Who is Covered?©

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ISBA Illinois Uninsured and Underinsured Motorist Benefits - A Study and Analysis

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1. **Principles**

   a) **Mandatory:** "[E]very liability insurance policy issued for any motor vehicle registered or principally garaged in Illinois must provide coverage for bodily injury or death caused by an uninsured or hit-and-run vehicle." ***Luechtefeld v. Allstate Insurance Co.***, 167 Ill.2d 148, 152, 212 Ill.Dec. 224, 656 N.E.2d 1058 (1995).

   b) **Not subject to dilution**: Statutory protection against uninsured motorist afforded by this paragraph is mandatory and cannot be diluted by unduly restrictive definitions. ***State Farm Mut. Auto. Ins. Co. v. Pfannebecker***, 1978, 21 Ill.Dec. 469, 64 Ill.App.3d 582, 381 N.E.2d 796; ***Rockford Mut. Ins. Co. v. Economy Fire & Cas. Co.***, App. 5 Dist.1991, 160 Ill.Dec. 187, 217 Ill.App.3d 181, 576 N.E.2d 1141; ***Ellis v. Sentry Ins. Co.***, App. 1 Dist.1984, 80 Ill.Dec. 453, 124 Ill.App.3d 1068, 465 N.E.2d 565.

   c) **Subject to Statute:** It is fundamental that an insurance policy must comport with the applicable statutory provisions of the Illinois Insurance Code (Insurance Code) in effect at the time the policy was drafted. ***Norris v. National Union Fire Ins. Co. of Pittsburgh, PA***, (Ill.App. 1 Dist. 2001) 2001 WL 1472594, 260 Ill.Dec. 62.

   d) **Purpose of uninsured (UM) coverage:** The purpose of the uninsured-motorist statute is to provide coverage that compensates an insured at least to the same extent he or she would have recovered if a motorist who had carried the minimum insurance required by law had injured him. ***Luechtefeld v. Allstate Ins. Co.***, (Ill. 1995) 656 N.E.2d 1058, 167 Ill.2d 148, ***Hoglund v. State Farm Mutual Automobile Insurance Co.*** (1992), 148 Ill.2d 272, 277, 170 Ill.Dec. 351, 592 N.E.2d 1031; Menke ***v. Country Mutual Insurance Co.*** (1980), 78 Ill.2d 420, 36 Ill.Dec. 698, 401 N.E.2d 539; ***Putnam v. New Amsterdam Casualty Co.*** (1970), 48 Ill.2d 71, 89, 269 N.E.2d 97; see also Glidden ***v. Farmers Automobile Insurance Association*** (1974), 57 Ill.2d 330, 338, 312 N.E.2d 247; ***Squire v. Economy Fire & Casualty Co.*** (1977), 69 Ill.2d 167, 176, 13 Ill.Dec. 17, 370 N.E.2d 1044, ***Ullman v. Wolverine Insurance Co.*** (1970), 48 Ill.2d 1, 4, 269 N.E.2d 295; ***Barnes v. Powell*** (1971), 49 Ill.2d 449, 452-53, 275 N.E.2d 377. The statute is intended is to make certain not only that the insured is minimally

insured but also that the insured makes an informed and intelligent decision regarding uninsured motorist coverage and the availability of excess uninsured motor vehicle limits. ***Nila v. Hartford Ins. Co. of Midwest***, App. 2 Dist.2000, 245 Ill.Dec. 350, 312 Ill.App.3d 811, 728 N.E.2d 81.

e) **Purpose of underinsured (UIM or UDIM) coverage:** The purpose of the underinsured motorist statute and policies written thereunder is to place the insured in the same position he or she would have occupied if injured by a motorist who carried liability insurance in the same amount as the policyholder. ***Smith v. Allstate Ins. Co.***, App. 1 Dist.1999, 244 Ill.Dec. 405, 312 Ill.App.3d 246, 726 N.E.2d 1, modified on denial of rehearing; and ***Koperski v. Amica Mut. Ins. Co.***, App. 1 Dist.1997, 222 Ill.Dec. 862, 287 Ill.App.3d 494, 678 N.E.2d 734. Or stated another way the statute is intended to provide underinsured motorist (UIM) coverage is to place insured in same position he would have occupied if tort-feasor had carried adequate insurance. ***State Farm Mut. Auto. Ins. Co. v. Villicana***, App. 2 Dist.1997, 222 Ill.Dec. 447, 286 Ill.App.3d 1013, 677 N.E.2d 981, appeal allowed 226 Ill.Dec. 139, 173 Ill.2d 547, 684 N.E.2d 1342, reversed 230 Ill.Dec. 30, 181 Ill.2d 436, 692 N.E.2d 1196.

2. Contract Interpretation

a) **Interpreted in favor of the insured:** Contract should be interpreted in favor of the insured and in favor of coverage. Ambiguous contract terms should be construed in favor of the insured, ***Glidden v. Farmers Automobile Insurance Ass'n*** (1974), 57 Ill.2d 330, 312 N.E.2d 247.

b) **Coverage:** Generally, courts will not construe a policy in a way that renders the coverage provided of no value to the insured. ***Glazewski v. Coronet Insurance Co.***, 108 Ill.2d 243, 250, 91 Ill.Dec. 628, 483 N.E.2d 1263 (1985); American ***Country Insurance Co. v. Cline***, 309 Ill.App.3d 501, 511, 242 Ill.Dec. 971, 722 N.E.2d 755 (1999); ***Michael Nicholas, Inc. v. Royal Ins. Co. of America***, (Ill.App. 2 Dist. 2001) 748 N.E.2d 786, 321 Ill.App.3d 909.

i) **Liberally construed in favor of insured:** Provisions that limit or exclude coverage will be interpreted liberally in favor of the insured. ***American States Insurance Co. v. Koloms***, 177 Ill.2d 473, 479, 227 Ill.Dec. 149, 687 N.E.2d 72 (1997); ***Fidelity and Cas. Co. v. Merridew***, (Ill.App. 1 Dist. 2001) 2001 WL 1609083; ***Krusinski Const. Co. v. Northbrook Property and Cas. Ins. Co.***, (Ill.App. 1 Dist. 2001); 2001 WL 1411888, 260 Ill.Dec. 113.

ii) **Interpreted in favor of coverage:** Illinois courts have consistently recognized that "insurance policies are to be liberally construed in favor of coverage and where an ambiguity exists in the terms, the ambiguity will be resolved in favor of the insured and against the insurer." ***Jones v. Universal Cas. Co.***, (Ill.App. 1 Dist. 1994) 630 N.E.2d 94, 257 Ill.App.3d 842; ***State Security Insurance Co. v. Burgos*** (1991), 145 Ill.2d 423, 438, 164 Ill.Dec. 631, 583 N.E.2d 547.

iii) **Construing limitations on coverage:** In controlling obligations and rights of insurers, any limitations placed on uninsured motorist coverage by an insurer should be liberally construed in favor of the policyholder. ***Norris v. National Union Fire Ins. Co. of Pittsburgh, PA***, (Ill.App. 1 Dist. 2001) 2001 WL 1472594, 260 Ill.Dec. 62; ***State Farm Mutual Automobile Insurance Co. v. Pfannebecker***, 64 Ill.App.3d 582, 586, 21 Ill.Dec. 469, 381 N.E.2d 796 (1978), citing Barnes ***v. Powell***, 49 Ill.2d 449, 275 N.E.2d 377 (1971).

iv) **Territorial Limitations:** The courts have upheld territorial limitations on uninsured motorist coverage. In ***Mijes v. Primerica Life Ins. Co.***, App. 1 Dist.2000, 251 Ill.Dec. 589, 317 Ill.App.3d 1097, 740 N.E.2d 1160, the court found that it was not a violation of Illinois's public policy where an insurance policy only provided liability and uninsured motorist coverage for rental vehicles in Mexico if the vehicle was within 75 miles of the United States border at the time of the accident.

v) **Intentional Conduct:** It is irrelevant if the uninsured motorist was acting negligently or intentionally at the time that they cause the injuries. ***Dyer v. American Family Ins. Co.***, (Ill.App. 2 Dist. 1987) 512 N.E.2d 1071, 159 Ill.App.3d 766.

c) **Ambiguities:** An insurance policy provision is ambiguous if it is "subject to more than one reasonable interpretation" when reading the policy as a whole. ***State Farm Mutual Automobile Insurance Co. v. Pfannebecker*** (1978), 64 Ill.App.3d 582, 585, 21 Ill.Dec. 469, 381 N.E.2d 796. The determination of ambiguity may be made as a matter of law, but not "in a factual vacuum"; among other factors, "the court should consider the predominate purpose of the contract which is to indemnify the insured." ***Illinois Central Gulf R.R. v. Continental Casualty Cos.*** (1985), 132 Ill.App.3d 310, 313, 87 Ill.Dec. 274, 476 N.E.2d 1266; ***Jones v. Universal Cas. Co.***, (Ill.App. 1 Dist. 1994) 630 N.E.2d 94, 257 Ill.App.3d 842.

"The touchstone when determining whether an ambiguity exists regarding an insurance policy is whether the relevant portion is subject to more than one reasonable interpretation, not whether creative possibilities can be suggested. 'Reasonableness is the key.' " ***Pekin Insurance Co. v. Estate of Goben***, 303 Ill.App.3d 639, 646, 236 Ill.Dec. 689, 707 N.E.2d 1259 (1999), quoting Bruder ***v. Country Mutual Insurance Co.***, 156 Ill.2d 179, 193, 189 Ill.Dec. 387, 620 N.E.2d 355 (1993); see also, ***Domin v. Shelby Ins. Co.***, (Ill.App. 1 Dist. 2001) 2001 WL 1482982,

i) **Ambiguities interpreted in favor of coverage:** "When an insurance policy is ambiguous, the insured shall be deemed covered." ***Shelton v. Country Mutual Insurance Co.*** (1987), 161 Ill.App.3d 652, 113 Ill.Dec. 426, 655, 515 N.E.2d 235.

3. Vehicles Covered

a) **Off Road:** need not be covered.

b) **Dual Purpose vehicles cannot be excluded:** ***State Farm Mut. Auto. Ins. Co. v. Pfannebecker***, 1978, 21 Ill.Dec. 469, 64 Ill.App.3d 582, 381 N.E.2d 796, thus, although four-wheel drive pickup trucks, jeep-type vehicles and two wheel drive dune buggies could fall within a contract clause excluding uninsured motor vehicle and underinsured motor vehicle due to their off-road capabilities are covered if they meet the statutory licensing and titling requirements for use on public roads.

c) The absence of a few cosmetic items should not affect the classification of a vehicle. In ***Economy Fire and Cas. Co. v. Stevens***, (Ill.App. 5 Dist. 1981) 426 N.E.2d 321, 99 Ill.App.3d 1006, the vehicle lacked a speedometer, windshield and both headlights and taillights and the court found that uninsured motor vehicle coverage should be extended to the use that vehicle.

4. Persons Covered

a) **Named:** are only covered if designated. ***Pellegrini v. Jankoveck***, App. 1 Dist.1993, 185 Ill.Dec. 185, 245 Ill.App.3d 35, 614 N.E.2d 319, appeal denied 190 Ill.Dec. 894, 152 Ill.2d 563, 622 N.E.2d 1211.

b) **Family – Relatives (Other Insurance):** In ***Carlson v. American Family Ins. Co.***, (Ill.App. 2 Dist. 1992) 585 N.E.2d 1272, 223 Ill.App.3d 943, the court found that policy language that excluded from the term "relative" any person who has their own separate insurance coverage although they would otherwise fit the definition of a "relative.

c) **Family – Relatives (Owning a Vehicle):** The courts have held that it is not improper to exclude a family member from coverage, as a relative or member of a household, where they own their own vehicle even though that vehicle has no insurance coverage. ***American Family Mutual Insurance Co. v. Kittinger*** (1986), 147 Ill.App.3d 586, 101 Ill.Dec. 74, 498 N.E.2d 256, also ***Carlson v. American Family Insurance Co.*** (1992), 223 Ill.App.3d 943, 946, 166 Ill.Dec. 250, 585 N.E.2d 1272

d) **Family Members (drivers) not listed**: Where a family member is not listed as occasional driver under automobile they are covered by clause in policy covering permissive users. ***Ratliff v. Safeway Ins. Co.***, (Ill.App. 1 Dist. 1993) 628 N.E.2d 937, 257 Ill.App.3d 281.

i) Corporations v. Partnerships

(1) **Corporations:** The fact that the policy mentions "family members" does not in itself render the policy ambiguous because the record shows that the policy forms are specifically designed so the "named insured" can be

either an "individual", a "partnership", or a "corporation", and the policy language states that "family members" are covered only when the named insured is designated as an "individual". ***Rosenberg v. Zurich American Ins. Co.***, (Ill.App. 1 Dist. 2000) 726 N.E.2d 29, 312 Ill.App.3d 97; ***Rohe ex rel. Rohe v. CNA Ins. Co.***, App. 1 Dist.2000, 244 Ill.Dec. 442, 312 Ill.App.3d 123, 726 N.E.2d 38. See also, ***Rosenberg v. Zurich American Ins. Co.***, (Ill.App. 1 Dist. 2000) 726 N.E.2d 29, 312 Ill.App.3d 97.

(2) **Partnership:** Where a policy of insurance is issued to a partnership a child of one of the partners was covered under the policies uninsured motor vehicle coverage. ***Pekin Ins. Co. v. Estate of Goben,*** (Ill.App. 5 Dist. 1999) 707 N.E.2d 1259, 303 Ill.App.3d 639.

e) **Resident of Household (living with)**: "The phrase "resident of the household" has no fixed meaning. ***Coriasco v. Hutchcraft***, 245 Ill.App.3d 969, 970, 185 Ill.Dec. 769, 615 N.E.2d 64 (1993). The reasonable interpretation of the phrase requires a case-specific analysis of intent, physical presence, and permanency of abode. ***Coriasco***, 245 Ill.App.3d at 971, 185 Ill.Dec. 769, 615 N.E.2d 64. However, the controlling factor is the intent, as evinced primarily by the acts, of the person whose residence is questioned. ***Cincinnati Insurance Co. v. Argubright***, 151 Ill.App.3d 324, 330, 104 Ill.Dec. 371, 502 N.E.2d 868 (1986). If an absence from a residence is intended to be temporary, it does not constitute an abandonment or forfeiture of the residence. ***Raprager v. Allstate Insurance Co.***, 183 Ill.App.3d 847, 859, 132 Ill.Dec. 224, 539 N.E.2d 787 (1989)." ***Farmers Auto. Ins. Ass'n v. Williams***, (Ill.App. 2 Dist. 2001) 746 N.E.2d 1279, 321 Ill.App.3d 310.

i) **Occasional & Transitory Presence:** In ***Coley v. State Farm Mutual Automobile Insurance Co.*** (1989), 178 Ill.App.3d 1077, 128 Ill.Dec. 200, 534 N.E.2d 220, the plaintiffs attempted to have their deceased grandson, declared an insured under their policy. The grandson had left his father's home and moved in with his grandfather two years prior to graduating from high school. From that time the grandfather provided him with food, clothing, and a room. After high school graduation, he enlisted in the Air Force for a four-year period and was stationed at several locations throughout the United States and overseas. The evidence further showed that the he kept some of his belongings at his grandfather's house and continued to use it as his address for receiving mail. The court concluded that because decedent was a young emancipated man serving in the armed forces, where he could have only an occasional, transitory presence in his grandfather's house, he did not "live with" his grandfather for the purpose of the insurance policy.

ii) **Separate Residence Not Presently in School:** In ***State Farm Mutual Automobile Insurance Co. v. Taussig*** (1992), 227 Ill.App.3d 913, 169 Ill.Dec. 845, 592 N.E.2d 332, the court held that the insured's son, the defendant, was not "living with" the insured so as to bring him within the policy. The defendant had moved from his parent's home into an apartment.

Defendant's father signed the lease on his behalf. In the month preceding defendant's January 1988 accident, defendant slept and ate most of his meals at his apartment, where he remained until October 1988. The court held that defendant's argument that he was away at school and intended on returning home to be without merit. Defendant voluntarily terminated his education well before the accident. He testified that it was his intention to "go out and make it on his own," thereby negating his position that he was away at school. The court further held that while defendant continued to use his parent's mailing address and occasionally visited his parents, he was not "living with" them for purposes of the insurance policy.

iii) **Estranged Spouses**: In ***State Farm Mut. Auto. Ins. Co. v. Reinhardt***, (Ill.App. 5 Dist. 1993) 625 N.E.2d 842, 253 Ill.App.3d 823, the court held that although a husband and wife were not physically living together at the time of insured event, where they were married and continued to visit and have intimate relations together, and were attempting reconciliation an ambiguity existed in the policy where the spouses were living together at the time that the policy was purchased.

iv) **Children of Divorced Parents**: In ***Casolari v. Pipkins***, (Ill.App. 5 Dist. 1993) 624 N.E.2d 429, 253 Ill.App.3d 265, a child was found to be a covered family member under uninsured motor vehicle coverage where both parents had physical custody and visitation was shared equally between them, with the child residing half of the time with her mother and half of the time with her father.

In ***Coriasco v. Hutchcraft***, (Ill.App. 5 Dist. 1993) 615 N.E.2d 64, 245 Ill.App.3d 969, a minor child of divorced parents, who had regular visitation with a noncustodial parent was held to be a resident of both households for purposes of the underinsured motorist provision.

f) Exclusions:

i) **Owned Vehicle:** Where claimant owned the vehicle in which they were injured there is no coverage. ***Karlov v. Home Indem. Co.***, (Ill.App. 1 Dist. 1996) 672 N.E.2d 904, 284 Ill.App.3d 844.

ii) **Family exclusion:** A family exclusion clause does not bar claim for uninsured motorist benefits. ***Safeco Ins. Co. v. Seck***, App. 2 Dist.1992, 167 Ill.Dec. 636, 225 Ill.App.3d 397, 587 N.E.2d 1251. Where the family member exclusion of the liability coverage applies the driver becomes uninsured bringing into play the uninsured motor vehicle coverage. ***Kerouac v. Kerouac***, App. 3 Dist.1981, 54 Ill.Dec. 678, 99 Ill.App.3d 254, 425 N.E.2d 543. The same rule applies to interspousal immunity situations. ***Allstate Ins. Co. v. Elkins***, 1979, 33 Ill.Dec. 139, 77 Ill.2d 384, 396 N.E.2d 528.

iii) ***Third Party Contribution:*** A family exclusion clause does not apply when third party has the right of contribution when an insured's vehicle is driven by person who is not in the insured's household or in claims against family member of injured person. ***Safeco Ins. Co. v. Seck***, App. 2 Dist.1992, 167 Ill.Dec. 636, 225 Ill.App.3d 397, 587 N.E.2d 1251

iv) **Family of Named insured:** It is not against public policy to restrict uninsured motorist coverage to family of named individuals when the incident occurs while not in automobile owned by family member. ***Pellegrini v. Jankoveck***, App. 1 Dist.1993, 185 Ill.Dec. 185, 245 Ill.App.3d 35, 614 N.E.2d 319, appeal denied 190 Ill.Dec. 894, 152 Ill.2d 563, 622 N.E.2d 1211.

g) **Passengers:** If passenger is injured in uninsured vehicle he must make a claim under his own policies uninsured motorist provision. ***Rockford Mut. Ins. Co. v. Economy Fire & Cas. Co.***, App. 5 Dist.1991, 160 Ill.Dec. 187, 217 Ill.App.3d 181, 576 N.E.2d 1141.

h) **Pedestrians:** The Illinois statute pertaining to uninsured motorist coverage does not specify that pedestrians must be included in underinsured and uninsured motorist coverage 726 N.E.2d 29, 312 Ill.App.3d 97, ***Rosenberg v. Zurich American Ins. Co.***, (Ill.App. 1 Dist. 2000). In spite of this many policies cover insured individuals who are pedestrians when they are struck by an uninsured motor vehicle. See, ***Groshans v. Dairyland Ins. Co.***, (Ill.App. 3 Dist. 2000) 726 N.E.2d 138, 311 Ill.App.3d 876; ***Jones v. State Farm Mut. Auto. Ins. Co.***, (Ill.App. 1 Dist. 1997) 682 N.E.2d 238, 289 Ill.App.3d 903; ***Buais v. Safeway Ins. Co.***, (Ill.App. 1 Dist. 1995) 656 N.E.2d 61, 275 Ill.App.3d 587.

5. **Events Covered:** uninsured motor vehicle and underinsured motor vehicle coverage is not limited to covering collisions between two automobiles.

a) **Alighting:** In ***Mathey ex rel. Mathey v. Country Mut. Ins. Co.***, (Ill.App. 1 Dist. 2001) 748 N.E.2d 303, 321 Ill.App.3d 805, the plaintiffs were passengers on school buses and exited the buses within a matter of minutes before an uninsured motor vehicle drove onto the sidewalk the students and other passengers were entitled to the uninsured motor vehicle coverage under the school district insurance policy.

In Lumbermen's ***Mutual Casualty Co. v. Norris***, 15 Ill.App.3d 95, 303 N.E.2d 505 (1973), the court found that uninsured motor vehicle coverage extended to a plaintiff even though she was injured while outside the vehicle. The plaintiff, a passenger in the insured car, was sitting on its front fender after the car had parked next to other cars on a gravel road. Plaintiff noticed an approaching vehicle on a collision course. She then jumped off the insured vehicle and ran to the front of the insured car in an attempt to get out of the way. While doing so, she was struck by the approaching vehicle.

It is not contrary to public policy for a UM policy to exclude coverage while getting in or out of another vehicle that has UM coverage as would never leave injured insured without UM coverage, and clause thus leaves injured person in substantially same position he would have occupied if driver of uninsured vehicle had obtained minimum liability insurance required by law. ***Luechtefeld v. Allstate Ins. Co***., 1995, 212 Ill.Dec. 224, 167 Ill.2d 148, 656 N.E.2d 1058.

In ***Cohs v. Western States Ins. Co.,*** App. 1 Dist.2002, 264 Ill.Dec. 201, 329 Ill.App.3d 930, 769 N.E.2d 1038, appeal denied 271 Ill.Dec. 923, 201 Ill.2d 563, 786 N.E.2d 181, the court held that under the policy language an employee who was not a named insured but who was only covered under the "while occupying" provision of the underinsured motor vehicle coverage did not have underinsured motor vehicle coverage for an injury caused by an underinsured motor vehicle while the employee was 12 feet from his employers covered motor vehicle. In that case the plaintiff had driven his employers motor vehicle to a job site to perform some service and repair work on behalf of his employer. In the course of performing his work he was returned to the employers vehicle to obtain parts necessary to perform his work. After he obtained the necessary parts from the vehicle he walked 12 feet from the vehicle to perform his job tasks, around one to two minutes expired before he was hit by the underinsured motor vehicle. The court found a nexus between the plaintiff's injury and the use of the vehicle however they also found that he was not covered at the time as he did not meet the policy definition of someone who was covered "while occupying" the insured vehicle.

> "The insurance policy, number WDS7-054243-21 (Western Policy), was issued by Western to DRW for the period November 16, 1995, to November 15, 1996. The Illinois underinsured motorist coverage endorsement of Western Policy stated, in relevant part:
>
> > "A. COVERAGE
> >
> > 1. We will pay all sums the 'insured' is legally entitled to recover as compensatory damages from the owner or driver of an 'underinsured motor vehicle.' The damages must result from 'bodily injury' sustained by the 'insured' caused by an 'accident.' The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the 'underinsured motor vehicle.'"
>
> The endorsement also defined, in pertinent part:
>
> > "B. WHO IS AN INSURED
> >
> > 1. You
> >
> > * * *
> >
> > 3. ***Anyone else 'occupying'*** a covered 'auto' or a temporary substitute for a covered 'auto.' ***.
> >
> > * * *
> >
> > F. ADDITIONAL DEFINITIONS

* * *

2. 'Occupying' means in, upon, getting in, on, out or off."

* * *

> At the hearing below, plaintiff's counsel focused primarily on the ***liability section*** in the principle Western Policy, which states:
>
> "A. COVERAGE
>
> We will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto'." (Emphasis added).

The court pointed out that the incident was caused by a underinsured motor vehicle and that there was a nexus between the employee/plaintiff's use of the covered vehicle. They pointed out that although these elements were met there was no evidence that the plaintiff was "upon, getting in, on out of or of" the covered vehicle and there was neither actual or virtual physical contact with the insured vehicle. **NOTE**: the decision might have been different if the plaintiff had been the named insured as there is no requirement of "occupying" the insured vehicle under the policy. Lesson read the policy very carefully.

b) **Objects from Automobiles:** In ***Illinois National Insurance Co. v. Palmer*** (1983), 116 Ill.App.3d 1067, 72 Ill.Dec. 454, 452 N.E.2d 707, the court found uninsured motor vehicle coverage where an object, in that case a lug nut, was thrown or propelled by the uninsured vehicle and struck the injured party. In ***Yutkin v. U.S. Fidelity & Guar. Co.***, (Ill.App. 1 Dist. 1986) 497 N.E.2d 471, 146 Ill.App.3d 953, the court found that uninsured motor vehicle coverage did not exist where insured vehicle struck what appeared to be piece of tire, which flew into the air striking insureds' windshield causing a crash. The court stated that there was no evidence that the object lying in the road was anything more than debris that could have been left by anyone.

Other states have held that an uninsured motor vehicle claim may exist where the insured's vehicle striking an integral part of a vehicle which is lying on the road (***Adams v. Mr. Zajac*** (1981), 110 Mich.App. 522, 313 N.W.2d 347). (See generally Anno., 25 A.L.R.3d 1299 (1984).) Compare with ***State Farm Fire and Cas. Co. v. Rosenberg***, App. 1 Dist.2001, 253 Ill.Dec. 793, 319 Ill.App.3d 744, 746 N.E.2d 35, below.

c) **Car Jackings:** Injuries suffered by insured when carjacker shot her with a gun while stealing her car when carjacker drove her vehicle while insured rode in passenger seat did not arise out of the operation or use of insured's vehicle but rather from the gun. ***State Farm Fire and Cas. Co. v. Rosenberg***, App. 1 Dist.2001, 253 Ill.Dec. 793, 319 Ill.App.3d 744, 746 N.E.2d 35. See also ***Ramirez v. State Farm Mut. Auto. Ins. Co.***, 331 Ill.App.3d 77, 264 Ill.Dec. 915, 771 N.E.2d 619 (Ill. App., 2002) Where the Appellate Court held that the insurance company was entitled to a summary judgment declaring that uninsured

motorist coverage did not apply to death of plaintiff's decedent, who lost control of his vehicle after he was shot by occupant of uninsured vehicle; because death did not "arise out of" operation of uninsured vehicle. Gunshot wound to driver is not an event that is within reasonable contemplation of parties to insurance contract. Further, "arising out of" requirement of policy is not ambiguous. This result would is different where the insured was injured because a criminal dragged her for a distance. ***Dyer v. American Family Ins. Co.***, (Ill.App. 2 Dist. 1987) 512 N.E.2d 1071, 159 Ill.App.3d 766; and ***Country Companies v. Bourbon by Bourbon,*** (Ill.App. 5 Dist. 1984) 462 N.E.2d 526, 122 Ill.App.3d 1061.

d) **Avoiding pedestrians:** where a motorist swerves to avoid hitting a pedestrian who was walking to get gas for his car, coverage applied as the incident arose out of the use of an uninsured motor vehicle by the pedestrian. ***Aryainejad v. Economy Fire & Cas. Co.***, App. 3 Dist.1996, 215 Ill.Dec. 593, 278 Ill.App.3d 1049, 663 N.E.2d 1107

e) **Standing near:** In ***Abrell v. Employers Ins. of Wausau***, 796 N.E.2d 643, 343 Ill. App.3d 260, 277 Ill.Dec. 557 (Ill. App., 2003), the Third District Appellate Court held that where a vendor was in contact with a van and had been using the rear as a makeshift desk was covered by the van's insurance when she was struck by a car because she was "occupying" the van in the sense she was "in" or "upon" it, even though she did not intend to use the van for transportation.

Conclusion

To determine if coverage exists one must carefully analyze all applicable insurance policies (for all vehicles as well as household policies) with the statutes, cases and particular facts of the case in mind.