

## Sample Claims Involving Minimum Auto Limits

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### **Western Kansas**

One of our clients is an elderly farmer who was insistent on carrying minimum auto limits. Our agency does not in good conscience sell minimum limits, but he found an agency that would. One afternoon he came into our office wanting to add an additional insured to his farm policy. When we asked for more details on the addition, he indicated that he had been found at-fault in an auto accident where the other driver was severely injured. The injured driver sued. As part of the settlement, the elderly man is allowed to live on his farm until his death at which time his heirs will not inherit the farm but instead the injured driver will receive the farm.

### **McPherson County**

A client's employee was rear-ended by a drunk driver driving in excess of 140 MPH. Thankfully neither driver was killed but both vehicles were totaled and the client's employee suffered extensive injuries. The at-fault driver only carried minimum liability limits which did not even cover the totaled pickup of my client. As a result my client incurred an underinsured motorist claim in excess of \$55,000 under their own auto policy.

### **Johnson County**

I insured an elderly couple who was hit by an underinsured motorist. Because of the insufficient limits the at-fault driver carried and the extent of their injuries, they had to turn to the underinsured motorist provisions in their own policy to pay out \$500,000 in medical bill claims.

### **Barton County**

We are early into an auto claim for one of our clients. The bill to airlift the insured driver from the accident scene was alone \$27,500.00. The insured driver was in ICU for a few days, then moved to a regular room, and will have several months of follow-ups and therapy. His medical bills will certainly top out in the \$150,000 - \$200,000 range, well in excess of the \$25,000 bodily injury minimum limit. The damages to the insured's vehicle were \$12,830.50 with an additional \$250.00 in vehicle rental fees, well in excess of the \$10,000 property damage minimum limit.

### **Johnson County**

I insured a doctor who carried \$500,000 in auto liability. One night on I-70 the doctor and his wife were hit by a car crossing the median. The couple, along with the other driver, were killed. The other driver carried minimum limits. The at-fault driver's policy paid out only \$50,000 to estate for their deaths, while the couple's own policy paid out the remaining \$450,000.

### **Shawnee County**

We insured a motorcyclist who was hit by a driver carrying only the minimum limits. He could not work for several weeks after the surgery. Because there was no PIP coverage on his cycle and the at-fault driver did not carry adequate coverage, he suffered a severe financial crisis.

### **Sedgwick County**

I insured an elderly gentleman who insisted on carrying the minimum limits against our advice. For several years I tried to talk him into carrying at least 100/300/100, noting that the premium for that level of coverage would have only been around \$20 more per policy period. On a Friday afternoon I had made another change he wanted to his policy and again asked him if he wanted to increase his auto limits and he declined. Two days later he and wife were running an errand, a car passed him and he lost control of his vehicle. He ended up in a used car lot where he damaged six autos. The damage was substantial, but under the minimum limits, \$10,000 was the most the policy would pay out. Retired and on a limited income, he will be making payments to the car dealer for the remaining damage for years to come.

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### **Reno County**

Our insured's vehicle and another vehicle collided at an intersection. The other driver was injured severely, spent over two years in an Assisted Care facility and ultimately passed away. A percentage of fault was placed on both drivers, however our insured driver received the greater percentage. Fortunately, our insured driver carried adequate coverage as the total payout on her auto and umbrella policies was in excess of \$1.9 million.

### **Dickinson County**

One of our clients is a soldier whose wife was killed in an auto accident on I-70. The driver who caused the accident was carrying Kansas' minimum limits on his policy. Because the other driver was not required to carry adequate coverage, my client had to turn to his own auto insurance policy to pay the claim on his vehicle. Any time an insured files a claim against their own policy, it tends to result in higher premiums. Therefore, in addition to having to pay out-of-pocket for the uncovered portion of his wife's funeral expenses, he is also paying the price every month through higher auto premiums for an accident that was through no fault of his own.

### **Johnson County**

My neighbor was driving a new car on the highway and was hit from behind by a driver with minimum limits coverage. Fortunately, no one was injured, but the \$10,000 in property damage coverage that the at-fault driver carried would not replace the new \$42,000 Ford Explorer that he had totaled. My neighbor ended up making a claim on his own insurance, which caused him to be out the deductible and be upside-down on the vehicle because of the depreciation on the brand new Explorer. He had \$4,000 in out-of-pocket costs for an accident he did not cause in order to replace his vehicle with a similar one.

### **Western Kansas**

A driver in a large SUV ran a red light. Our client who was riding a motorcycle saw what was happening and laid his motorcycle over to try and avoid the accident. What he did probably saved his life but it did not stop the accident. The motorcycle was totaled when it was hit by the SUV. Though the at-fault driver had an SUV valued new today at over \$65,000, they chose to carry only minimum auto limits which was not enough to cover our client's expenses. The \$10,000 property damage limit did not cover half of what the motorcycle was worth. The \$25,000 bodily injury limit did not come close to covering the motorcyclist's shoulder surgery or medical bills totaling more than \$70,000.

### **Southeast Kansas**

Our client's employee was hit while on the job by a driver who had minimum limits. Due to the extensive injuries of the employee, the business owner has had to file \$5 million in claims against his own work comp policy because the at-fault driver was underinsured with the state minimum limits.

### **Shawnee County**

We had a client who was hit by a driver carrying the minimum limits. The accident caused the total loss of her auto. She had to turn to her own insurance carrier to pay for the replacement of her car, as his \$10,000 limits were inadequate. Additionally, her medical bills exceeded the \$25,000 minimum limits he carried causing her to hire an attorney and sue rather than having the claim hit her own policy for underinsured motorist coverage.

### **Johnson County**

I had a client that we advised and quoted for higher liability limits but she was adamant that she only needed the state minimums. Three months later, her child ran the car into the side of a building. It caused structural damage. The policy paid out \$10,000 in property damage and she was sued by the building owner for the remaining thousands of dollars in repairs that were not covered.

### **Southeast Kansas**

We insure a nonprofit foundation in our community where the president of the organization and a major funder of the foundation were hit head-on and killed by a person that only carried the state's minimum limits of liability. The at-fault driver's policy only paid out \$50,000 for the death, leaving the foundation to file against its Underinsured Motorist coverage for the remainder of the claim.

### **Western Kansas**

This example was tragic. Our client was in their truck on a two lane highway. She saw two cars coming in the opposite direction. The second car did not notice that the first had slowed slightly and rear ended the first car. That collision pushed the first car into the other lane and directly into the path of our client. They hit head-on killing the other driver and injuring our driver seriously. The driver at-fault was carrying minimum limits. I cannot speak to the cost of damages incurred by the deceased driver's family, but to date our client has had to fall back on her own policy's Underinsured Motorist coverage to cover more than \$140,000 in medical and auto bills.



## **APPENDIX B, RECENT LEGISLATIVE PROPOSALS**

### **UNINSURED MOTORIST LEGISLATION**

#### **2005-2006**

- **2005 HB 2305.** The bill would have amended KSA 40-284, which deals with uninsured motorist coverage and underinsured motorists and liability protections. The bill would have removed the language that the insured may recover what the uninsured/underinsured motorist coverage exceeds in the bodily injury coverage of the other motorist. The language would have instead allowed the recovery to be to the limits of the amount of liability actually available to the injured insured. (Recommended by House Committee; failed on an HCOW vote.)
- **SB 321.** The bill would have required a real-time, online insurance verification system bill with an implementation deadline (January 1, 2008) for the Kansas Department of Revenue.
- **SB 322.** The bill was the first 2006 legislative review of the penalties under the Kansas Automobile Injury Reparations Act (KAIRA). Among provisions of the bill, as introduced, was the proposed amendment that a third offense of a motorist being uninsured would result in a felony charge (currently there is no specific penalty for a third offense). The bill also increased fines. Senate Committee amendments added the contents of **Sub. for HB 2690**. Discussion of both SB 321 and SB 322 led to the introduction of SCR 1619.
- **SCR 1619.** This resolution called for a task force study of an electronic verification system (online insurance database system for verification of proof of insurance). The 17-member task force was composed of insurance company representatives, legislators, and agency officials. The task force was to report its recommendations and conclusions on the feasibility of such system to the Legislature no later than the commencement of the 2007 Session. **[ENACTED]**
  - The Legislature again considered proposals to address uninsured motorists and amendments to current procedures and penalties. The resolutions reauthorizing the Electronic Motor Vehicle Financial Security Verification System Task Force, **2007 SCR 1603** and **2008 SCR 1616**, were enacted into law.
- **Sub. for HB 2690.** The bill addressed resuspension and revocation of drivers' licenses. The language was placed into SB 322, after it was approved by the Senate Committee on Financial Institutions and Insurance, and then placed in Senate Sub. for HB 2366. The conference report for Senate Sub. for HB 2366 was adopted by the first house. No action was taken by the second house. Sub. for HB 2690 previously had been incorporated, as a floor amendment, into HB 2938.

The language that passed through HB 2690-SB 322 and HB 2690-HB 2938 was placed into **Sub. for HB 2706** (conference report) which passed the Legislature. However, the proposed penalties (fine increases, third offense felony, imprisonment) were not enacted by the 2006 Legislature. **[ENACTED]**

- **HB 2755.** This bill was introduced by the House Insurance Committee during the 2006 Session, but did not have a hearing. The bill incorporated the language from 2005 HB 2305 (right to recovery).

## 2007-2008

- **SB 615.** The bill, as amended by the Senate Committee of the Whole, would have amended KAIRA to:
  - Require that a prosecution for permitting an uninsured motor vehicle to be operated on a highway, or failure to provide proof of financial security, be stayed if evidence of financial security is presented to the court, unless there is a request from the defense attorney to set the matter for trial;
  - Require that if the Department of Revenue indicates the insurance was not in force on the date in question, the Department would be required to deliver a certified copy to any defense attorney;
  - Require that all criminal proceedings would be stayed and eventually dismissed, if the person whose license is suspended or revoked and who is involved in an accident, enters into an agreement with any driver or driver's insurer to pay for such damage and fulfills the agreement within 12 months;
  - Require that all criminal proceedings would be reinstated if the person whose license is suspended or revoked and who is involved in an accident, enters into an agreement with any driver or driver's insurer to pay for such damage and defaults on the agreement;
  - Authorize a court to order that a convicted person's motor vehicle be impounded or immobilized for up to 30 days for failure to maintain financial security or liability insurance (see 2008 HB 2867);
  - Prohibit the owner of a motor vehicle from recovering the first \$5,000 of property damage to his or her motor vehicle if the owner failed to maintain financial security on the vehicle;
  - Exempt a lienholder from the prohibition from recovering for property damage to a motor vehicle; and
  - Require that any moneys not paid by insurance companies to the uninsured motorist would be required to be paid to the Attorney General for deposit into the Crime Victims Compensation Fund. (Adopted by Senate; Hearing in House Committee; died in Committee)
- **HB 2378.** The bill would have amended KAIRA to prohibit a vehicle owner from recovering property damage to the owner's vehicle if the owner did not have

insurance and was involved in an accident with an insured vehicle. In situations where the accident was the fault of the insured driver, recovery of property damage would have been prohibited for the uninsured vehicle. (2007 Committee hearing; died in Committee)

- **HB 2867.** The bill would have amended KAIRA to provide that the court, in addition to other penalties specified in current law, may order the convicted person's vehicle be impounded or immobilized up to 30 days for the failure to have or maintain financial security. The vehicle owner would be responsible for towing, impoundment, and storage fees. The court would have been required to consider, prior to impoundment, whether the impoundment would result in the loss of employment of the convicted person or member of the person's family or whether the owner or family member would be impaired from attending school or obtaining medical care. Provisions also were made for personal property retrieval and lease vehicles. (Introduced in 2008, died in Committee).

## 2009-2010

- **H. Sub. for SB 260** would have required the Secretary of Revenue, in consultation with the Insurance Commissioner, to implement a motor vehicle financial security verification and compliance system by March 1, 2011. The system, among other things, would have been required to utilize data reported by insurers and send requests to insurers for verification of insurance via services established by the insurers with enhancements, additions, and modification as required by the state agencies. The bill also would have required the Department of Revenue, after the system was operational for two years, to report to the Legislature regarding the benefits and costs of the verification system to the State, insurers, and the public and the effectiveness of the program [system] in reducing the number of uninsured motor vehicles. The substitute bill died on general orders in the House. **SB 260**, as amended by Senate Committee of the Whole, would have provided that anyone operating an uninsured vehicle who, at the time of auto accident, had not maintained personal injury protection (PIP) benefits coverage is prohibited from having a cause of action for non-economic loss. This provision would not have applied to persons who failed to maintain coverage for a period of 30 days or less and had maintained continuous coverage for at least one year prior to this coverage lapse. The bill also would have barred persons convicted of, or having pled guilty to, an alcohol or drug-related violation in connection with an auto accident from this recovery.
- **SB 392** and **HB 2474**, as introduced, were nearly identical bills directing the Secretary of Revenue, in consultation with the Insurance Commissioner, to develop and implement an on-line motor vehicle and financial security verification system. The bills did not specify the type of system to be utilized and instead required the Secretary to select and enter into a contract with a third party contractor to develop, implement, operate, and maintain the system. Insurance companies would have been required to submit policy information to this contractor on a daily basis. There was no committee action on SB 392; HB 2474 was modified by the House Committee on Insurance and recommended as H. Sub. for SB 260 (described above).
- **SCR 1631**, as amended by the Senate Committee of the Whole, would have reactivated the task force created by 2008 SCR 1616 to study the design and

implementation of an electronic motor vehicle financial security verification system. The bill passed the Senate and was referred to House Committee. The bill died in committee.

## 2011-2012

- **SB 136.** The bill provided that anyone operating an uninsured vehicle who, at the time of auto accident, had not maintained personal injury protection (PIP) benefits coverage is prohibited from having a cause of action for non-economic loss (see 2009 SB 260, as amended by SCOW). Amended by House Committee, the bill specified that this prohibition would not apply if the court finds that the person did not knowingly drive a motor vehicle that was without PIP coverage. **[ENACTED]**
- **HB 2291.** The bill would amend KSA 40-284 to extend underinsured motorist coverage to “any occupant of the insured vehicle or their heirs at law.” Additionally, these individuals would be permitted to recover from the owner or operator another vehicle the same limits of the policy as are available to the owner of the vehicle they are occupying. Current law pertains only to the policyholder (does not address the vehicle's occupants). The bill was referred to the House Committee on Insurance. No action, to date, has been taken on this matter.