Modernizing Underinsured Motorist Coverage in Missouri: Removing the Insurance Paradox Between Uninsured and Underinsured Coverage via Legislative Action

David W. Reynolds
reynolds.davidwayne@gmail.com
MODERNIZING UNDERINSURED MOTORIST COVERAGE IN MISSOURI: REMOVING THE INSURANCE PARADOX BETWEEN UNINSURED AND UNDERINSURED COVERAGE VIA LEGISLATIVE ACTION

INTRODUCTION

After leaving work late, Peter Gibbons, who recently purchased his daughter a used car, the older model version of his wife’s, finds himself on a narrow two-lane road. Looking ahead, he sees two headlights approaching rapidly and takes notice as they dip from his lane to the oncoming traffic lane. Reacting quickly, Peter veers to the side, but is struck by the oncoming vehicle in a moment that seems to last forever. He becomes disorientated, overcome by the confusion, pain, and knowledge that he is seriously injured as his now mangled car comes to a halt in a shallow ditch on the side of the road. In this moment he knows not to whom the dancing headlights belonged, nor does he care. In this moment he thinks only of his family and of contacting them.

After an extended hospital stay and the prospect of extensive physical rehabilitation, Peter attempts to move forward from this life-altering event and contacts his automobile insurance carrier. During this call, the insurer records a statement of the events and asks Peter for a copy of the police report. He observes that the police report lists the name of the other driver, described as “Driver 2,” along with other pertinent details, such as the make and model of the vehicles involved. It is only now that Peter begins to realize the importance of Driver 2, and his stomach begins to turn with fear as he scans across to a box marked “Insurance.”

In Missouri, drastic differences exist concerning the recovery available to an innocent party involved in an accident depending on the insurance status of the tortfeasor. Some of the most important aspects of these differences depend upon the innocent party’s automobile insurance policy, as opposed to the policy of the tortfeasor.\(^1\) These differences can severely impact the available recovery of an innocent party based solely upon whether the tortfeasor maintained state-required automobile insurance.\(^2\) Although an intuitive thinker

1. Compare Cameron Mut. Ins. Co. v. Madden, 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc), with Rodriguez v. Gen. Accident Ins. Co. of Am., 808 S.W.2d 379, 383–84 (Mo. 1991) (en banc) (illustrating the differences a tortfeasor’s insurance status (uninsured versus underinsured, respectively) makes concerning the recovery under the innocent party’s insurance policy).

2. Compare Cameron, 533 S.W.2d at 544–45, with Rodriguez, 808 S.W.2d at 383–84.
may conclude that an individual would be better compensated financially in instances where the negligent party to an accident maintains auto insurance as required under Missouri state law, that same intuitive thinker may need to read on. As a result of statutory interpretation and Missouri public policy, an innocent party obtains greater insurance benefits when the tortfeasor does not maintain insurance versus when the tortfeasor maintains state-minimum insurance.3

Currently, Missouri law is in a state of flux concerning instances where the tortfeasor maintains insurance but damages to the innocent party are greater than the tortfeasor’s liability coverage.4 This uncertainty negatively impacts both insurers and consumers by creating unpredictable judicial results and unfairly limiting recovery for insureds.5 To rectify this dilemma, the Missouri legislature ought to reformulate the insurance regulations concerning a type of coverage known as underinsured motorist coverage in order to increase predictability for insurers and provide adequate protection for consumers.

Protection from the mistakes of others is an essential aspect of insurance created by spreading the risks, and subsequent losses, to an aggregate group, thereby lessening the impact on any one individual.6 An essential legal aspect of insurance coverage is the idea that the purchase of insurance is a contract between an insurer and a consumer, subject to the constraints of the law.7 These contracts, entered into between insurers and insureds, provide economic relief when an unforeseen circumstance occurs.8 By spreading the risk over a large population, the individual benefits by paying an affordable premium that provides economic protections.9 Insurance companies are able to make a profit by properly forecasting the aggregate cost and charging a premium across that aggregate which is greater than that loss.10 In order to accurately forecast that loss, insurance companies require certainty regarding minimum insurance requirements.11

3. See infra Part I.A.
5. Id. at 11.
8. See BUCKHAM, supra note 6, at 6–9 (discussing the origins of insurance as well as the need for risk mitigation in the financial advancement of modern societies).
9. Id.
10. Id. at 11–13.
11. Id. at 12–13 (“For both insurer and insured to benefit from the contract, an insurable risk must be identified . . . as opposed to the uncertainty of an unquantifiable adverse event.”).
Insureds, the other weight to this balance, require sufficient and affordable coverage to protect against catastrophic loss. As the quasi-mediator to this balance between insurance certainty and consumer protection, state governments create a regulatory scheme aimed to protect the interests of both entities. These insurance regulatory schemes vary from state to state and are comprised of statutes, common law, and public policy.

In the state of Missouri, both legislative and judicial devices regulate a type of auto insurance known as underinsured motorist coverage. Although it is one of the newer types of coverage offered by insurance companies, underinsured motorist coverage becomes extremely important when an innocent party’s damages from an accident exceed the liability insurance coverage of the tortfeasor. Thus, when a tortfeasor is liable for damages in an amount greater than their liability insurance, the injured party may rely on their own underinsured motorist coverage to help alleviate the financial burden resulting from the tortfeasor’s inadequate liability coverage.

This Comment will outline the benefits and shortcomings associated with underinsured motorist (“UIM”) coverage in Missouri and propose a legislative remedy to foster predictability, uniformity, and greater consumer protection. Because of the commonalities and shared history between UIM coverage and uninsured motorist coverage (“UM”), this paper must also explain and analyze UM coverage. Part I outlines Missouri’s law for contract interpretation, which includes interpreting insurance policies; defines both UM and UIM coverage; and defines terms important to both types of coverage in order to develop a concrete roadmap and the basis of knowledge required to understand and analyze the issues presented in this comment. Part II examines the current state of both types of coverage in Missouri through an analysis of Missouri court decisions and legislative actions.

Part III takes a step back from the state of Missouri by taking a cursory view of the laws and policies affecting UIM coverage in all fifty states. This view illustrates the trend throughout the United States of enacting legislation affecting UIM coverage. Part IV proposes a solution to alleviate the problems Missouri faces with the uncertainty and unpredictability of UIM coverage. This solution entails a legislative enactment defining aspects intrinsic to UIM

12. Robert C. Niesley, Payment Bond Claims Handling and the Law of Bad Faith, in THE LAW OF PAYMENT BONDS 358 (Kevin L. Lybeck & H. Bruce Shreves eds., 1998) (stating that the two main goals of state regulation are maintaining insurer solvency and promoting the equitable, moral, and legal interests of policyholders).
13. Id.; Kimball, supra note 7, at 472.
15. Ward, supra note 4, at 1, 8.
17. Hopkins, 896 S.W.2d at 935.
coverage while simultaneously providing semi-reciprocal treatment between UM and UIM coverage, thereby creating certainty for insurers and sufficient protections for insureds. The overall gains from an insurer’s ability to predict costs of UIM policies, coupled with an individual’s ability to receive similar protections under UM and UIM coverage, benefit both the insurance and consumer interests of Missouri.18

I. DEFINING ASPECTS OF UIM AND UM COVERAGE AND PRESENTING CONTRACT INTERPRETATION LAW OF MISSOURI

To create a basic understanding and concrete roadmap for this topic, a certain degree of background information is necessary. This background will be provided by exploring the application and history of UIM and UM coverage, the definition and application of the insurance terms “stacking” and “set-off provision,” and the judicial interpretation standards for insurance contracts in Missouri.

A. History of UM and UIM Motorist Coverage

Missouri requires UM coverage within all automobile insurance policies to protect an innocent party when a tortfeasor fails to maintain the state-required minimum coverage.19 This either means the tortfeasor does not maintain insurance—a violation of Missouri law—or maintains liability insurance from a different state where the required minimum limits are less than those required in Missouri, provided that there is no provision in the out-of-state insurance policy for matching foreign minimum coverage.20 When an innocent party sustains damage greater than the protections offered by the tortfeasor—which are typically non-existent21—UM coverage, as a part of the injured party’s insurance, provides financial support to subsidize the incurred costs.22

19. See Mo. Rev. Stat. § 379.203 (2011) (requiring the inclusion of UM coverage within all automobile insurance policies issued in the state of Missouri with a minimum protection against death or bodily injury of $25,000 as required by Mo. Rev. Stat. § 303.030(5) (2011)).
20. Thomas D. Bixby, Resolving a Peculiar Paradox: Uninsured Motorist Coverage Applied to an Underinsured Tortfeasor, 62 Mo. L. Rev. 591, 591, 606 (1997) (concluding that if an individual maintains liability insurance from another state at less than the levels required in Missouri then UM coverage, and not UIM coverage, shall be the source of recovery for the injured party); see also State Farm Mut. Ins. Co. v. Ardrey, 353 S.W.3d 437, 439–40 (Mo. Ct. App. 2011).
22. Id. (“The purpose of UM coverage is to protect individuals from financially irresponsible motorists who neither carry liability insurance nor have the financial resources to compensate people whom they injure through the negligent use of a motor vehicle.”)
The creation of UM coverage predates the creation of UIM coverage and stems from consumer demand in the 1950s for additional protections to avoid substantial loss to innocent parties caused by uninsured motorists.\(^{23}\) During this time, a boom in consumer ownership of automobiles necessitated greater protections.\(^{24}\) Although many insurance companies met the consumer demand by voluntarily offering UM coverage within general automobile policies, state legislatures nationwide took action.\(^{25}\)

Across the country, legislatures created universal UM coverage by statutorily mandating that all automobile insurance policies within their respective states contain UM provisions.\(^{26}\) By the 1970s, this push for coverage reached every state and mandated the offering, if not inclusion, of UM coverage in all automobile policies.\(^{27}\) Missouri enacted its statute requiring universal UM coverage for automobile policies issued within the state in 1967 with the enactment of section 379.203 of the Missouri Revised Statutes.\(^{28}\) The initial enactment included the mandate to provide UM coverage for Missouri insureds,\(^{29}\) and it has withstood all four of the amendments to section 379.203.\(^{30}\)

Following the enactment of statutory mandates, a paradox developed where an insured could recover more when the tortfeasor was uninsured than

\(^{23}\) Jeffrey A. Kelso & Matthew R. Drevlow, *When Does the Clock Start Ticking? A Primer on Statutory and Contractual Time Limitation Issues Involved in Uninsured and Underinsured Motorist Claims*, 47 Drake L. Rev. 689, 689–90 (1999); see also Slaughter, supra note 21, at 741 (“The first UM coverage was offered by New York insurance companies in 1955. In 1957, New Hampshire became the first state to require insurance companies to include UM coverage in its automobile insurance policies.” (internal citations omitted)).

\(^{24}\) Rusty Monhollon, *Suburbanites and Suburbia*, in *BABY BOOM: PEOPLE AND PERSPECTIVES* 149, 155 (Rusty Monhollon ed., 2010) (stating that from 1950 to 1960, vehicle registrations in America increased from 40 million to 74 million).

\(^{25}\) Kelso & Drevlow, supra note 23, at 689–90.

\(^{26}\) Id. at 690.

\(^{27}\) Id.


\(^{29}\) Dawson v. Denney-Parker, 967 S.W.2d 90, 92 (Mo. Ct. App. 1998). The *Dawson* court reprinted the original text of section 379.203:

> No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any 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 coverage is provided therein or supplemental thereto, in not less than the limits for bodily injury or death set forth in section 303.030, RSMo, 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, resulting therefrom . . . .

Id.

when the tortfeasor maintained minimal liability coverage. For instance, if an insured maintained $50,000 of UM coverage and suffered $50,000 of damages from a collision with an uninsured motorist, the insured would receive the extent of the UM coverage limits: $50,000. However, if the insured suffered $50,000 of damages and the tortfeasor maintained state minimum insurance of $25,000, that individual would receive only the $25,000 of coverage through the tortfeasor’s liability policy. UIM insurance developed to counteract that paradox. That is, UIM insurance developed to provide sufficient protections available to an injured party regardless of the insurance status of the tortfeasor, including the maintenance of state minimum insurance. By the 1990s, more than thirty states mandated UIM coverage offerings as a response to this paradox—Missouri has not.

Analogous to UM coverage, UIM coverage protects an injured party when a tortfeasor maintains inadequate liability insurance to cover the full extent of damages sustained. The two types of coverage diverge at the point of application. UIM coverage applies when the liability limits of the tortfeasor equal or surpass the required minimum liability limits under Missouri law but the damages sustained by the injured party go beyond the amount of liability coverage carried by the tortfeasor. The fundamental design of UIM coverage is to pay “for losses incurred because another negligent motorist’s coverage [was] insufficient to pay for the injured person’s actual losses.” For example, if an insured suffers $50,000 in damages, and the tortfeasor maintains $100,000 of liability insurance, the injured party is not underinsured. However, if that tortfeasor maintains the required state minimum liability insurance, $25,000 in Missouri, then that injured party is underinsured in the amount of $25,000.

UIM coverage further differs from UM coverage in that no statutory mandate currently exists that requires the inclusion of UIM protection within Missouri automobile insurance policies—UIM coverage is an optional

32. See id.
33. See id.
34. Id.
35. Id.
36. Richie v. Allied Prop. & Cas. Ins. Co., 307 S.W.3d 132, 135 (Mo. 2009) (en banc); Thomas, supra note 31, § 65.01[1][b].
coverage separately offered by the insurer and purchased by the consumer. Since UIM coverage is optional, the Missouri law of contracts governs coverage disputes. No Missouri public policy reaches UIM coverage.

B. Stacking and Set-off Provisions

Insurance policies in Missouri routinely include anti-stacking clauses and set-off provisions to better control and limit the payouts to insureds. These terms often represent the crux of UIM coverage disputes between insureds and insurers as the provisions control both the limits and scope of recovery. Missouri allows set-off provisions in both UM and UIM coverage when the offset is a recovery from the tortfeasor. However, anti-stacking clauses are prohibited in Missouri UM coverage, even though they are permitted within UIM coverage. Although different rights exist depending on the type of coverage invoked, the meanings of the terms stacking and set-off remain the same.

The ability to stack coverages is the process of obtaining benefits from additional policies on the same claim when recovery from the first policy alone

41. Hopkins, 896 S.W.2d at 935.
42. Turner, 824 S.W.2d at 21.
43. See Rodriguez v. Gen. Accident Ins. Co. of Am., 808 S.W.2d 379, 383–84 (Mo. 1991) (en banc); infra notes 125–28 and accompanying text.
44. DAVID D. NOCE, MISSOURI PRACTICE, INSURANCE LAW & PRACTICE § 7:35 (2d ed. 2011) [hereinafter NOCE, INSURANCE LAW & PRACTICE] ("generally . . . the limits of the liability of a liability insurer may be established by contract. Contractual provisions reducing the limits of underinsured motorist coverage by reason of such [third party] payments have been recognized as valid[,] if they are “not ambiguous.”). These anti-stacking provisions take many forms. The following is an anti-stacking provision held to be unambiguous by the Missouri Supreme Court:

No. 5. Other Automobile Insurance in the Company—With respect to any occurrence, accident, death, or loss to which this and any other automobile insurance policy issued to the named insured or spouse by the company also applies, the total limit of the Company’s liability under all such policies shall not exceed the highest applicable limit of liability or benefit amount under any one such policy.

Noll v. Shelter Ins. Cos., 774 S.W.2d 147, 149 (Mo. 1989) (en banc).
45. Bough & Heath, supra note 38, at 210 (“The policy language will determine whether stacking underinsured coverage is permissible and whether an insurer is entitled to a setoff.”); see also Ward, supra note 4, at 11 (discussing the importance for insurers to pay careful attention to Missouri court decisions concerning anti-stacking and set-off provisions).
47. Cameron Mut. Ins. v. Madden, 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc) (prohibiting enforcement of anti-stacking provision within UM coverage); Rodriguez, 808 S.W.2d at 383–84 (permitting the enforcement of anti-stacking provisions within UIM coverage).
48. See NOCE, INSURANCE LAW & PRACTICE, supra note 44, at § 7:35 (regarding stacking); id. § 7:19 (regarding set-off provisions, also known as offsets).
would be inadequate to cover the accrued damages. Insureds accomplish this by combining the coverage limits of every owned insured vehicle to achieve maximum coverage. The ability to stack may bridge across insurance companies to include similar coverages purchased from several insurers. For ease of explanation, assume a Missouri individual owns three vehicles with a $50,000 UM coverage limit on each. If two coverages are purchased through Insurer A, and the third coverage is purchased from Insurer B, that insured can stack the intra-policy UM coverage limits from Insurer A, along with stacking the inter-policy UM coverage from Insurer B, to create $150,000 total UM coverage limits.

These higher amounts of available compensation result in higher payouts from an insurer, leading to increased costs to cover insureds compared to when stacking is unavailable. To offset the increased costs of coverage, insurance companies typically raise the premiums charged to consumers. Even with the increased cost, insureds benefit from increased coverage limits when they combine multiple policies, and they are able to receive sufficient coverage to compensate for damages sustained more easily. A cap on the compensation exists at the lesser of the total damages or the combined limits of coverage. These caps both prevent insureds from receiving windfalls when injured by a negligent tortfeasor and permit insurers to reasonably predict the costs of coverage.

49. BLACK'S LAW DICTIONARY 1534 (9th ed. 2009).
51. Id. at 1 (describing the distinction between inter-policy stacking, which involves the combining the limits coverage of vehicles insured under multiple policies, and intra-policy stacking, which involves combining the limits of coverage of vehicles insured under the same policy). Missouri courts have recognized both:

“Stacking” refers to an insured’s ability to obtain multiple insurance coverage benefits for an injury either from more than one policy, as where the insured has two or more separate vehicles under separate policies, or from multiple coverages provided for within a single policy, as when an insured has one policy which covers more than one vehicle. Niswonger v. Farm Bureau Town & Country Ins. Co. of Mo., 992 S.W.2d 308, 313–14 (Mo. Ct. App. 1999) (citing Tresner v. State Farm Mut. Ins. Co., 957 S.W.2d 380, 382 (Mo. Ct. App. 1997)).
52. PROP. CAS. INSURERS ASS’N, supra note 50, at 2.
53. Id.
54. Id. The states that permit stacking limit the recoverable compensation at the amount of total damages. The evidence illustrates that insurers pay higher claims on average in states that allow stacking than in those states that do not permit stacking. The higher payouts, combined with the compensation cap of the total damages, allow an inference that insureds required additional coverage to cover the damages associated with their accident. See id. at 2, 5.
55. See NOCE, INSURANCE LAW & PRACTICE, supra note 44, at § 7:35.
A set-off provision is a method insurers use to deduct the tortfeasor’s liability limit from the amount payable to an insured, either under UM or UIM coverage. The method of computing a set-off dramatically affects the amount of compensation an injured insured recovers. One method of computing a set-off, known as damage limits set-off, is to subtract the amount recovered from a tortfeasor from the total amount of damages sustained by the insured. In this method, if an insured purchased $50,000 of UIM coverage and sustains $100,000 of damages from a tortfeasor who held $25,000 of liability coverage, the insured can recover the full $50,000 UIM coverage limit. The set-off provision subtracts the $25,000 liability coverage from the total damages, creating $75,000 in remaining liability insured by the $50,000 UIM coverage.

The other method used to compute a set-off, known as limits of coverage set-off, favors the insurer of the injured party by subtracting the tortfeasor’s liability policy limit from the limit of the injured party’s coverage. Using this method, if an insured purchased $50,000 of UIM coverage and sustains $100,000 in damages from a tortfeasor who held $25,000 of liability coverage, the insured recovers only $25,000 of the UIM coverage limit. The set-off provision subtracts the $25,000 liability coverage from the $50,000 limit of UIM coverage, creating a remainder of $25,000 in UIM coverage for the insured’s $75,000 in remaining damages. In the first example, the insured must absorb $25,000 in damages not protected by insurance, while in this second example the insured must absorb $50,000 in unprotected damages.

A slightly different way to visualize set-off provisions is to view them in the context of what triggers, or activates, the UIM coverage. The first set-off method discussed above is akin to a damages trigger—the trigger occurs when the amount of damages exceed the amount of the tortfeasor’s liability coverage. After determining the trigger point, the liability policy limits are deducted from the total damages to establish the total amount payable to the insured, capped at the limits of UIM coverage. Under this trigger point, the

57. Id.
58. See id. (deducting the tortfeasor’s insurer’s payment of $60,000 from the total damages of $1.8 million in determining that the full amount—$300,000—of the insured’s UIM coverage must be paid out, because $1.74 million exceeded that amount).
59. Id. at 139–40. The court in Ritchie declined to apply limits of coverage set-off, despite the insured’s attempts to argue its validity. Id. at 141.
60. PROP. CAS. INSURERS ASS’N, supra note 50, at 3.
61. Id.
62. Id.
amount recoverable by the insured equals the sum of the tortfeasor’s policy limits and the complete UIM coverage limits, capped at the total damages. 63

The second method used to calculate an insurer’s available set-off, as discussed above, is akin to a limits trigger. The trigger occurs when both the damages and the UIM coverage limits surpass the liability limits of the tortfeasor. 64 When the circumstances trigger UIM coverage in this context, the amount paid from the UIM coverage is the difference between the tortfeasor’s liability policy and the UIM coverage limits. 65 The liability limits of the tortfeasor are deducted from the UIM limits to determine the amount of coverage available to an insured. The cap on recovery under a limits trigger is the greater of the tortfeasor’s liability limits or the UIM coverage limits, not exceeding the amount of damages. 66

C. Missouri Courts’ Interpretation of Insurance Contracts and Provisions

If an insurer and insured disagree on whether the insurance contract permits stacking, or if they disagree on the applicable set-off calculation method, Missouri courts will interpret the insurance policy according to Missouri contract law. 67 Missouri courts invoke the four-corners approach to contract interpretation and thus enforce the provisions of a contract as written. 68 Interpretation of an insurance contract is a matter of law reviewed de novo. 69 When determining the coverage afforded within an insurance policy, the contract must be construed as a whole, rather than as detached provisions or clauses. 70 Missouri law states that if an insurance contract is clear and unambiguous, the court does not have the power to rewrite the contract and must construe the contract as written. 71 If only a single reasonable interpretation exists as to the extent of coverage offered within an insurance contract, the language of the contract will control, absent a statutory mandate or public policy consideration to the contrary. 72

63. Id.
64. Id.
65. PROP. CAS. INSURERS ASS’N, supra note 50, at 3.
66. Id.
68. Eisenberg v. Redd, 38 S.W.3d 409, 411 (Mo. 2001) (en banc) (citing J. E. Hathman, Inc. v. Sigma Alpha Epsilon Club, 491 S.W.2d 261, 264 (Mo. 1973) (en banc)).
70. Id. (quoting Seeck v. Geico Gen. Ins. Co., 212 S.W.3d 129, 133 (Mo. 2007) (en banc)).
71. Todd v. Mo. United Sch. Ins. Council, 223 S.W.3d 156, 163 (Mo. 2007) (en banc) (“Definitions, exclusions, conditions and endorsements are necessary provisions in insurance policies. If they are clear and unambiguous within the context of the policy as a whole, they are enforceable.”).
72. Ritchie, 307 S.W.3d at 142.
However, if a court determines an ambiguity exists within an insurance contract, the court must determine the proper interpretation of that ambiguity.73 This multi-step process begins with determining whether an ambiguity exists in the first place by examining the specific contract in dispute.74 According to Missouri caselaw, an “ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy.”75 If a provision contradicts other aspects or clauses of the insurance policy, or if the provision can be reasonably interpreted with more than one meaning, Missouri courts declare the insurance contract to contain an ambiguity.76 When investigating an insurance contract for ambiguities, a court will view the contract using “the meaning that would ordinarily be understood by the layman who bought and paid for the policy.”77 When viewing the policy in this way, words are ambiguous if they are “reasonably open to different constructions.”78

To determine the proper interpretation of an ambiguity that exists within an insurance contract, a court must view the ambiguity in terms of all reasonable interpretations.79 As a method of protecting the layman consumer, Missouri courts view any ambiguity in favor of an insured.80 Thus, after finding an ambiguity, a court will determine whether an ordinary person could reasonably expect coverage in that instance.81 If there are multiple reasonable interpretations of a provision located within an insurance contract, when viewed as a whole, the interpretation that favors the insured will control to determine the coverage dispute.82

Although an ambiguity may exist, a court must not revise the contract and must still view the contract as written.83 If ambiguity exists but all reasonable interpretations of the provision still render coverage unattainable, a court must abide by the contract and find that no coverage exists.84 A court is not free to create coverage where none exists when viewing an ambiguity.85

---

74. Ritchie, 307 S.W.3d at 135.
75. Id. (quoting Seeck, 212 S.W.3d at 132).
76. Lutsky v. Blue Cross Hosp. Serv., Inc., of Mo., 695 S.W.2d 870, 875 n.7 (Mo. 1985) (en banc).
81. Brugioni, 382 S.W.2d at 710–11.
82. Id.; Ritchie, 307 S.W.3d at 135.
83. Todd v. Mo. United Sch. Ins. Council, 223 S.W.3d 156, 163 (Mo. 2007) (en banc) (“Courts may not unreasonably distort the language of a policy or exercise inventive powers for the purpose of creating an ambiguity when none exists.”).
84. Id. at 164–65.
85. See id. at 163.
Ambiguities do not attach solely to the meaning of a specific provision but also to the entire meaning of a contract. 86 Where an insurance contract in Missouri promises certain coverage in one part, that coverage cannot be taken away by a different clause within the insurance policy without implicating a patent ambiguity. 87 As a result, if a specific provision of the insurance contract promises coverage, but another provision seemingly excludes that coverage, the court must determine an ambiguity exists as a result of uncertainty in the policy and afford the previously promised coverage to the insured. 88

Along with this ambiguity rule, Missouri provides for two other circumstances where provisions of a contract may not be enforceable as written: if a contract provision is against a Missouri statute, or if the provision is against Missouri public policy. 89 If the provision is against a Missouri statute or is against Missouri public policy, the insurance provision is rendered void while the remaining portion of the contract remains valid. 90 While seemingly simple, this approach does have its own intricacies in determining when the public policy of Missouri creates a penumbral right to coverage and voids a contract provision. Generally, a court will look to the plain meaning of the language within a statute and will inquire into the intent of the enacting legislature when determining Missouri public policy. 91 For example, and discussed more thoroughly later, Missouri courts, as a matter of public policy, found a penumbral right to stack UM coverages when the damages exceed a single UM policy limit. 92

II. EVOLUTION OF THE MISSOURI STANDARDS FOR UM AND UIM POLICIES

UM coverage in Missouri became mandatory with the enactment of section 379.203 of the Revised Statutes of Missouri. 93 Following this enactment, the


87. Lutsky v. Blue Cross Hosp. Serv., Inc., of Mo., 695 S.W.2d 870, 875 (Mo. 1985) (en banc) ("If a contract promises something at one point and takes it away at another, there is an ambiguity.").

88. Id.

89. See Rodriguez v. Gen. Accident Ins. Co. of Am., 808 S.W.2d 379, 383–84 (Mo. 1991) (en banc) (holding that in the absence of ambiguity or state public policy, and implying by lack of statutory mandate that insurers carry underinsured motorist coverage, the policy stands unambiguous as written).

90. Cameron Mut. Ins. Co. v. Madden, 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc) (rendering void provision within UM coverage as against Missouri public policy, as created by Missouri statute).

91. Id.

92. Id.; see infra Part II.A.

93. MO. REV. STAT. § 379.203; Dawson v. Denney-Parker, 967 S.W.2d 90, 92 (Mo. Ct. App. 1998).
Supreme Court of Missouri expanded the rights granted to insureds through the public policy enunciated by the 1967 statute. 94 Although this granted insureds greater rights in the area of UM coverage, those same benefits did not carry into UIM coverage, according to the Missouri Supreme Court. 95 As long as an insurer treated the types of coverages separately, so would the Missouri courts. 96 Due to the lack of an enunciated public policy concerning UIM coverage, insureds typically faced strict judicial interpretation and enjoyed fewer rights. 97 However, two 2009 Missouri Supreme Court decisions recently changed the landscape of UIM coverage 98 and now demonstrate the need to legislatively regulate UIM coverage in Missouri.

A. Enunciation of Missouri’s Public Policy Concerning UM Coverage and the Lack of a Similar Public Policy Regarding UIM Coverage

The creation of a public policy consideration concerning UM coverage occurred following the enactment of section 379.203. Following the enactment, the Missouri Supreme Court interpreted the intent of the legislature and the overriding public policy considerations. However, due to the lack of a parallel statute regarding UIM coverage, the Missouri Supreme Court declined to extend the public policy considerations beyond UM coverage.

1. Enunciation of Missouri’s Public Policy Concerning UM Coverage

Decided by the Missouri Supreme Court in 1976, *Cameron Mutual Insurance Co. v. Madden* permitted stacking of UM policies in all instances where the insured maintained UM coverage over several vehicles, even across policies purchased from different insurers. 99 Through *Cameron*, the court established the existence of a penumbral right to stack UM coverages following the statutory mandate to include UM coverage within all insurance policies issued in Missouri. 100 In *Cameron*, the insurer sought a declaratory

94. *Cameron*, 533 S.W.2d at 544–45.
96. Niswonger v. Farm Bureau Town & Country Ins. Co., 992 S.W.2d 308, 314 (Mo. Ct. App. 1999) (“[T]he existence of UIM coverage and its ability to be stacked are determined by the terms of the contract entered into between the insurer and insured; and in the absence of any public policy mandating UIM coverage, if the policy language is unambiguous in disallowing stacking, the courts will not create such extra coverage.”).
97. *See* Trapf v. Commercial Union Ins. Co., 886 S.W.2d 144, 147–48 (Mo. Ct. App. 1994) (holding that insureds are not entitled to UIM coverage and that the lack of a provision granting UIM coverage does not alone render the policy language ambiguous).
99. 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc).
100. *Id.* at 542.
judgment to determine whether an insurance policy, when insuring more than one vehicle, could limit the amounts of UM coverage to the state minimum—then $10,000. The defendant insured argued that the state minimum coverage applied to each vehicle and that the public policy of Missouri against reducing the state minimum coverage of any vehicle permitted the stacking of the state minimum coverages.

Drawing heavily from the analysis in a comparable Florida Supreme Court case, *Tucker v. Government Employees Insurance Co.*, the Missouri Supreme Court determined that insurers are not free to limit the benefits paid for by the insured through policy clauses designed to prohibit stacking of each vehicle’s coverage. The court held that the insured maintained the ability to stack the policies of several vehicles for an accident involving a single vehicle, up to the limits of the damages sustained by the insured. Because the court relied on the public policy it presumed the legislature had intended, it did not concern itself with whether clauses listed within the policy unambiguously attempted to limit the ability of the insured to stack coverages. The court stated that “the public policy expressed in 379.203 prohibits the insurer from limiting an insured to only one of the uninsured motorist coverages provided by a policy,” and that all such coverages are available to an insured, “provided, of course, that insured is limited to recovery of damages suffered.”

Missouri public policy did not permit a prohibition on the insured’s recovery; therefore, the court did not determine whether the policy contained an ambiguity, as argued in the alternative by the insured. Whereas a finding resting on whether an ambiguity exists requires a case-by-case determination of whether the policy at hand properly limited the scope of recovery, the public policy pronouncement made by the court changed the analysis of stacking in the context of UM coverage. The analysis changed from one of contract interpretation to one of state policy—as a matter of law, Missouri permits the stacking of UM coverages when an insured maintains coverage for multiple vehicles and one of those vehicles sustains damage from an uninsured motorist.

Following *Cameron*, Missouri courts continue to recognize the prohibition on insurers from enforcing clauses precluding stacking of

---

101. *Id.* at 538–39.
102. *Id.* at 539.
103. 288 So. 2d 238 (Fla. 1973) (construing a statute whose language tracked that of the Missouri statute at issue as entitling the insured to stack coverages).
104. *Cameron*, 533 S.W.2d at 544–45.
105. *Id.*
106. *Id.* at 545.
107. *Id.* at 544–45.
108. *Id.* at 545.
109. *See supra* notes 73–82 and accompanying text.
coverages provided under multiple policies or where UM coverage for multiple vehicles exists under a single policy.111

As a result of Cameron, insurance companies received predictable results stemming from the concrete judicial interpretation of UM insurance policies.112 Insurers can better determine the costs of insuring individuals with multiple vehicles and do not have any doubt as to whether insureds will be able to use the coverage of all their policies in instances involving a single insured vehicle. From an insured’s standpoint, the ability to stack coverages results in higher limits of coverage for accidents involving a negligent uninsured motorist. These higher limits result in higher costs to insurers,113 but since compensation caps exist at the amount of damages sustained, the inference is that insurers more fairly and predictably disperse monetary awards to those raising claims.114

2. Missouri’s Denial of Application of Public Policy Considerations to UIM Coverage

The Missouri Supreme Court, when presented with the question of whether insurers could limit UIM coverages—specifically the stacking of coverages—through provisions in a policy, answered the question in the affirmative. In Noll v. Shelter Insurance Cos. and Rodriguez v. General Accident Insurance Co. of America, the Missouri Supreme Court outlined the requirements for reaching a public policy invalidation of an insurance contract provision.115 In both cases, insureds sought additional coverage from their insured in the form of stacking policies to increase compensation.116 In both instances, and similar to Cameron, the plaintiff sought more coverage than a single policy limit delivered.117 However, the court ended the comparisons between Cameron and the current cases with that similarity.

In Noll, the court quickly distinguished Cameron on the basis that the type of coverage in dispute in Cameron, UM coverage, required inclusion within insurance policies through a statutory mandate.118 The court asserted that “[t]he

111. Niswonger v. Farm Bureau Town & Country Ins. Co. of Mo., 992 S.W.2d 308, 313 (Mo. Ct. App. 1999) (citing Cameron, 533 S.W.2d at 544–45) (“Missouri public policy . . . requires that multiple uninsured motorist coverages must be allowed to be stacked, and prevents insurers from including policy language denying such stacking.”).
112. Ward, supra note 4, at 1.
113. PROP. CAS. INSURERS ASS’N, supra note 50, at 2, 5.
114. See id.
116. Noll, 774 S.W.2d at 148; Rodriguez, 808 S.W.2d at 383.
117. Noll, 774 S.W.2d at 148; Rodriguez, 808 S.W.2d at 383; Cameron Mut. Ins. v. Madden, 533 S.W.2d 538, 539 (Mo. 1976) (en banc).
118. Noll, 774 S.W.2d at 151.
coverage here involved was not mandated by statute at the time liability arose, and so the parties were free to contract as to limits of coverage.  

119. Holding valid and enforceable “policy provisions prohibiting the aggregation of coverage under multiple policies,” the Noll court denied the plaintiff insured further relief.  

120. The decision in Noll, although not explicitly involving UIM coverage, allows insurers greater ability to constrict policies and to include any exclusion desired by the insurer, so long as no ambiguity exists.  


122. Rodriguez, unlike Noll, involved a challenge on an anti-stacking clause located within a UIM policy.  


124. Id. at 383–84.  

125. Rodriguez, 808 S.W.2d at 383.  

126. Compare id. at 383–84 (declaring no public policy in the absence of statutory authority), with Cameron Mut. Ins. Co. v. Madden, 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc) (determining that a penumbral right to stack UM coverages shall exist as a matter of public policy following the statutory mandate of UM coverage).  

127. Rodriguez, 808 S.W.2d at 383–84.  

128. Id.; Noll v. Shelter Ins. Cos., 774 S.W.2d 147, 151–52 (Mo. 1989) (en banc).
Although the court stated that insurers and insureds are free to contract the ability to stack coverages, insurers routinely insert anti-stacking clauses into UIM policies without a bargain.130 Although in theory an insured maintains the ability to contract for a UIM policy containing the ability to stack, insurers throughout Missouri insert the anti-stacking clauses into policies as a matter of course.131 Although an insured may pay premiums toward multiple UIM coverages, insurers routinely prohibit an insured to collect on the UIM coverages purchased at the times when an insured most needs them.

B. Historical Reluctance to Declare Ambiguities Within UIM Coverage Provisions

Following the precedent set in Noll and Rodriguez, the Missouri Court of Appeals, Eastern District, later exemplified the extent of the judiciary’s disinclination to determine UIM coverage provisions ambiguous, upholding policy exclusions not valid in the context of UM coverage. The Eastern District in Trapf v. Commercial Union Insurance Co. declared that the impossibility of recovery in any situation did not create an ambiguity, regardless of whether the insurer collected premiums for coverage.132 In Trapf, the insured sought compensation from a $25,000 UIM policy.133 At the time of the collision causing the need for coverage, the Motor Vehicle Financial Responsibility Law of Missouri required a minimum of $25,000 liability coverage.134 The insurance contract in Trapf declared that the definition of an underinsured motor vehicle did not include vehicles where the tortfeasor’s liability limits were less than the liability limits required under Missouri law; that is, the contract considered any individual who maintained liability coverage at less than the state-required level to be an uninsured motorist for purposes of insurance coverage.135 Therefore, by definition, an underinsured motor vehicle could not be a vehicle where the tortfeasor maintained less than $25,000 of liability coverage.

To mitigate the amount of insurance payable to the insured, the insurer inserted a provision excluding UIM coverage when the liability policy limits of a tortfeasor equaled or surpassed the UIM coverage limits.136 This exclusion prevented the insured in this case from ever collecting on the $25,000 UIM...
coverage in any circumstance. 137 Due to the ability of the insurer to exclude payments under any circumstance, the UIM coverage maintained no value. 138 In a nutshell, no recovery under the UIM coverage occurred if the policy limits of the tortfeasor were less than the $25,000 required under section 303.190, nor did recovery occur when tortfeasor liability limits equaled or surpassed $25,000 since the policy excluded recovery when the tortfeasor maintained insurance greater than or equal to the UIM coverage limits, here $25,000—under no circumstance would the insured recover under the UIM coverage 139.

Even as the court recognized the lack of value in the UIM policy in this instance, it also foreclosed the possibility of recourse. 140 Because of the principles enunciated by Noll and Rodriguez, the court did not broach the topic of whether the impossibility of UIM coverage in any circumstance violated Missouri public policy; rather, the court only analyzed whether the provisions eliminating UIM coverage in all possible circumstances created an ambiguity in the policy. 141 Although the trial court determined an ambiguity existed because of the promise of UIM coverage in the contract and the subsequent preclusion of coverage for this policy, the appellate court in Trapf followed the language of Rodriguez and reversed the trial court’s holding, stating, “The fact that there is no actual underinsured motorist coverage in the Trapf policy does not make it ambiguous.” 142 Trapf illustrates both historical aspects of UIM contract interpretation in Missouri: the lack of public policy considerations when examining UIM coverage, and the general unwillingness to declare UIM provisions ambiguous.

Following the 1994 Trapf decision, the Missouri legislature, to prohibit the sale of UIM coverage that maintained no value, enacted the first statute in the state to address an issue concerning UIM coverage in 1999. 143 Section 379.204 of the Missouri Revised Statutes removed the ability of insurers to charge

137. Id. at 147.
138. See Trapf, 886 S.W.2d at 147.
139. The court reprinted the UIM provision in question. The relevant portion of the policy follows with the original emphasis included:

“Underinsured motor vehicle” means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage. However, “underinsured motor vehicle” does not include any vehicle or equipment:

1. To which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which your covered auto is principally garaged.

Id. at 146.
140. Id. at 147–48.
141. Id.
142. Id. at 146–47.
143. See Mo. Rev. Stat. § 379.204.
premiums for UIM in situations where, in actuality, no UIM coverage exists.\footnote{144} Section 379.204 effectively set the minimum amount of UIM coverage capable of being marketed and sold at $50,000.\footnote{145} If an insurer provides a UIM policy at a limit less than double the Motor Vehicle Financial Responsibility minimum, currently $25,000, the UIM policy shall be construed to provide excess insurance.\footnote{146} This designation as excess insurance eliminates an insurer’s ability to reduce the UIM policy limits by any amount recovered from the tortfeasor’s liability—excess insurance provides coverage on top of existing recoverable policies.\footnote{147} Therefore, if an insurer sells $25,000 of UIM coverage, that amount cannot be reduced by a set-off provision and is recoverable by the insured upon a showing of sufficient damages. To date, this is the only statute in Missouri concerning UIM coverage.

C. Increased Complexity Within Insurance Contracts

Although Trapf indicates the reluctance of Missouri courts to declare UIM coverage ambiguous, Missouri courts have found ambiguities in certain contexts. Most notably, the Missouri Supreme Court found an ambiguity exists when insurers treat UM and UIM coverage indistinguishably within a policy.\footnote{148} In Krombach v. Mayflower Insurance Co., Ltd.,\footnote{149} the court analyzed the insured’s UIM coverage to determine whether the policy unambiguously prohibited stacking.\footnote{150} There, the court determined that the insurer lumped the UM and UIM coverages together in a single provision.\footnote{151} The court stated that when an “insurance carrier lumps apples and oranges together and calls the entire class ‘apples,’” the court shall treat them as such.

The Krombach court declared that in instances where the insurer treats UM and UIM coverages identically, the public policy applying to UM coverage

\begin{itemize}
\item \footnote{144}{Id. (“Any underinsured motor vehicle coverage with limits of liability less than two times the limits for bodily injury or death pursuant to section 303.020 shall be construed to provide coverage in excess of the liability coverage of any underinsured motor vehicle involved in the accident.”).}
\item \footnote{145}{Although an insurer, in theory, may be able to sell UIM at less than $25,000, thereby reducing the coverage total recovery to the insured at a $25,000 minimum of tortfeasor liability plus the additional UIM coverage of less than $25,000, no case exists in Missouri where the UIM limits of liability did not at least equal the minimum liability insurance required under state law.}
\item \footnote{146}{Mo. Rev. Stat. § 379.204.}
\item \footnote{147}{Black’s Law Dictionary 816 (9th ed. 2009) (“excess insurance. An agreement to indemnify against any loss that exceeds the amount of coverage under another policy. — Also termed excess policy.”).}
\item \footnote{148}{Krombach v. Mayflower Ins. Co., Ltd., 827 S.W.2d 208, 212 (Mo. 1992) (en banc).}
\item \footnote{149}{Id.}
\item \footnote{150}{Id.}
\item \footnote{151}{Id.}
\end{itemize}
shall apply to UIM coverage.\textsuperscript{152} Thus, the court permitted the insureds to stack UIM coverages as if they were controlled by the public policy considerations of UM coverage.\textsuperscript{153} Following this decision, insurers separated the UM and UIM provisions within a contract to assure the public policy considerations affecting UM coverage do not give those same rights to insureds making UIM coverage claims.\textsuperscript{154}

\textit{Krombach} also found an ambiguity within the UIM coverage concerning the set-off provision.\textsuperscript{155} The set-off provision contained within the contract stated that “[a]ny amounts payable . . . shall be reduced by all sums” collected from the tortfeasor.\textsuperscript{156} When presented with the decision of whether to set-off the recoverable liability insurance of the tortfeasor from the total damages or from the limits of the UIM coverage, the court determined that an ambiguity existed within the contract.\textsuperscript{157} According to the court, the term “any amounts payable” could reasonably mean either the limits of the UIM coverage or the extent of damages.\textsuperscript{158} Because of the ambiguity, the court concluded that the interpretation favoring the insured controlled and held that the amount of recovery from the tortfeasor’s liability policy were to be set-off from the total damages rather than the limits of the UIM policy.\textsuperscript{159}

\begin{footnotesize}
\footnotetext[152]{152. Id. (“The same public policy that invalidates anti-stacking provisions of uninsured motorist coverage is equally applicable to underinsured motorist coverage if the two are treated as the same in the insurance contract.”)}
\footnotetext[153]{153. \textit{Krombach}, 827 S.W.2d at 212.}
\footnotetext[154]{154. SCHNURBUSCH, supra note 130 (“Most of the time you can’t stack [u]nderinsured coverage . . . unless the insurance policy is worded poorly.”).}
\footnotetext[155]{155. \textit{Krombach}, 827 S.W. 2d at 211.}
\footnotetext[156]{156. Id. The court reprinted the critical portions of the UIM coverage concerning set-off of recovery from the tortfeasor:}
\footnotetext[157]{157. Id.}
\footnotetext[158]{158. Id.}
\footnotetext[159]{159. \textit{Krombach}, 827 S.W. 2d at 211.}
\end{footnotesize}
Beginning in 1999, Missouri courts began viewing other portions of the insurance contract to determine whether an ambiguity existed in the sense of creating coverage in one provision and later revoking such coverage. In *Niswonger v. Farm Bureau Town & Country Insurance Co. of Missouri*, the court first looked at the language of the anti-stacking clause to determine whether any ambiguity existed in this portion of the UIM coverage. The court agreed that the language of the anti-stacking clause replicated the language of the clause located in *Rodriguez v. General Accident Insurance Co. of America*, a clause found not to be ambiguous by the Missouri Supreme Court. However, the court analyzed the contract further.

The Plaintiff in *Niswonger* argued that another provision of the UIM coverage created the ability to stack limits by labeling the UIM coverage purchased as an excess policy. The court viewed the disputed language located in a portion of the coverage termed an “Other Insurance” provision and determined that the last sentence of the provision did create an ambiguity. In that last sentence, the insurer stated that “any insurance provided under this endorsement for a person insured while occupying a non-owned vehicle is excess of any other similar insurance.” According to the court, although the anti-stacking clause perhaps did not contain an ambiguity, the last sentence of the “Other Insurance” provision created an ambiguity by conflicting with the anti-stacking clause as to whether the UIM coverage acted as excess insurance and could be stacked with other UIM coverages. In *Niswonger*, the court looked outside just the anti-stacking clause to determine an ambiguity requiring stacking of policies existed.

The Missouri Court of Appeals, Eastern District, ultimately limited the scope of *Niswonger*’s impact by declaring that the result in *Niswonger* occurred because the plaintiff sustained injury while occupying a non-owned vehicle. However, the Eastern District later made a subtle shift in *Chamness v. American Family Mutual Insurance Co.*, by declaring that the policy did not...

161. *Id.* at 314.
162. *Id.*
163. *Id.* at 314–15.
164. *Id.* at 315.
165. *Niswonger*, 992 S.W.2d at 315. Interestingly, the sentence the court determined created an ambiguity was not only the last sentence of the provision, but also the last sentence of the UIM coverage. *Id.*
166. *Id.* at 315–16.
167. *Id.*
168. *Id.* at 315; see also *Clark v. Am. Family Mut. Ins. Co.*, 92 S.W.3d 198, 202 (Mo. Ct. App. 2002) (“The *Niswonger* decision specified that the ambiguity only arose in the factual situation where the accident occurred while the insured was ‘occupying a non-owned vehicle.’”).
unambiguously define “a vehicle you do not own” as a vehicle not owned by either of two policy-holders. Therefore, the court ruled to allow stacking of UIM coverage to compensate for the damages sustained by the wife while operating her husband’s vehicle.170

Following each Missouri court decision, insurers have tended to change the language within insurance contracts to avoid the ambiguities announced by the court.171 Since each court decision can only inquire into the language within the contract presented, any one decision by the Missouri courts finding a policy ambiguous only reaches so far as those insurance contracts containing the same language.172 Because of the constant evolution of insurance contracts, the decisions of the Missouri courts dwindle rapidly in their importance. Although the courts have attempted to funnel contract language into more obvious terms,173 the effect on insurance contracts is exactly the opposite. UIM coverage provisions in Missouri are becoming more burdensome, require greater analysis by courts and laypersons, and insurers are constantly rewriting existing policies to create the exact wording that courts will construe as unambiguous as a matter of law.174 This process creates increasingly complex caselaw and increasingly complex insurance contracts.175 This waltz between

169. 226 S.W.3d 199, 204 (Mo. Ct. App. 2007).
170. Id. at 203, 208.
171. See Ward, supra note 4, at 11 (advising insurers to review recent Missouri cases that found ambiguities to help rewrite current policies in order to avoid mistakenly providing coverage not required under the law).
172. Bough & Heath, supra note 38, at 210 (“Previous court decisions determining UIM coverage are not controlling unless the insurance policy language is identical.”).
173. See Jones v. Mid-Century Ins. Co., 287 S.W.3d 687, 691 (Mo. 2009) (en banc) (suggesting language for an insurer to insert into UIM coverages to replace language deemed ambiguous by the court).
174. Compare Am. Family Mut. Ins. Co. v. Turner, 824 S.W.2d 19, 20, 22 (Mo. Ct. App. 1991) (determining that set-off applies to the total damages when underinsured motor vehicle coverage is defined as one that provides “limits less than the damages an insured person is legally entitled to recover”), with Hopkins v. Am. Econ. Ins. Co., 896 S.W.2d 933, 937 (Mo. Ct. App. 1995) (determining that set-off applies to the UIM coverage limits when underinsured motor vehicle is defined as “one with liability insurance with a ‘. . . limit . . . less than the limit of liability for this coverage’”) (quoting Rodriguez v. Gen. Accident Ins. Co. of Am., 808 S.W.2d 379, 381 (Mo. 1991) (en banc)). See also Bough & Heath, supra note 38, at 208 (“While the general principals behind uninsured and underinsured motorist coverages seem straightforward enough, any lawyer who has dealt with the issues surrounding uninsured and underinsured motorist coverage issues are anything but simple. In fact, Judge Daniel Scott of the Missouri Court of Appeals for the Southern District recently stated, ‘As things now stand, even legally sophisticated persons may find it practically impossible to know their UIM coverage . . . which cannot be a desirable situation.’”).
the judiciary, insurers, and insureds continued through the current phase of decisions rendering UIM provisions ambiguous and invalid.\textsuperscript{176}

\textbf{D. The Current State of the Missouri Supreme Court’s Analysis of UIM Coverage}

The Missouri Supreme Court decided two decisions in 2009 that altered how a Missouri court views an ambiguity. In \textit{Jones v. Mid-Century Insurance Co.} and \textit{Ritchie v. Allied Property & Casualty Insurance Co.}, the court determined that the policies contained ambiguities arising from a conflict between two separate provisions.\textsuperscript{177} In \textit{Jones}, the insureds sought compensation from an accident causing more than $150,000 in damages to each of them.\textsuperscript{178} After each received $50,000 from the tortfeasor’s liability, the insureds then sought further compensation from the UIM coverage in the amount of $100,000 per person.\textsuperscript{179} The insurer cited the set-off provision within the policy—which contained language previously ruled unambiguous by courts when standing alone—and contended that the UIM coverage only provided an additional $50,000 of coverage per person.\textsuperscript{180} However, the court viewed the set-off provision in the context of the entire contract and determined the set-off provision conflicted with the “Limits of Liability” provision located within the UIM coverage.\textsuperscript{181}

\begin{itemize}
  \item 176. \textit{See infra} Part II.D.
  \item 178. \textit{Jones}, 287 S.W.3d at 689.
  \item 179. \textit{Id}.
  \item 180. \textit{Id}.
  \item 181. \textit{Id} at 689, 692. The court included the relevant portions of the UIM coverage, which included the limit of liability provision and the set-off provision.
\end{itemize}

\textbf{Limit of Liability}

a. Our liability under the UNDERinsured Motorist Coverage cannot exceed the limits of UNDERinsured Motorist Coverage stated in the policy, and the most we will pay will be the lesser of:

1. The difference between the amount of an insured person’s damages for bodily injury, and the amount paid to that insured person by or for any person or organization who is or may be held legally liable for the bodily injury; or

2. The limits of liability of this coverage

b. Subject to subsections a. and c.—h. in this Limits of Liability section, we will pay up to the limits of liability shown in the schedule below as shown in the Declarations.

\begin{tabular}{|l|l|}
\hline
\textbf{Coverage Designation} & \textbf{Limits} \\
\hline
\textbf{U9100/300} & \\
\hline
\end{tabular}

\textbf{U9100/300}

f. The amount of UNDERinsured Motorist Coverage we will pay shall be reduced by any amount paid or payable to or for an insured person;

i. by or for any person or organization who is or may held legally liable for the bodily injury to an insured person; or
According to the court, the provision created an ambiguity when it stated “the most [the coverage would] pay” an insured was the lesser of either the difference between the limits of the tortfeasor’s liability policy and the payments already made, or “[t]he limits of liability of this [UIM] coverage.”  

The court stated an ambiguity arose because a reasonable interpretation of the UIM coverage was that the insurer would pay $100,000 under some circumstances. However, if the set-off provision applied to the liability limits, the insurer would never pay the coverage limits of $100,000. The court ruled that the resulting ambiguity required the set-off provision to apply towards the damages sustained rather than the liability limits—in a sense, defining the UIM coverage as a damage trigger when an ambiguity arises.

In Ritchie v. Allied Property & Casualty Insurance Co., another 2009 Missouri Supreme Court decision, the court again signified a more general willingness to declare UIM coverages ambiguous as compared to the existing precedent. The court again ruled the coverage ambiguous concerning whether to use a damage or limit set-off, and it also determined the coverage ambiguous concerning the ability to stack coverages. The insureds in this case sustained damages greater than $1.8 million, a total greater than the combined policy limits of the tortfeasor’s liability policy and the three UIM coverages purchased, and asserted both the ability to apply the set-off to the damages sustained and the ability to stack the UIM coverages.

The court first determined that an ambiguity arising in the coverage created the ability to stack the three UIM coverages. This case, like Niswonger, turned on the fact that the insured sustained damages while in a vehicle she did not own. The court, taking into consideration the entire contract, looked to the terms of the “Other Insurance” provision, which stated, “[a]ny coverage we provide with respect to a vehicle you do not own shall be excess over any other collectible underinsured motorist coverage.” The court held that, when read

ii. for bodily injury under the liability coverage of this policy . . . .

Id. at 690.

183. Id.
184. Id. at 691.
185. Id. at 693.
186. 307 S.W.3d 132, 138 (Mo. 2009) (en banc).
187. Id. at 138, 140–41.
188. Id. at 134.
189. Id. at 138.
190. Id. at 138.
191. Ritchie, 307 S.W.3d at 137 (emphasis omitted). The court reprinted the pertinent portion of the UIM coverage, adding emphasis to the portions deemed particularly relevant:

**LIMIT OF LIABILITY**

A. The limit of liability shown in the Declarations for each person for Underinsured Motorists coverage is our maximum limit of liability for all damages for case, loss of
together, although the anti-stacking clause may normally be applicable, a reasonable interpretation exists that the anti-stacking clause does not apply in cases where the insured sustains damage while in a vehicle not owned by that insured. After determining an ambiguity existed that allowed stacking of the UIM coverages, the court next turned to the issue of whether to set-off the tortfeasor’s policy against the total damages or against the limits of the UIM coverage.

In a decision similar to Jones, the court determined an ambiguity existed due to language in the “Limits of Liability” provision of the contract stating, “this is the most we will pay.” The court indicated that one potential means of salvaging the contract would be to insert additional language in order to remove the ambiguity created by the “Limits of Liability” provision, and it cited Jones for an example of what language the insurer might add in order to make clear the set-off provision applies as against the liability limits of the

---

services, or death arising out of “bodily injury” sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Schedule or in the Declarations for each accident for Underinsured Motorists Coverage is our maximum limit of liability for all damages for “bodily injury” resulting from any one accident. This is the most we will pay regardless of the numbers of:
1. “Insureds;”
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

B. The limit of liability shall be reduced by all sums: . . . [p]aid because of ‘bodily injury’ or by or on behalf of persons organizations who may be legally responsible . . .

OTHER INSURANCE
If there is other applicable underinsured motorists coverage available under one or more
policies or provisions of coverage:
1. Any recovery for damages may equal but not exceed the highest applicable limit for any
one vehicle under this insurance or other insurance providing coverage on either a
primary or excess basis. In addition, if any such coverage is provided on the same basis,
either primary or excess, as the coverage we provided under this endorsement, we will
pay only our share. Our share is the proportion that our limit of liability bears to the total
of all applicable limits for coverage provided on the same basis.
2. Any coverage we provide with respect to a vehicle you do not own shall be excess over
any other collectible underinsured motorist coverage.

---

192. Id. at 136–37.
193. Ritchie, 307 S.W.2d at 139.
194. Id. at 140–41.
tortfeasor.\textsuperscript{195} The court declared a reasonable interpretation of the ambiguity to be application of the set-off provision against the total damages sustained, thereby allowing for compensation of the policy limits for each of the three UIM coverages.\textsuperscript{196}

\textit{Jones} and \textit{Ritchie} had the potential to encourage litigation concerning whether existing UIM coverages contained ambiguities within the anti-stacking clauses and set-off provisions.\textsuperscript{197} Such spike in litigation will wane until the Missouri courts again find it necessary to find ambiguities in language that is abundant throughout Missouri UIM coverages.\textsuperscript{198} Furthermore, this type of judicial reconstruction of what constitutes ambiguities, while benefiting a few insureds involved directly in the litigation, harms consumers by creating more difficult and complex policies designed to comport to the standard of the law as opposed to the comprehension ability of the reasonable consumer.\textsuperscript{199} As

\textsuperscript{195.} \textit{Id.} The \textit{Jones} court determined that rather than stating “[t]he limits of liability of this coverage” is the most an insurer will pay under UIM coverage, the “Limits of Liability,” to be clear, should state that “[t]he limits of liability of this coverage minus the amount already paid to that insured person” is the most an insurer will pay, or else the insurer risks creating an ambiguity. \textit{Jones v. Mid-Century Ins. Co.}, 287 S.W.3d 687, 691 (Mo. 2009) (en banc).

\textsuperscript{196.} \textit{Ritchie}, 307 S.W.2d at 141. In a footnote to the case, the court asserted that policy limit set-off provisions are permissible in Missouri if no ambiguity exists. \textit{Id.} at 141 n.10.

\textsuperscript{197.} \textit{See Ward}, supra note 4, at 11 (stating that \textit{Jones} and \textit{Ritchie} indicate that Missouri courts are likely to find ambiguities in many existing UIM policies); Bough & Heath, supra note 38, at 208 (explaining that the clarification by Missouri courts, combined with the predicted rise in uninsured motorist coverage rates resulting from the economic downturn, “will inevitably drive up the number of uninsured motorist claims . . . .”).

\textsuperscript{198.} \textit{See supra} notes 173–86 and accompanying text.

\textsuperscript{199.} \textit{Shelter Mut. Ins. Co. v. Straw}, 334 S.W.3d 592, 598–99 (Mo. Ct. App. 2011) (Scott, C.J., dissenting). Chief Judge Scott succinctly stated his concerns over the increasing complexity of the insurance policies due to judicial intervention and subsequent revision of insurance policies in Missouri. Below is the full dissent of Chief Judge Scott.

I respectfully dissent. Notwithstanding the court’s painstaking analysis, I cannot square its result with our Supreme Court’s reasoning in \textit{Jones} and \textit{Ritchie}, which I consider to be controlling on the issues in this case.

I also offer these observations, for whatever they may be worth, with no intent to criticize anyone and with full appreciation for sanctity of contract and stare decisis. It approaches a fiction, in my view, to think that the complicated analyses in this and other recent UIM cases yield “the meaning which would be attached by an ordinary [insurance purchaser] of average understanding.” I do not fault this court for making and laying out charts to distinguish its policy interpretation under \textit{Lynch} from the trial court’s interpretation based on \textit{Ritchie} and \textit{Jones}. Indeed, it may be almost necessary to do so given the increasing complexity of relevant opinions and the nuances upon which they turn. Yet a divergence may be developing between our espoused consumer-based standard of interpretation and the sophisticated policy comparisons and legal analyses that we actually (and per recent caselaw, perhaps necessarily) undertake.
it stands now, UM coverage receives stable interpretation of the benefits available to an insured due to a legislative enactment, whereas UIM coverage remains subject to the whims associated with judicial cycles. The Missouri legislature should follow the majority lead of the states and create a legislative remedy in order to provide insureds the same benefits under UIM coverage as they receive under UM coverage.

III. STATUTORY SCHEMES REGULATING UIM COVERAGE NATIONWIDE

Statutes regulating UIM coverage exist throughout the United States. In fact, most states regulate UIM coverage issues via statutory schemes, as opposed to the predominantly judicial regulation present in Missouri—Missouri falls into the minority of states that rely on judicial constructs to effectively regulate UIM coverage within the state. However, the regulatory schemes outside Missouri vary considerably when determining the ability of an insured to insert anti-stacking clauses and to enforce policy limits set-off provisions.

As things now stand, even legally sophisticated persons may find it practically impossible to know their UIM coverage for such scenarios, which cannot be a desirable situation.

Id.

A common trend featured in most states’ regulatory schemes is reciprocal benefits between UM and UIM coverage. Reciprocal benefits are those that allow for similar, if not identical, coverage under UM and UIM coverage, and provide greater certainty for UIM coverage to both insurers and insureds—to insurers by comporting to a standard already adopted by UM statutes and public policy, and to insureds by ensuring sufficient and similar recovery independent of the tortfeasor’s insurance status. Providing semi-reciprocal schemes furthers the interests of both insurers and insureds while solving the insurance paradox of greater recovery when a tortfeasor does not maintain state required liability insurance. The distinct language of each state’s laws providing reciprocal benefits does demonstrate, however, that care must be taken when observing the trends nationwide and crafting statutory schemes to ensure a balance between insurers’ and insureds’ rights.

A. Reciprocal Treatment of UM and UIM Coverages

An overwhelming majority of states contain legislative provisions requiring the offering of UIM coverage to insureds, with only four states abstaining from legislative regulation—Michigan, Missouri, Montana, and Wyoming. This figure accounts for the states that include UIM under the definition of UM. For example, New Hampshire requires both UM and UIM coverage, although the statute only explicitly states UM. Additionally, of the forty-five jurisdictions that maintain UIM statutes, it is possible that at least twelve mandate the inclusion of UIM coverage within insurance policies. The permissibility of mandating UIM coverage within various other states indicates that it is possible to also require insurers in Missouri to carry UIM coverage.

201. See infra Part III.A.
202. See supra notes 10–12 and accompanying text.
203. See supra notes 31–35 and accompanying text.
204. See supra note 200.
205. N.H. REV. STAT. ANN. § 264:15 (2012); Wyatt v. Md. Cas. Co., 738 A.2d 949, 953 (N.H. 1999) (“The statute § 264:15 . . . requires that where an insured chooses to purchase liability coverage greater than the statutory minimum, underinsured motorist coverage shall be equal to that amount.”).
The more interesting aspect of UM and UIM coverage nationwide is the level of reciprocity between the two coverages. In fact, as indicated previously, many states do not differentiate between UM and UIM coverage, but rather treat the coverage rights interchangeably (hence, “reciprocal” coverage).207 However, states that statutorily mandate UIM coverage are not the only states that provide reciprocal benefits between the two coverages. For example, Montana is a state that statutorily requires the offering of UM coverage within all insurance policies, but does not provide a similar statutory requirement for UIM coverage.208 Even so, Montana maintains the same public policy considerations for both types of coverage, indicating the compulsion of UIM coverage where that policy would be served.209 Missouri is in the severe minority of states that afford drastically different rights.

B. Stacking of Policies

When discussing the right to stack coverages, an important aspect to consider is the distribution of the state laws and policies concerning whether to prohibit stacking, whether to allow anti-stacking clauses, and whether to allow stacking as a matter of right in certain circumstances. If a wide variance occurs, this likely illustrates that the ability to stack does not create prohibitive insurance costs on the part of the insurer, nor does the ability to stack create unaffordable rates for consumers. Although stacking coverages leads to higher payouts by insurers, and subsequently higher rates for insureds, the benefits are substantial enough to afford stacking as a right in many states.210

In total, at least eleven states prohibit stacking policies under almost all circumstances.211 Of the thirty-nine states that do allow stacking under some circumstances, at least sixteen states permit the insurer to exclude stacking

207. See supra notes 204–06 and accompanying text.
208. MONT. CODE ANN. § 33-23-201 (2011). The language of the statute requires insurers to provide protection against only “uninsured motor vehicles” and makes no mention of underinsured motor vehicles.
210. See supra notes 52–55 and accompanying text.
with clear and unambiguous language, the same standard set forth under Missouri’s UIM regulatory scheme.\footnote{12}

Although Missouri allows stacking for UM policies as a matter of right, the inability to do so in such a large majority of states for UIM coverage likely indicates that an absolute right to stack coverages is ill-favored by insurers (due to increased payouts), insureds (due to increased coverage rates), or both. When determining whether to allow stacking under Missouri UIM coverage, the legislature should take this into consideration, along with the substantial number of states that do allow stacking with limitations.

C. Set-off Provisions

Across the nation, only two main types of set-off provisions exist—damage limit and policy limit set-offs.\footnote{13} The trend nationwide is not unanimous, but the majority of states offer policy limit set-offs versus damage limit set-offs—twenty-nine states provide policy limit set-offs.\footnote{14} Likely, states consider the limits of UIM coverage to be the amount that an insured requires in order to maintain sufficient coverage. Additionally, policy limit set-offs provide greater equality between UM and UIM coverages and help to remove the insurance paradox between accidents involving uninsured tortfeasors and those involving tortfeasors with inadequate coverage.

To understand this concept, envision Driver A, who maintains $100,000 UM coverage and $100,000 UIM coverage. If driver A sustains $150,000 of total damages from an uninsured tortfeasor, the UM policy reimburses him


only the $100,000. If Driver A sustains the same damages with a minimally insured tortfeasor, he will receive $100,000 total compensation under policy limit set-offs, but will receive $100,000 in addition to the extent of the tortfeasor’s liability limits, up to the total amount of damages sustained. Under damage limit set-offs, the insurance paradox pendulum unfairly swings to benefit those involved in accidents with tortfeasors maintaining insufficient protection versus those involved in accidents with uninsured tortfeasors.

With a goal of solving the insurance paradox in Missouri, one can gain great perspective by viewing the system of reciprocal rights developed by a majority of the states. An overwhelming majority of states offer reciprocal benefits between UM and UIM coverage and many states require a mandate to include UIM coverage within all insurance policies.\[215\] Further, a great variety exists between the states concerning the ability to stack coverages, likely illustrating that a workable model exists that includes stacking rights within UIM coverages.\[216\] However, that the majority of states allow for policy limit set-offs demonstrates the preferred method among insurers and lawmakers to equalize coverage between UM and UIM coverages.\[217\]

IV. LEGISLATIVE PROPOSAL FOR UIM COVERAGE TO PROTECT THE INTERESTS OF INSURERS AND INSUREDS IN MISSOURI

While these varying state models display a constructive template applicable to the legislative solution needed in Missouri, the state cannot simply mirror the pattern followed by the majority of states in the nation for UIM coverage because of its deeply entrenched public policy considerations for UM coverage and the need to provide semi-reciprocal coverage between UM and UIM coverages.\[218\] As in the overwhelming majority of states, where the language of the statute offers similar benefits in both UIM and UM coverages, Missouri must attempt to provide similar benefits for UIM coverage as those Missouri public policy deems necessary in UM coverage. Moreover, to make the legislation palatable to the interests of insurers and consumers alike, a compromise must be reached between the guaranteed stacking of policy limits available under UM coverage and the current state of permitting absolute exclusion of stacking separate UIM coverages.

This Comment proposes a legislative remedy that contains two portions—the first favoring insurers and the second favoring consumers—to promote a

\[215\] See supra notes 204–09 and accompanying text.

\[216\] See supra notes 210–12 and accompanying text.

\[217\] Supra notes 214–15 and accompanying text; Prop. Cas. Insurers Ass’n, supra note 50, at 6.

\[218\] See Cameron Mut. Ins. Co. v. Madden, 533 S.W.2d 538, 544–45 (Mo. 1976) (en banc) (stating that public policy prohibits the insurer from limiting an insured to only one of the UM coverages provided by a policy).
lasting balance between the competing interests. To create this balance, the first portion of the legislative remedy views UM and UIM in the same context, which is to cover insureds as if no other funds for protecting the innocent, injured party exist. This first portion of the legislative compromise entails two important aspects: the necessary creation of a mandate to include UIM protection in Missouri insurance policies and the ability for insurers to set-off recovery of the UIM coverage limits by the recoverable liability limits of the tortfeasor. The second portion of the legislative remedy attaches UIM coverage to the insured versus attaching the coverage to a particular vehicle. By attaching coverage to the individual, the insured achieves the ability to stack UIM coverages, but with some legislative limitations.

The aspects contained in the first portion of the legislative compromise favor insurers in Missouri since UIM coverage is already included voluntarily in many insurance policies. The big benefit to insurers exists in the state directive to permit a set-off of the recovery from the tortfeasor’s liability policy. The idea here is to first assume that UM and UIM coverage exist as the sole available insurance recovery for a non-liable, injured insured. In the context of UM coverage, this is an intrinsic characteristic of the coverage since no tortfeasor insurance exists to provide support to the injured party. Applying this sentiment to UIM coverage, we first assume that the UIM coverage is the sole source of equitable financial recovery available to the injured party—a legal fiction. This legal fiction constructs the basis of a public policy rationale for creating a state mandate to include UIM coverage within insurance policies issued in Missouri and allows the state to determine that the primary UIM coverage’s limit creates an equitable recovery.

Applying this public policy sentiment to the feature that separates UM and UIM coverage—an actual available recovery from the tortfeasor—the legislature shall allow a set-off in the amount of the tortfeasor’s liability policy limit. Since an equitable recovery under a primary policy containing UIM coverage would be that coverage’s policy limit, we may now assume that subtracting actual recovery from the tortfeasor’s liability coverage does not undermine the rationale of the Missouri legislature. Including the set-off provision within the legislative remedy promotes predictability by determining, in essence, that the UIM coverage limit is the amount the insured shall receive under the primary policy from the combined resources of the tortfeasor’s liability limit and the UIM coverage.

219. Because UIM coverage remains a separate cost within an insurance policy, section 379.204 of the Missouri Revised Statutes, which promotes UIM coverage at least double the state minimum liability requirement, shall remain in effect to disallow set-off of benefits if the UIM coverage is less than double the state minimum under section 303.190. MO. REV. STAT. § 379.204.
The second portion of this legislative compromise proposes that UIM coverage follows the insured that purchased the coverage rather than remaining attached to a specific vehicle. As much as the initial portion of the two-part compromise favors insurers, this second portion likely equally favors insureds. As mentioned previously, an aim of any Missouri legislative remedy concerning UIM coverage must be semi-reciprocal benefits as those of UM coverage, which provides sufficient recovery for insureds. Akin to UM coverage, this determination shall not limit recovery to a single policy, but rather shall treat UIM coverage as following the insured rather than the vehicle; as such, stacking of UIM coverages shall be permitted. However, the preference towards recovery of the policy limits when damages require shall be applicable to the UIM coverage contained within the primary policy—the insurance policy of the vehicle involved—with the subsequent additional UIM coverages acting as excess coverage.

In order to truly create a compromise between the insurer and insured, this second portion must differ slightly from that of the UM public policy pronouncement of Missouri courts. In order to create a legislative proposal with the ability to attract the interests of both businesses and consumers, the stacking provision cannot be absolute, even though that is the case with UM coverage. UIM stacking shall limit the additional recovery under the excess UIM coverages maintained by the insured to the state minimum required insurance levels under section 303.190 of the Revised Statutes of the State of Missouri, which is currently $25,000. This difference, although minor, will ensure that the resulting giveaway of the insurance industry does not surpass that of the giveaway from consumers in the first portion of the legislative compromise. Curtailing the ability to stack UIM coverages increases insurer payout predictability. Furthermore, in order to achieve a balanced rule concerning stacking, the legislature may articulate that any additional UIM coverage purchased by an insured shall be limited to the Missouri minimum insurance requirements. Additionally, allowing the stacking of UIM coverages purchased by the insured creates an additional avenue of recovery for an injured party whose initial UIM coverage did not sufficiently offset the damages accrued.

Therefore, the legislative proposal contains two portions to strike a balance between the predictability required by insurers and the protections insisted by insureds. First, it assumes that both UM and UIM coverage provide the sole economic recovery for an injured insured. Although in the case of UIM

220. This idea is not foreign to Missouri courts. Browning v. GuideOne Specialty Mut. Ins. Co., 341 S.W.3d 897, 900 (Mo. Ct. App. 2011) (quoting Niswonger v. Farm Bureau Town & Country Ins. Co. of Mo., 992 S.W.2d 308, 313 (Mo. Ct. App. 1999)). However, neither the Missouri Supreme Court nor the state legislature advanced this concept.

221. MO. REV. STAT. § 303.190.
coverage this is actually a legal fiction, it provides the public policy rationale to mandate UIM coverage while also creating the rationale for allowing a set-off of the UIM coverage in the amount recovered from the tortfeasor’s liability policy. Second, it declares that UIM coverage attaches to the insured rather than any particular vehicle. This portion of the proposal requires the policies to permit stacking of UIM coverages purchased by the insured. However, to create a more predictable payout for insurers, this stacking of additional UIM coverages shall limit the recovery under additional, excess UIM coverages to the state minimum insurance requirements prescribed by section 303.190. Thus, the two-part compromise entails three aspects to foster predictability for insurers and sufficient recovery for insureds: mandating inclusion of UIM coverages within Missouri insurance policies; allowing reduction of the UIM coverage limits in the amount of recovery from a tortfeasor’s liability limits; and permitting stacking of UIM coverages in an amount equal to the state minimum insurance requirement under section 303.190 for each excess policy.

CONCLUSION

The ability to stack automobile coverages allows insureds injured in a car accident to turn to insurance to help ease the financial burden associated with the total damages inflicted by the accident. As a matter of public policy, Missouri allows insureds to stack UM coverages from multiple policies when a tortfeasor maintains no insurance.222 This policy is well enunciated and known throughout the insurance community.223 Missouri’s fully enunciated public policy of allowing stacking of UM policies produces predictability of insurance payouts as opposed to the unpredictable landscape concerning the ability to stack UIM coverages. Certainty provided to an insurer concerning the limits of payouts, along with the increase in financial support available should a catastrophic automobile accident handicap an insured, creates a sustainable balance between turning a profit as a business and providing a service genuinely needed by the public.224

Unfortunately, this same balance does not exist in the context of UIM coverage, which acts to the detriment of both insurers and insureds. An imbalance arises in UIM coverage due to the lack of a Missouri statute delineating public policy, such as the one in the context of UM coverage. Leaving to the judiciary the decisions of whether to permit stacking and whether to use policy limit or damage limit set-offs on a case-by-case determination provides security to neither business nor consumer interests.225 Although recent decisions favor the consumer, the current unrest stemming

222. Cameron, 533 S.W.2d at 544–45.
223. See supra Part II.A.1.
224. See supra notes 9–14 and accompanying text.
225. See supra notes 171–76 and accompanying text.
from recent Missouri Supreme Court decisions exemplifies the unpredictability of judicial contractual interpretation and provides evidence of the need for legislative intervention.

A legislative enactment concerning UIM coverage must occur in order to truly void Missouri of the insurance paradox discussed in this Comment. This legislative remedy needs only two main prongs in order to succeed in creating an atmosphere agreeable to both the insurance industry and consumers alike. First, the legislation needs to assert that both UM and UIM coverage provide insurance compensation when no other adequate remedy exists. This would declare that the minimum coverage limits proffered by the state are sufficient protections to the masses. This declaration mandates UIM coverage within insurance policies while also allowing insurers to use policy limit set-offs, which is the more insurer friendly method of the two set-off provisions.

The second assertion needed by a legislative enactment is a pronouncement that Missouri insureds shall maintain the ability to stack multiple UIM coverages purchased up to the total damages sustained in an accident. The ability to stack, an insured-favored ability, is not without constraint in order to increase predictability for insurers. Under the proposed legislative remedy, an insured can recover the limits of the primary policy and stack each additional coverage in the amount of the state required minimum of UIM coverage.

This legislative proposal offers compromises to both insurance companies and insureds to better promote predictable coverage and compensation. In order to create a legislative remedy that can actually have force of law, both sides of this issue must come to an agreement tailored to the unique aspects associated with UIM coverage. The benefits of this proposal include a statutorily mandated inclusion of UIM coverage within all Missouri policies that provides semi-reciprocal coverage between UM and UIM policies, while also creating greater predictability in overall payouts of UIM claims prior to an accident occurring. The paradox associated with UM coverage needs to end in Missouri. This proposal does so with the interests of insurers and insureds in mind in order to offer a legislative remedy with the possibility of approval from various interest groups and, ultimately, enactment into law.

DAVID W. REYNOLDS*

* J.D., Saint Louis University School of Law. The author would like to thank Professor Karen Speiser Sanner for her guidance and expertise in helping develop the Comment’s concepts, and to thank Kathleen Gallerano for the support provided throughout the writing process.