-in two years of the date of accident. See our discussion of [Miller v. Progressive](#) and [Selander](#).
- 6) If policy provides Hired and/or non-owned auto coverage, review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in *Linko* and/or the current UM/UIM statute. If you think it is, go to bullet point 8) below. See [ACORD's Response](#), [Selander](#), and [ACORD 61](#).
- 7) If creating you own Offer/Selection/Rejection (O/S/R) UM/UIM form you need to address the following issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement. See [Linko](#).
 - b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit along a place to input the premium associated with that limit. See [Linko](#).

- c) Make sure that there is an express statement of the UM & UIM coverage limits. Quite frankly, we aren't quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question indicated that there needs to be some sort of statement that UM/UIM coverage limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the commercial umbrella depending on the verbiage used). See [Linko](#) and [ACORD 61](#).

- d) Make sure there is an area for the signature of the Named Insured or applicant. See [Required Statutory Code 3937.18](#).
- 8) If policy provides hired and/or non-owned auto coverage, and if there is going to be more than one insured, you need to decide if relying on the binding portion of division (C) of this statute (see [Required Statutory Code 3937.18](#)) is worth the gamble in light of *Linko*. See [Linko](#) and [Selander](#). If not, the following questions need to be answered by you:
- a) Do I want each named insured to complete and sign a separate UM/UIM coverage form?
- b) If yes to a), how do I reflect the premium charge--a separate charge for each company or do you insert verbiage in the form that clearly states the premium charged is the total charge for all named insureds under this coverage part?
- 9) In the answer to Question 3(b) in the discussion of the *Linko* case above (See [Q3\(b\)](#)), the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that Court would classify such O/S/R forms as extrinsic evidence. Again, we believe this point should be a concern only if policy provides hired and/or non-owned auto coverage. See [Selander](#).
- 10) If you agree with us in 9) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.

- a) One is by endorsement wording that needs to be completed by hand and signed by the Named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also, administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.
 - b) The second approach is to incorporate into the declarations page language that states the O/S/R form is attached and is considered part of the policy. Since the policy language should incorporate the declarations page we recommend this approach. From an administrative standpoint, it is the easier of the two options we've encountered. Of course, revising the declarations takes time and probably needs to be filed with the state insurance department for approval.
- 11) Read our answer to [“Does General Liability Policy Need to Offer UM/UIM Coverage because of coverage for Mobile Equipment?”](#) and decide if you concur.

Personal Auto

- 1) Submit for approval from the Ohio Superintendent of Insurance UM/UIM coverage limits less than the maximum AL policy limit. Lowest limit that can be offered can't be less than the AL F/R limit. Make approves superintendent approves complete rejection. Discuss content of rejection form at another bullet point. See UM/UIM statute discussion concerning division (2)(C). See [division \(2\)\(C\)](#).
- 2) Make sure the UM/UIM Coverage Part includes policy language for anti-stacking, application of policy limit, exclusions for owned but not insured vehicles and operating a non-owned vehicle without a reasonable belief, and a requirement that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer in accordance with UM/UIM statute. See [Policy Language](#).
- 3) Consider filing your own UM/UIM Coverage Form incorporating language that limits UM/UIM coverage to demands for arbitration or lawsuits filed with-in two years of the date of accident. We don't have access to ISO's personal auto UM/UIM coverage part for Ohio. See our discussion of [Miller v. Progressive](#).
- 4) Review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in *Linko* and/or the current UM/UIM statute. If you think it is, go to bullet point 5) below. See [ACORD's Response](#) and [ACORD 61](#).
- 5) If creating you own Offer/Selection/Rejection (O/S/R) UM/UIM form you need to address the following issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in

this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement. See [Linko](#).

- b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit along a place to input the premium associated with that limit. See [Linko](#).
- c) Make sure that there is an express statement of the UM & UIM coverage limits. Quite frankly, we aren't quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question indicated that there needs to be some sort of statement that UM/UIM coverage limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the commercial umbrella depending on the verbiage used). See [Linko](#) and [ACORD 61](#).

- d) Make sure there is an area for the signature of the Named Insured or applicant. See [Required Statutory Code 3937.18](#).
- 6) In the answer to Question 3(b) in the discussion of the *Linko* case above (See [Linko Q3\(b\)](#)), the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that Court would classify such O/S/R forms as extrinsic evidence.
- 7) If you agree with us in 6) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.
- a) One is by endorsement wording that needs to be completed by hand and signed by the named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also, administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.
 - b) The second approach is to incorporate into the declarations page language that states the O/S/R form is attached and is considered part of the policy. Since the

policy language should incorporate the declarations page we recommend this approach. From an administrative standpoint, it is the easier of the two options we've encountered. Of course, revising the declarations page takes time and probably needs to be filed with the state insurance department for approval.

Personal Umbrella

- 1) Submit for approval from the Ohio Superintendent of Insurance UM/UIM coverage limits less than the maximum AL policy limit. Lowest limit that can be offered can't be less than the AL F/R limit. Make approves superintendent approves complete rejection. Discuss content of rejection form at another bullet point. See UM/UIM statute discussion concerning division (2)(C). See [division \(2\)\(C\)](#).
- 2) Make sure the UM/UIM Coverage Part includes policy language for anti-stacking, application of policy limit, exclusions for owned but not insured vehicles and operating a non-owned vehicle without a reasonable belief, and a requirement that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer in accordance with UM/UIM statute. See [Policy Language](#).
- 3) Make sure you have a separate Personal Umbrella UM/UIM Coverage Part. If you don't already have one, you may have to revise your Personal Umbrella Policy form and Declarations Page to incorporate this Coverage Part. Pricing and Underwriting Rules for this coverage part will also have to be developed. See [Umbrella Policies are considered Motor Vehicle Liability Policies](#) and [Pricing](#).
- 4) Consider filing your own UM/UIM Coverage Form incorporating language that limits UM/UIM coverage to demands for arbitration or lawsuits filed with-in two years of the date of accident. See our discussion of [Miller v. Progressive](#).
- 5) Review ACORD 61 for Ohio and decide if it is adequate to meet the requirements set forth in *Linko* and/or the current UM/UIM statute. If you think it is, go to bullet point 6) below. See [ACORD's Response](#) and [ACORD 61](#).
- 6) If creating you own O/S/R form you need to address the following issues in order to address the issues created by *Linko* and/or Ohio's UM/UIM statute:
 - a) Create a brief description of UM and UIM coverage. We recommend using the statutory description of each as much as possible, but there isn't much guidance in this area as to what constitutes an adequate, brief description that complies with the *Linko* requirement. See [Linko](#).
 - b) Make sure your O/S/R form contains a section for selected UM/UIM Coverage Limit along a place to input the premium associated with that limit. See [Linko](#).
 - c) Make sure that there is an express statement of the UM & UIM coverage limits. Quite frankly, we aren't quite sure what this means. A review of the Ohio Appellant cases cited in the Ohio Supreme Court's answer to this question

indicated that there needs to be some sort of statement that UM/UIM coverage limits will be the same as the selected bodily injury limits unless the named insured or applicant selects a lower limit or no coverage.

I don't have access to the lower court opinions that gave guidance to what the statement should contain. Much of the following verbiage is language ACORD adopted in 61 OH 02/2001. The notice should also mention that the insured has the right to purchase UM and UIM coverage limits from \$25,000 CSL or \$12,500/\$25,000 split limits up to his or her policy's liability limit, or that he or she may reject the coverage entirely. Neither limit may exceed his or her coverage limit for Bodily Injury (need to probably use the word Personal Injury in the commercial umbrella depending on the verbiage used). See [Linko](#) and [ACORD 61](#).

- d) Make sure there is an area for the signature of the Named Insured or applicant. See [Required Statutory Code 3937.18](#).
- 7) In the answer to Question 3(b) in the discussion of the *Linko* case above (See [Q3\(b\)](#)), the Ohio Supreme Court said it's the four-corners of the contract that controls, and not the parties' intent established by extrinsic evidence. This begs the question whether or not a signed O/S/R UM/UIM form is considered extrinsic evidence when it is not part of the policy itself. Because of the specific language of *Linko*, we think that Court would classify such O/S/R forms as extrinsic evidence.
- 8) If you agree with us in 7) above, the next question is how does one incorporate such O/S/R form into the policy? We've seen two approaches.
 - a) One is by endorsement wording that needs to be completed by hand and signed by the named Insured. Unusual and time-consuming in that such endorsement needs to be created, filed and approved by the Ohio Insurance Department. Also, administratively, this could cause problems because the policy is often created after its effective date. In addition, we can see problems in making sure these endorsements are completed and signed after the insured has already completed an application.
 - b) The second approach is to incorporate into the declarations page with language that states the O/S/R form is attached and is considered part of the policy. Since the policy language should incorporate the declarations page we recommend this approach. From an administrative standpoint, it is the easier of the two options we've encountered. Of course, revising the declarations page takes time and probably needs to be filed with the state insurance department for approval.

Homeowners/Farmowners

Because of *Davidson v. Motorists Mutual Insurance Company* (2001), 91 Ohio St.3d 262, UM/UIM coverage does not need to be offered even though the homeowners policy

provides limited motor vehicle coverage. As long as the policy doesn't provide coverage for motor vehicles designed for use on a public highway and subject to motor vehicle registration, we believe that insurer doesn't need to offer UM/UIM coverage. However, we strongly recommend that you read [Davidson](#) and draw your own conclusions. Some farmowner policies we reviewed provide coverage for these type of vehicles. If so, all the offer requirements spelled out in *Linko* and the policy incorporation requirements discussed in the same case would apply to such a policy. This would also necessitate a UM/UIM coverage form and possibly revising policy language along with the declarations page. If you have such a policy, we would recommend revising the form and provide UM/UIM coverage for those vehicles with a personal or commercial auto coverage form. This would apply for all states—not just Ohio.

APPENDIX A

**Ohio Supreme Court Decisions and Ohio Legislative Reactions
Uninsured-Underinsured Motorist Coverage 1975 to 2000**

YEAR	OHIO SUPREME COURT CASE	Legislature Response or Case where Ohio Supreme Court Reversed
1975	<ul style="list-style-type: none"> ❑ UM limits in a multi-car policy cannot be stacked, <i>Weemhoff v Cincinnati Ins</i> 	<ul style="list-style-type: none"> ❑ See 1984
1980	<ul style="list-style-type: none"> ❑ The “other owned auto” exclusion is valid, <i>Orris v Claudio</i> 	<ul style="list-style-type: none"> ❑ Reversed in 1982 by <i>Ady v West American</i>
1982	<ul style="list-style-type: none"> ❑ The “other owned auto” exclusion violates the UM statute, <i>Ady v West American</i> 	<ul style="list-style-type: none"> ❑ HB 261 (1997) ❑ - “Other owned auto” exclusion is valid
1982	<ul style="list-style-type: none"> ❑ An insured father may make a UM claim based on the death of his non-resident son, <i>Sexton v State Farm</i> 	<ul style="list-style-type: none"> ❑ HB 489: Anti-stacking language is permitted in UM insurance ❑ SB 20 (1994)- Loss for bodily injury or death must be suffered by an insured
1984	<ul style="list-style-type: none"> ❑ UM limits from separate policies may be stacked, <i>Auto-Owners v Lewis and Gomulka v State Farm</i> ❑ Separate UM per-person limits are available for each derivative claim, <i>Auto Owners Ins v Lewis</i> ❑ UM anti-stacking language is permitted by statute, <i>Karabin v State Auto</i> 	<ul style="list-style-type: none"> ❑ HB 489 (1982)- Anti-stacking language is permitted in UM insurance ❑ SB 20 (1994)- Stacking of UM coverage may be excluded. ❑ SB 20 (1994)- All claims resulting from one person’s injury or death are subject to a single UM limit ❑ Limited in 1993
1985	<ul style="list-style-type: none"> ❑ Punitive damages are insurable under UM coverage, <i>Hutchinson v J C Penney Ins</i> ❑ Contact requirement for hit-and-run UM claims is valid, <i>Yurosta v Nationwide</i> 	<ul style="list-style-type: none"> ❑ SB 249 (1986)- Punitive damages are not payable in UM insurance ❑ Reversed, 1996
1986	<ul style="list-style-type: none"> ❑ Contact requirement for hit-and-run UM claims is valid, <i>State Auto v Rowe</i> ❑ Fellow-servant immunity will not bar a UM claim between co-workers, <i>Theil v Allstate</i> ❑ UM anti-stacking language is permitted by statute, <i>Hedrick v Motorists Mut</i> 	<ul style="list-style-type: none"> ❑ Reversed, 1996 ❑ Reversed, 1991 ❑ Limited in 1993

Formatted: Indent: Left: -0.5", Hanging: 0.5", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"

YEAR	OHIO SUPREME COURT CASE	Legislature Response or Case where Ohio Supreme Court Reversed
	<ul style="list-style-type: none"> □ The “other owned auto” exclusion is valid in some cases, <i>Hedrick v Motorists Mut</i> □ A contractual limitation of one year for making UM claims is valid, <i>Duriak v Globe American</i> 	<ul style="list-style-type: none"> □ Reversed in 1994; HB 261 (1997)- “Other owned auto” exclusion is valid □ Reversed in 1994 □ SB 249: Punitive damages are not payable under UM insurance
1987	<ul style="list-style-type: none"> □ Household exclusion and intra-family immunity in liability coverage did not create a UM claim, <i>Dairyland v Finch</i> □ UM anti-stacking language is permitted by statute, <i>Saccucci v State Farm</i> 	<ul style="list-style-type: none"> □ Reversed in 1991 what case? □ Limited in 1993 by Savoie v Grange Mut
1988	<ul style="list-style-type: none"> □ UM policy may limit all derivative claims to the injured person’s per-person limit, <i>Dues v Hodge</i> □ UM anti-stacking language is permitted by statute, <i>Dues v Hodge</i> 	<ul style="list-style-type: none"> □ Reversed in 1991 what case and 1993 by Savoie v Grange Mut □ Limited in 1993 by Savoie v Grange Mut
1989	<ul style="list-style-type: none"> □ UM policy may limit all derivative claims to the injured person’s per-person limit, <i>Crane v State Farm</i> □ UM coverage limits are reduced by the amount of liability payments, <i>In re Nationwide v Stobbs</i> 	<ul style="list-style-type: none"> □ Reversed in 1993 by Savoie v Grange Mut □ Reversed in 1993 Savoie v Grange Mut and in 1994 by Newman v. United Ohio Ins.
1990	<ul style="list-style-type: none"> □ Fellow-servant immunity will bar a UM claim between co-workers, <i>State Farm v Webb</i> 	
1991	<ul style="list-style-type: none"> □ UM policy may limit all derivative claim to the injured person’s per-person limit, <i>State Farm v Rose</i> 	<ul style="list-style-type: none"> □ Reversed in 1993 by Savoie v Grange Mut
1992	<ul style="list-style-type: none"> □ If liability coverage is denied under a household exclusion, the vehicle is then “uninsured,” <i>State Farm v Alexander</i> □ Separate UM per-person limits are available for derivative wrongful death claims, <i>Derr v Westfield</i> 	<ul style="list-style-type: none"> □ HB 261 (1997)- Denying liability coverage does not create UM situation under same policy □ SB 20 (1994)- All claims resulting from one person’s injury or death are limited to a single UM limit □ HB 261 (1997)- Household exclusion in liability coverage does create a UM situation in

Formatted: Indent: Left: -0.5", Hanging: 0.5", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"

YEAR	OHIO SUPREME COURT CASE	Legislature Response or Case where Ohio Supreme Court Reversed
		same policy
1993	<ul style="list-style-type: none"> □ A per-person limit of UM coverage is available for each derivative claim; full UM limits are available in addition to liability limits, with no set-off; Inter-family UM policies may not preclude stacking, Savoie v Grange Mut □ Separate UM per-person limits are available for derivative wrongful death claims, Savoie v Grange Mut □ UM coverage is not reduced by available liability limits in wrongful death claims, Savoie v Grange Mut 	<ul style="list-style-type: none"> □ SB 20 (1994)- Inter-family and intra-family stacking may be excluded □ SB 20 (1994)- All claims resulting from one person's injury or death are limited to a single UM limit □ SB 20 (1994)- Liability limits are set-off from UM limits
1994	<ul style="list-style-type: none"> □ The "other owned auto" exclusion in UM coverage is invalid, Martin v Midwestern Indemnity □ UM coverage is not reduced by available liability limits in injury claims, Newman v. United Ohio Ins. 	<ul style="list-style-type: none"> □ SB 20: All claims resulting from one person's injury or death are subject to a single limit of UM coverage; both inter-family and intra-family UM stacking may be excluded; liability limits are set off from UM limits □ HB 261 (1997)- The "other owned auto" exclusion is valid □ SB 20 (1994)- Liability limits are set off from UM limits
1996	<ul style="list-style-type: none"> □ An actual contact requirement for hit-and-run UM claims is against public policy, Girgis v State Farm □ Even though corporate policyholder understood UM coverage, the waiver was invalid since the offer was not in writing, Gvori v Johnston Coca-Cola Separate UM per-person limits are available for derivative bodily injury claims, Schaefer v Allstate □ Statute stated that UM limits are reduced by liability limits, this meant 	<ul style="list-style-type: none"> □ HB 261 (1997)- Independent corroborative evidence of a "phantom" vehicle will support a UM claim □ SB 20 (1994)- All claims resulting from one person's injury or death are limited to a single UM limit □ SB 20 (1994)- Liability limits are set off from UM limits

Formatted: Indent: Left: -0.5", Hanging: 0.5", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"

YEAR	OHIO SUPREME COURT CASE	Legislature Response or Case where Ohio Supreme Court Reversed
	<ul style="list-style-type: none"> □ set-off against damages, not against UM limits, Cole v Holland □ UM coverage is not reduced by amounts paid under that policy's liability coverage, Keppel v Keppel 	<ul style="list-style-type: none"> □ SB 20 (1994)- Liability limits are set off from UM limits
1997	<ul style="list-style-type: none"> □ Non-resident relatives may make a claim under the decedent's UM policy, Holt v Grange Mut 	<ul style="list-style-type: none"> □ SB 20 (1994)- UM covers bodily injury and death suffered by a person insured in the UM policy □ HB 261: Independent corroborative evidence of a "phantom" vehicle will support UM claim; UM household exclusion is valid; UM coverage is offered only in "proof of financial responsibility" policies or umbrellas; an "other owned auto" exclusion is permitted in UM; selection of UM coverage by applicant or one named insured binds all others
1998	<ul style="list-style-type: none"> □ The UM statute in effect at policy inception/renewal controls, interim changes to statute do not apply, Ross v Farmers 	<ul style="list-style-type: none"> □ SB 267 (2000)- An insurer may amend UM coverage at any renewal, consistent with statute
1999	<ul style="list-style-type: none"> □ If any "motor vehicle liability" coverage, however limited, is provided, UM must be offered, Selander v Erie Ins □ Family members of a corporation's employees are "insureds" in its auto policy, Ezawa v Yasuda F&M Ins Co □ All employees of a corporation are "insureds" in its auto policy, Scott-Pontzer v Liberty Mut □ Helicopter as a vehicle for UM coverage, Delli Bovi v Pacific Indemnity 	<ul style="list-style-type: none"> □ SB 57 UM coverage is offered only in "proof of financial responsibility" or umbrella policies □ Revised ISO commercial UM form issued in 2000 □ Revised ISO commercial UM form issued in 2000 □ 4-3 decision, a helicopter is not a vehicle for UM coverage.
2000	<ul style="list-style-type: none"> □ Derivative claims are permitted for injury/death of non-residents, Moore v State Auto; renewal of an "auto" policy begins new two-year term with 	<ul style="list-style-type: none"> □ SB 267: If liability coverage has "household exclusion" then UM claim is permitted; the injured person must be an

Formatted: Indent: Left: -0.5", Hanging: 0.5", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"

YEAR	<input type="checkbox"/> OHIO SUPREME COURT CASE	Legislature Response or Case where Ohio Supreme Court Reversed
	<p>no interim changes, Wolfe v Wolfe UM waiver/rejection must be signed by all ‘named insureds,’ Linko v Indemnity Ins</p> <p><input type="checkbox"/> Choice-of-law favors the place where the contract was made, but UM contracts are special, Csulik v Nationwide</p> <p><input type="checkbox"/> Persons who are not insured, parties to the contract, or intended beneficiaries, may sue to re-form a UM policy, Schumacher v Kreiner</p>	<p>insured in the UM coverage; UM coverage may be amended consistent with statute at any renewal, even less than the two-year period</p>

Formatted: Indent: Left: -0.5", Hanging: 0.5", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"

<input type="checkbox"/> NON-RESIDENT DERIVATIVE CLAIMS	<p>An insured father may make a UM claim based on the death of his non-resident son, <i>Sexton v State Farm</i> (1982), Moore v State Auto (2000)</p>	<p>SB 267 (2000) The injured person must be “insured” in the UM coverage</p>
<input type="checkbox"/> UM COVERAGE NON-AUTO POLICIES	<p>If auto liability coverage, however limited, is provided, UM coverage must be offered, Selander v Erie Ins (1999)</p>	<p>HB 261 (1997) UM coverage is only offered in policies that are “proof of financial responsibility” or umbrellas</p>
<input type="checkbox"/> STACKING UM POLICIES	<p>UM limits from separate policies may be stacked, <i>Auto Owners v Lewis</i> (1984) and <i>Gomulka v State Farm</i> (1984) Inter-family policies may not preclude stacking, Savoie v Grange Mut (1993)</p>	<p>HB 489 (1982) Anti-stacking language is permitted.</p> <p>SB 20 (1994) Both inter-family and intra-family stacking may be excluded</p>
<input type="checkbox"/> OTHER OWNED AUTOS	<p>The “other owned auto” exclusion in UM coverage is invalid, Martin v Midwestern Indemnity (1994)</p>	<p>HB 261 (1997) An “other owned auto” exclusion in UM coverage is permitted</p>
<input type="checkbox"/> SIGNING APPS	<p>UM application must be signed by all “named insureds,” Linko v Indemnity Ins (2000)</p>	<p>HB 261 (1997) Selection of UM coverage by an applicant or named insured binds all named insureds</p>
<input type="checkbox"/> SET-OFF OF LIABILITY LIMITS	<p>Full UM limits are payable in addition to the liability limits without set-off, Savoie v Grange Mut (1993)</p>	<p>SB 20 (1994) Liability limits are set off from UM limits</p>

<p>◆ □ HOUSEHOLD EXCLUSION</p>	<p>If liability coverage is denied under a household exclusion, vehicle is “uninsured,” <i>State Farm v Alexander</i> (1992)</p>	<p>HB 261 (1997) Vehicle available for regular use is not UM. HB (2000) Vehicle available for regular use is UM if liability coverage is denied by household exclusion</p>	<p>Formatted: Indent: Left: 0", Hanging: 0.13", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"</p>
<p>◆ □ DERIVATIVE CLAIMS</p>	<p>A per-person limit of UM coverage is available for each derivative claim, Savoie v Grange Mut (1993)</p>	<p>SB 20 (1994) All claims—res from one person’s injury or death subject to a single per-person limit of coverage.</p>	<p>Formatted: Indent: Left: 0.13", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: 0.25", List tab + Not at 0.5"</p>
<p>◆ □ PUNITIVE DAMAGES</p>	<p>Punitive damages are insurable by UM coverage, <i>Hutchinson v J C Penney Ins</i> (1985)</p>	<p>SB 249 (1986) Punitive damages not payable by UM coverage</p>	<p>Formatted: Indent: Left: 0.13", First line: 0", Bulleted + Level: 1 + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: Not at 0.5"</p>
<p>□ HIT-AND-RUN</p>	<p>Actual contact requirement for hit-and-run UM claims is against public policy, Girgis v State Farm (1996)</p>	<p>HB 261 (1997) Independent corroborative evidence of a “phantom” vehicle will support a UM claim</p>	

APPENDIX B

We make no representations as to whether or not the policy language below will hold up in court or not. Don't rely on it without reviewing your declarations page, and UM &/or UIM coverage part. One needs to make sure the language of all three dovetail together. The intent of this sample is for it to be the framework for designing an UM/UIM umbrella coverage part if you haven't already done so. You will also need to develop pricing and underwriting rules for this coverage part if you haven't already done so.

UNINSURED AND UNDERINSURED MOTORISTS COVERAGE UMBRELLA EXCESS FORM

This policy shall not apply to compensatory damages which an "insured" (see definition of insured below) is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" (see the definitions of uninsured motor vehicle and underinsured motor vehicle below) unless an "insured" is covered for such compensatory damages by valid and collectible underlying insurance as listed under the Schedule of Underlying Insurance on the Declarations page of this policy for the full limit shown. This policy shall then apply excess of such limit (hereinafter referred to as the underlying limit). Coverage of such compensatory damages shall be identical to the coverage of such compensatory damages provided by the coverage part of the underlying insurance listed under such Schedule of Underlying Insurance that provides the applicable underlying Uninsured Motorists Coverage or Underinsured Motorists Coverage except that:

- a) coverage applies excess of the underlying limit, and
- b) the limit of liability is the limit shown on the Declarations page of this policy for Uninsured/Underinsured Motorists coverage.

DEFINITIONS

Insured—For purposes of this coverage, the definition of insured shall be identical to the definition of insured as defined in the coverage part of the underlying insurance listed under the Schedule of Underlying Insurance on the Declarations page of this policy that provides the applicable underlying Uninsured Motorists Coverage or Underinsured Motorists Coverage.

Uninsured Motor Vehicle—Definition of Uninsured Motor Vehicle shall be identical to the definition of Uninsured Motor Vehicle as defined in the coverage part of the underlying insurance listed under the Schedule of Underlying Insurance on the Declarations page of this policy that provides the applicable underlying Uninsured Motorists Coverage.

Underinsured Motor Vehicle—Definition of Underinsured Motor Vehicle shall be identical to the definition of Underinsured Motor Vehicle as defined in the coverage part

of the underlying insurance listed under the Schedule of Underlying Insurance on the Declarations page of this policy that provides the applicable underlying Underinsured Motorists Coverage.

Consider incorporating language that limits the demand for arbitration or the filing of a lawsuit with-in 2 years of the date of accident. See [Policy Language Recommendation](#) in our discussion of Miller v. Progressive. Other Terms and Conditions also need to be incorporated such as Filing of a Claim or Demand for Arbitration, Other Insurance, etc. Use CA 21 33 01 01 as a guide along with other “follow form” excess forms.

APPENDIX C

ISO CA 21 33 01 01 OHIO COMMERCIAL AUTO UM/UIM COVERAGE FORM



"CA 21 33 01
01.doc"

APPENDIX D

ACORD 61 OH 2-2001 OFFER/SELECTION/REJECTION OHIO FORM



"ACORD 61 OH
2-2001.tif"

APPENDIX E

§ 3937.18 Mandatory offering of uninsured and underinsured motorist coverage as of date White paper was created.

Text of Statute

(A) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless both of the following coverages are offered to persons insured under the policy due to bodily injury or death suffered by such insureds:

(1) Uninsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for bodily injury, sickness, or disease, including death under provisions approved by the superintendent of insurance, for the protection of insureds thereunder who are legally entitled to recover from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy.

For purposes of division (A)(1) of this section, an insured is legally entitled to recover if the insured is able to prove the elements of the insured's claim that are necessary to recover from the owner or operator of the uninsured motor vehicle. The fact that the owner or operator of the uninsured motor vehicle has an immunity under Chapter 2744. of the Revised Code or a diplomatic immunity that could be raised as a defense in an action brought against the owner or operator by the insured does not affect the insured's right to recover under uninsured motorist coverage. However, any other type of statutory or common law immunity that may be a defense for the owner or operator of an uninsured motor vehicle shall also be a defense to an action brought by the insured to recover under uninsured motorist coverage.

(2) Underinsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for insureds thereunder for bodily injury, sickness, or disease, including death, suffered by any person insured under the policy, where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are less than the limits for the insured's uninsured motorist coverage. Underinsured motorist coverage is not and shall not be excess insurance to other applicable liability coverages, and shall be provided only to afford the insured an amount of protection not greater than that which would be available under the insured's uninsured motorist coverage if the person or persons liable were uninsured at the time of the accident. The policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured.

(B) Coverages offered under division (A) of this section shall be written for the same limits of liability. No change shall be made in the limits of one of these coverages without an equivalent change in the limits of the other coverage.

(C) A named insured or applicant may reject or accept both coverages as offered under division (A) of this section, or may alternatively select both such coverages in accordance with a schedule of limits approved by the superintendent. The schedule of limits approved by the superintendent may permit a named insured or applicant to select uninsured and underinsured motorists coverages with limits on such coverages that are less than the limit of liability coverage provided by the automobile liability or motor vehicle liability policy of insurance under which the coverages are provided, but the limits shall be no less than the limits set forth in section 4509.20 of the Revised Code for bodily injury or death. A named insured's or applicant's rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be in writing and shall be signed by the named insured or applicant. A named insured's or applicant's written, signed rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's written, signed selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section, and shall be binding on all other named insureds, insureds, or applicants.

Field Code Changed

Unless a named insured or applicant requests such coverages in writing, such coverages need not be provided in or made supplemental to a policy renewal or a new or replacement policy that provides continuing coverage to the named insured or applicant where a named insured or applicant has rejected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer or affiliate of that insurer. If a named insured or applicant has selected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer or affiliate of that insurer, with limits in accordance with the schedule of limits approved by the superintendent, such coverages need not be provided with limits in excess of the limits of liability previously issued for such coverages, unless a named insured or applicant requests in writing higher limits of liability for such coverages.

(D) For the purpose of this section, a motor vehicle shall be deemed uninsured in either of the following circumstances:

(1) The liability insurer denies coverage or is or becomes the subject of insolvency proceedings in any jurisdiction;

(2) The identity of the owner and operator of the motor vehicle cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of this division,

the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence.

(E) In the event of payment to any person under the coverages offered under this section and subject to the terms and conditions of such coverages, the insurer making such payment to the extent thereof is entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury or death for which such payment is made, including any amount recoverable from an insurer which is or becomes the subject of insolvency proceedings, through such proceedings or in any other lawful manner. No insurer shall attempt to recover any amount against the insured of an insurer which is or becomes the subject of insolvency proceedings, to the extent of those rights against such insurer which such insured assigns to the paying insurer.

(F) The coverages offered under this section shall not be made subject to an exclusion or reduction in amount because of any workers' compensation benefits payable as a result of the same injury or death.

(G) Any automobile liability or motor vehicle liability policy of insurance that includes coverages offered under division (A) of this section or selected in accordance with division (C) of this section may, without regard to any premiums involved, include terms and conditions that preclude any and all stacking of such coverages, including but not limited to:

(1) Interfamily stacking, which is the aggregating of the limits of such coverages by the same person or two or more persons, whether family members or not, who are not members of the same household;

(2) Intrafamily stacking, which is the aggregating of the limits of such coverages purchased by the same person or two or more family members of the same household.

(H) Any automobile liability or motor vehicle liability policy of insurance that includes coverages offered under division (A) of this section or selected in accordance with division (C) of this section and that provides a limit of coverage for payment for damages for bodily injury, including death, sustained by any one person in any one automobile accident, may, notwithstanding Chapter 2125. of the Revised Code, include terms and conditions to the effect that all claims resulting from or arising out of any one person's bodily injury, including death, shall collectively be subject to the limit of the policy applicable to bodily injury, including death, sustained by one person, and, for the purpose of such policy limit shall constitute a single claim. Any such policy limit shall be enforceable regardless of the number of insureds, claims made, vehicles or premiums shown in the declarations or policy, or vehicles involved in the accident.

(I) Nothing in this section shall prohibit the inclusion of underinsured motorist coverage in any uninsured motorist coverage provided in compliance with this section.

(J) The coverages offered under division (A) of this section or selected in accordance with division (C) of this section may include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under any of the following circumstances:

(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the uninsured and underinsured motorist coverages are provided;

(2) While the insured is operating or occupying a motor vehicle without a reasonable belief that the insured is entitled to do so, provided that under no circumstances will an insured whose license has been suspended, revoked, or never issued, be held to have a reasonable belief that the insured is entitled to operate a motor vehicle;

(3) When the bodily injury or death is caused by a motor vehicle operated by any person who is specifically excluded from coverage for bodily injury liability in the policy under which the uninsured and underinsured motorist coverages are provided.

(K) As used in this section, "uninsured motor vehicle" and "underinsured motor vehicle" do not include any of the following motor vehicles:

(1) A motor vehicle that has applicable liability coverage in the policy under which the uninsured and underinsured motorist coverages are provided;

(2) A motor vehicle owned by a political subdivision, unless the operator of the motor vehicle has an immunity under Chapter 2744. of the Revised Code that could be raised as a defense in an action brought against the operator by the insured;

(3) A motor vehicle self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered.

(L) As used in this section, "automobile liability or motor vehicle liability policy of insurance" means either of the following:

(1) Any policy of insurance that serves as proof of financial responsibility, as proof of financial responsibility is defined by division (K) of section 4509.01 of the Revised Code, for owners or operators of the motor vehicles specifically identified in the policy of insurance;

(2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section.

Field Code Changed

Field Code Changed

History

HISTORY: 131 v 965 (Eff 9-15-65); 132 v H 1 (Eff 2-21-67); 133 v H 620 (Eff 10-1-70); 136 v S 25 (Eff 11-26-75); 136 v S 545 (Eff 1-17-77); 138 v H 22 (Eff 6-25-80); 139 v H 489 (Eff 6-23-82); 141 v S 249 (Eff 10-14-86); 142 v H 1 (Eff 1-5-88); 145 v S 20 (Eff 10-20-94); 147 v H 261 (Eff 9-3-97); 148 v S 57 (Eff 11-2-99); 148 v S 267. Eff 9-21-2000.

The provisions of §§ 3, 4 of SB 267 (148 v --) read as follows:

SECTION 3. It is the intent of the General Assembly in amending division (A) of section 3937.18 of the Revised Code to supersede the holdings of the Ohio Supreme Court in *Sexton v. State Farm Mut. Auto. Ins. Co.* (1982), 69 Ohio St.2d 431, and *Moore v. State Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27, that division (A)(1) of section 3937.18 of the Revised Code does not permit an insurer to limit uninsured or underinsured motorist coverage in such a way that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer.

SECTION 4. It is the intent of the General Assembly in amending division (C) of section 3937.18 of the Revised Code to make it clear that new rejections of uninsured and underinsured motorist coverages or decisions to accept lower limits of coverages need not be obtained from an insured or applicant at the beginning of each policy period in which the policy provides continuing coverage to the named insured or applicant, regardless of whether a new, replacement, or renewal policy that provides continuing coverage to the named insured or applicant is issued by the insurer or affiliate of that insurer with or without new policy terms or new policy numbers.

© Copyright 2000 Anderson Publishing Co.
Containing legislation passed and filed through November 1, 2000.
[Anderson Publishing Co.](#)

Field Code Changed

Field Code Changed

Field Code Changed