IOWA UNINSURED AND UNDERINSURED MOTORIST COVERAGE

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A COMPREHENSIVE TREATISE COVERING EVERY IOWA STATUTE, REGULATION, INSURANCE DEPARTMENT RULING, ALONG WITH EVERY IOWA SUPREME COURT OR IOWA COURT OF APPEALS OPINION RELATED TO UNINSURED OR UNDERINSURED MOTORIST COVERAGE.

With updates through June 7, 2018.

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1. **Purpose of this Treatise**

    1. This treatise is meant to be used by the practitioner who has identified all of the applicable policies, has obtained copies of those policies, and now has questions about the terms of the policy. The treatise is organized based upon the standard flow of an auto policy.

        i. Note – Be sure to identify the individual who suffered bodily injury or death, and then make a list of every other person who may have either a consortium or a bystander claim. Also include the owner or operator of the motor vehicle if the injured person was operating a non-owned vehicle or if the injured person was a passenger.

2. **How to Approach Insurance Coverage**

    1. Three Parts of a Policy - Every insurance policy can be broken into three parts: (1) the declarations pages; (2) the policy form; and (3) the endorsements. Each part is discussed, in detail, below. The policy form can also be broken down into three subparts, which are the insuring clause, the exclusions, and the policy conditions. The endorsements typically amend the language in the policy form – so be sure to review them as part of your analysis. The endorsements may also provide separate coverage that is not provided by the policy forms.

    2. Broad v. Narrow Coverage View explained - In reading the cases, you may see an inconsistent use of whether a court must use a broad or a narrow view of UM/UIM issues. Chief Justice Cady explained that the broad/narrow coverage analysis is meant to be limited to the "duplication of coverage" issue described below. It is not applicable to UM/UIM coverage analysis outside of the duplication issues.

        i. Am. Family Mut. Ins. Co. v. Petersen, 679 N.W.2d 571, 579 (Iowa 2004), amended on denial of reh'g (May 6, 2004). We acknowledge our prior cases have adopted a "narrow coverage" view of uninsured-motorist coverage, in contrast with a "broad coverage" view of underinsured-motorist coverage. Veach, 460 N.W.2d at 848; see also McClure v. Northland Ins. Co., 424 N.W.2d 448, 449–50 (Iowa 1988). However, our narrow coverage view applies to the duplication of benefits from other sources. Veach, 460 N.W.2d at 848; McClure, 424 N.W.2d at 449. It means we traditionally subtract "from the policy limit any recovery from other sources" in awarding UM coverage. McClure, 424 N.W.2d at 449; see also McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321, 329–30 (Iowa 1976) (insurer would be allowed to deduct workers' compensation benefits from UM policy limits to avoid duplicative award). The objective of the statute is to restrict the "maximum recovery to the minimum required amount."

Lemrick v. Grinnell Mut. Reins. Co., 263 N.W.2d 714, 719 (Iowa 1978). This case, however, is not about duplication of benefits, and the "narrow coverage" approach, taken in our prior cases, does not restrict our consideration of the meaning of an "accident" in determining whether coverage exists in the first place.

3. The Briefest of Histories

   i. In Am. Family Mut. Ins. Co. v. Petersen, 679 N.W.2d 571, 578 (Iowa 2004),we have previously traced the concept of UM coverage back to a standard endorsement promulgated by the National Bureau of Casualty Underwriters in 1956, and initiated as a response to the growing trend among the states to require liability insurance. Douglass v. Am. Family Mut. Ins. Co., 508 N.W.2d 665, 666 (Iowa 1993) (citing Dag E. Ytreberg, Annotation, *Insured's Right to Bring Direct Action Against Insurer for Uninsured Motorist Benefits*, 73 A.L.R.3d 632, 636–37 (1976)), overruled on other grounds by Hamm v. Allied Mut. Ins. Co., 612 N.W.2d 755, 784 (Iowa 2000). The idea was not only to require all motorists to carry liability insurance, but to further close the gap between motor vehicle financial responsibility and compulsory insurance by providing financial compensation to innocent persons injured by the wrongful acts of those motorists who were uninsured. See Ytreberg, 73 A.L.R.3d 632, 636–37 (1976). In Douglass, we indicated that the purpose of a UM provision was "to provide to the victim of an accident the same protection that the victim would have had if the negligent tortfeasor had had minimum insurance coverage." 508 N.W.2d at 667.

4. Mandatory - The district court correctly understood Iowa Code Ann. § 516.A1 to require that underinsured coverage be a part of an auto policy unless the insured signed a written waiver of that coverage. Welchans v. United Servs. Auto. Ass'n., 645 N.W.2d 1, 4 (Iowa Ct. App. 2002).

5. Statutory Requirements are Implied Terms in Every Policy - The statute itself forms a basic part of the policy and is treated as if it had actually been written into the policy. Tri-State Ins. Co. of Minnesota v. De Gooyer, 379 N.W.2d 16, 17 (Iowa 1985).

6. UM/UIM Linked to Policies Liability Coverage - Under these statutory provisions, courts have concluded persons who must be insured by the underinsured motorist insurance are those who are protected by the liability coverage. Hornick v. Owners Ins. Co., 511 N.W.2d 370, 373 (Iowa 1993). As this court observed in Hornick, we have adopted the "prevailing view" that "persons who must be insured by the underinsured motorist insurance are those who are protected by the liability coverage." Thomas v. Progressive Cas. Ins. Co.,749 N.W.2d 678, 686 (Iowa 2008).

"Automobile liability policy" means an insurance policy issued by an insurance carrier authorized to do business in this state to or for the benefit of the person named in the policy as insured against loss from liability imposed by law for damages arising out of ownership, maintenance, or use of an insured automobile. Iowa Code Ann. § 516B.1.

7. Will Making a UM/UIM Claim Increase the Policy Premium?

    i. Unlike many other states, Iowa allows an insurance carrier to charge a higher premium or even refuse to renew or accept an insured when the insured has made a UM/UIM claim. The only restriction on premium increases is found at Iowa Code Ann. § 516B.3, which restricts a carrier from charging more premiums for minor traffic infractions.

8. Always Request the Applicable Policy and the Original Policy Packet -

    i. All insurance companies or associations shall, upon the issue or renewal of any policy, provide to the insured, a true copy of any application or representation of the insured which, by the terms of such policy, is made a part of the policy, or of the contract of insurance, or referred to in the contract of insurance, or which may in any manner affect the validity of such policy. Iowa Code Ann. § 515.133.

    ii. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section Iowa Code Ann. § 515.133, the company or association shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon the policy, and the plaintiff in any such action shall not be required, in order to recover against the company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option. Iowa Code Ann. § 515.134.

9. Carriers Currently Filed and Approved Iowa Coverage Forms -

    i. Every insurer doing business in Iowa must have its current policy forms filed and approved by the Iowa Insurance Division. You can search for the current (or past) forms on SERFF. This can be helpful if a carrier refuses to provide you with its policy forms, and you can check to ensure that the forms that you receive are the ones that were approved by the Insurance Division. You can also look through the carrier's rate filings to get an idea of how it calculates insurance premiums.

ii. SERFF (Iowa Insurance Carriers' Forms)
https://filingaccess.serff.com/sfa/home/IA

3. Application

1. Check to ensure that coverage selected by insured in the Application is what was provided by current policy.

2. Reformation for Agent or Insurer Error
Check with your client to make sure that the coverage provided by the policy is what he or she actually requested from the agent.

    i. Any officer, insurance producer, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of the agency relationship, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding. Iowa Code Ann. § 515.105.

    ii. Johnson v. United Inv'rs Life Ins. Co., 263 N.W.2d 770, 772 (Iowa 1978). Our cases have uniformly held that a soliciting agent's knowledge and material declarations at the time an application for insurance is obtained are binding on the company and may serve as a basis for reformation.

3. If there is a coverage rejection, check to see if the underwriting company has changed since the policy was written.

4. Call Recordings & Internet Clicks

    i. Insurers save call recordings and internet clicks. Obtain those if there is a question as to what coverage was selected or rejected by your client.

4. Declarations Page

1. The declarations page is typically the first substantive document in a policy packet. It lists the coverages, vehicles, drivers, and premium charges.

2. **Quick Checklist** –

    i. Application: Request a copy of the insured's application to ensure that the coverages listed in the policy are those listed on the declarations page.

ii. Policy Period: Double check to make sure that the policy period on the declarations page covers the date of loss.

iii. Policy Forms: Most insurers list the policy forms, endorsements, and policy notices as form numbers on the declarations page. Use that list to flip through the policy to make sure that the insurer provided every form listed on the declarations page.

iv. Policy Packet: What you have been provided is a copy of generic forms from a database along with what is likely a recreated declarations page for the policy period. As will be described below, the underwriting department for some carriers can obtain an exact scanned copy of the initial policy packet that was mailed to the insured at the beginning of the coverage. In some situations, it can be important to obtain that packet to see what was actually included, but you will have to go through the underwriting department as it has been my experience that claims department are not closely connected to underwriting departments to know that such documentation exists. The client's agent often has a direct contact in the underwriting department.

5. Base Policy

1. Generally, insurance carriers have a base policy document that they use in every state. The carriers then amend the base policies via endorsements to the policy. The declarations page, base policy, and endorsements are typically the three parts of the entire insurance contract. The language in most base policies is created by the Insurance Services Office, Inc. ISO creates the policy documents and obtains approval from the various state insurance departments. ISO then sells the policy forms to insurance companies for those carriers to use. ISO tracks legislation and case law to regularly update its forms. Carriers receive notices from ISO regarding those updates and then the carriers make the decision whether they also want to update their forms.

2. You can view the current (as of 2018) ISO Personal Auto Policy Filings by searching for SERFF Tracking Number ISOF-131216329 on the Iowa SERFF website located here https://filingaccess.serff.com/sfa/home/IA.

3. **Base Policy Definitions & Conditions -**

   i. UM and UIM coverages are *typically* provided via a separate endorsement to the base policy; however, remember that the endorsement is an amendment of the base policy. Thus, the definitions at the beginning of the policy and the conditions at the end of the policy still apply to the UM/UIM endorsements. This means – don't simply read the UM/UIM

endorsements – you have to also read the base policy definitions and conditions.

ii. With the foregoing in mind, this treatise will discuss definitions and conditions without reference to whether they are contained in the endorsements or the base policy.

6. The Elements of UM/UIM Coverage

1. **The Iowa Bar Association Jury Instructions -**

Iowa Civil Jury Instructions – 1440.1

i. At the time of the accident, the plaintiff was insured by the defendant for bodily injuries caused by the fault of an owner or operator of an underinsured motor vehicle.
ii. The tortfeasor was the owner or operator of an underinsured motor vehicle.
iii. The tortfeasor is legally liable for the plaintiff's bodily injuries.
iv. The nature and extent of the plaintiff's damages.
v. The plaintiff's damages exceeded the policy limits of the tortfeasors bodily injury liability policy.

b. **The ISO base policy UM coverage is amended via endorsement, which begins with the following language -**

We will pay compensatory damages, which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury" caused by accident.

The owner's or operator's liability for these damages must arise out of the ownership maintenance or use of the "uninsured motor vehicle".

c. **The Iowa Code UM/UIM statutes provide as follows -**

Auto policies must provide coverage "for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident.

Each of the underlined terms are the elements that the insured must satisfy to obtain coverage under the policy. However, keep in mind that even though there is coverage, there may be exclusions or conditions (described below) that reduce or eliminate the coverage.

Element 1 – Is the specific claimant a "person insured" under the applicable policy?

a. Three Classes of Insureds – Hornick v. Owners Ins. Co., 511 N.W.2d 370, 373 (Iowa 1993). Coverage is generally provided for three distinct groups of persons. The first group includes the named insured identified on the declarations page and, while residents of the same household, the spouse, and relatives of the named insured. Id. The second group defined as insured is usually any other person while occupying a covered or insured vehicle. Id. The third group includes persons who may claim damages because of bodily injury to persons in group one or two. Id.

CLASS I – You or Resident Relatives

Personal and Portable as to Named Insured and Resident Relatives: Hornick v. Owners Ins. Co., 511 N.W.2d 370, 372 (Iowa 1993)
To provide protection against this peril, the coverage must be personal and portable. See Bradley v. Mid-Century Ins. Co., 409 Mich. 1, 294 N.W.2d 141, 152 (1980) (Insureds are protected "when injured in an owned vehicle named in the policy, in an owned vehicle not named in the policy, in an unowned vehicle, on a motorcycle, on a bicycle, whether afoot or on horseback or even on a pogo stick."). Uninsured and underinsured coverage protects and follows the person, not the vehicle.

The ISO base policy UM Coverage Part C defines "Insured" as follows:

"Insured" as used in this Part means:
1. You or a "family member";
2. Any other person "occupying" "your covered auto"; or
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

The ISO base policy definitions section defines "You", "family member".

Throughout this Policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

"Family member" means a person related to you by blood, marriage, or adoption who is a resident of your household. This includes a ward or foster child.

Resident – Factors to Consider – Frunzar v. Allied Prop. & Cas. Ins. Co., 548 N.W.2d 880, 885 (Iowa 1996). Proof of residency to be a resident relative insured – In AMCO Insurance Co. v. Rossman, 518 N.W.2d 333 (Iowa 1994), we approved certain factors a court may consider or on which a court may instruct the jury to determine whether a claimant was a resident of a named insured's household at the time of a loss. Id. at 335. Although not deemed an exclusive list, permissible factors include: (1) Whether the claimant was living under the same roof as the named insured at the time of the loss; (2) Whether the relationship between the claimant and the named insured was close and intimate; (3) Whether the claimant's stay at the household of the named insured was likely to be substantial; (4) The age of the claimant; (5) Whether the claimant had a residence separate from that of the named insured; (6) Whether the claimant was self-sufficient at the time of the loss; and (7) The frequency and duration of the claimant's stay in the named insured's household. Id. Under the AMCO case, no one factor controls the residency analysis and the term "resident" is not susceptible to one overriding definition. Id.

Corporations – Relatives – Cote v. Derby Ins. Agency, Inc., 908 N.W.2d 861, 867 (Iowa 2018). Our conclusion is reinforced by our precedent holding corporations do not have "family members" within the meaning of business insurance policies. See Huebner v. MSI Ins., 506 N.W.2d 438, 440–41 (Iowa 1993) (construing uninsured motorist policy and rejecting argument that policy's definition of insured, including "family members," extended coverage beyond the named insured, a corporation).

vi. Class I Insured when Passenger in Covered Vehicle – Taylor v. Pekin Ins. Co., 797 N.W.2d 131 (Iowa Ct. App. 2010). However, in Iowa, we believe the court has rejected this point of view. In Rodman v. State Farm Mutual Automobile Insurance Co., 208 N.W.2d 903 (Iowa 1973), an individual who had been injured while riding as a passenger in his own automobile due to his driver's negligence sought recovery under the uninsured motorist provisions of his policy. Rodman, 208 N.W.2d at 904. That court held that a policy purporting to deny coverage in that situation violated Iowa Code Ann. § 516A.1, which requires motor vehicle insurers in Iowa to offer uninsured motorist coverage and does not exclude the vehicle covered by the policy from the statutory definition of "uninsured motor vehicle." Id. at 909–10, (noting that "[t]here is no reason to believe the legislature intended to deny the purchaser of uninsured motorist coverage the protection he purchased just because the liability coverage is abstractly applicable to

someone else"); see also Jones v. State Farm Mut. Auto. Ins. Co., 760 N.W.2d 186, 187 (Iowa 2008) (assuming that a child passenger in an insured car driven by her mother could recover as an "uninsured motorist" where a policy exclusion barred her from recovering under the basic liability coverage); Classic Ins. Co. v. Reiger, 497 S.E.2d 20, 20–21 (Ga.Ct.App. 1998) (applying Iowa law, in a one-car accident case, holding that an individual who was a passenger in her own vehicle could recover on her uninsured motorist coverage based on the permissive driver's negligence). Thus, we do not find Taylor's claim barred by the "abstract" proposition that a vehicle cannot be both "insured and uninsured" at the same time.

Kats v. Am. Family Mut. Ins. Co., 490 N.W.2d 60, 62 (Iowa 1992).
Definition of resident relative excluded drivers who owned other cars. Thus, driver who owned another car was not a "person insured under the policy." We agree with the analysis of these cases and hold that Iowa Code Ann. § 516A.1 requires underinsured coverage only for persons who are otherwise insured under the policy. Because of the specific exclusion for the decedent in this case, he did not fit within the definition of persons covered by the underinsured provisions.

CLASS II – Others Occupying Your Covered Auto

Other Persons Occupying your Covered Auto – This class covers permissive users and passengers.

Operators – When it comes to operators, drivers, permissive users, or whatever term is used, the rule is that if the person's actions triggered the liability coverage on the policy – then the policy must also provide UM/UIM coverage to that person. This means that insurers must provide UM/UIM coverage to other operators of a vehicle insured by the policy.

Lee v. Grinnell Mut. Reinsurance Co., 646 N.W.2d 403, 405 (Iowa 2002).
Must provide coverage to permissive users of the insured vehicle. Upon our review of the applicable statutes and the legislative intent evidenced by the statutory scheme, we agree with Lee that coverage for persons "using" the insured motor vehicle must be read into liability policies issued pursuant to chapter 321 and not otherwise extending such protection. Additionally, insurers must provide UIM coverage to those persons included as insureds under the liability coverage, absent a valid exclusion. It follows then that any UIM coverage provided in a motor vehicle liability policy must likewise insure persons "using" the insured motor vehicle with the named insured's consent, notwithstanding a more restrictive policy definition of "insured person."

Passengers – Iowa law does not require UM/UIM coverage for Class II passengers. Most policies provide the coverage to Class II insured passengers.

Permission – Permission to operate the vehicle, or the lack thereof, is dealt with as a policy exclusion in the ISO policy, so it is discussed in the exclusions section, below;

The ISO base policy provides

> "Occupying" means
> 1. In;
> 2. Upon; or
> 3. Getting in, on, out or off.

Hornick v. Owners Ins. Co., 511 N.W.2d 370, 373 (Iowa 1993).
Under these statutory provisions, courts have concluded persons who must be insured by the underinsured motorist insurance are those who are protected by the liability coverage. As this court observed in Hornick, we have adopted the "prevailing view" that "persons who must be insured by the underinsured motorist insurance are those who are protected by the liability coverage." Thomas v. Progressive Cas. Ins. Co., 749 N.W.2d 678, 686 (Iowa 2008).

Physical Contact – Tropf v. Am. Family Mut. Ins. Co., 558 N.W.2d 158, 160 (Iowa 1997). Physical contact required under specific definition contained in the policy. There is no ambiguity in the phrase "and in physical contact with." Therefore we give this language its plain and ordinary meaning. This language clearly imposes a mandatory requirement for coverage that does not exist under the more typical version of the "occupying" definition: the claimant must be in actual physical contact with the insured vehicle when injured in order to be insured under the policy. Thus, a person seeking insured status must prove two things: (1) he or she was "in, on, getting into, or out of" the insured vehicle; and (2) he or she was "in physical contact with" the insured vehicle. Because Tropf was admittedly not touching the Farrell vehicle when he was injured, he does not meet the second part of the "occupying" definition and consequently, is not an insured under American Family's policy.

Zone of Protection – Simpson v. U.S. Fid. & Guar. Co., 562 N.W.2d 627, 629 (Iowa 1997). We employed the "physical contact" test in Tropf because the policy definition of "occupying" required the person seeking insured status to be "in physical contact with" the insured vehicle. When the policy definition does not impose this mandatory requirement of physical contact,

most jurisdictions recognize there is a "zone" or "area" around the insured vehicle in which protection is afforded. *Uninsured and Underinsured Motorist Insurance*, Alan I. Widiss, § 5.2, at 192 (2d ed. 1992). Coverage has been extended in many cases where the insured has been engaged in an activity associated with the vehicle's use or operation. We conclude as a matter of law that, whether Simpson was twenty feet or five feet from the truck, he was an insured of USF & G at the time he was struck by the uninsured motorist. It is clear he was in close proximity to the truck when he was injured. He had left the location of the valve and was returning to the vehicle to pick up another tool. He was clearly engaged in an activity relating to the use of the specialized truck. The vehicle was not merely a means of transporting persons, but was designed and equipped to aid with water valve inspection, cleanup, and repair.

Whicker v. Goodman, 576 N.W.2d 108, 111 (Iowa 1998).
Plaintiff was an insured under his grandpa's vehicle's liability coverage while moving it and thus entitled to UM coverage. But once he got out of the vehicle, he was no longer covered under liability, so no UM. Whicker's reliance on Hornick would be proper if Whicker had been injured while moving his grandfather's pickup. At that time, he was an "insured" under the liability coverages of the policy because he was using the insured vehicle. Thus, under our decision in Hornick, he would also be entitled to UM coverage during the period he was using his grandfather's pickup because that was the period during which he was an insured under the liability coverages. But Whicker was injured several minutes later, after his use of his grandfather's pickup had ended and after he had focused his activities elsewhere. Whicker was not an insured under the liability coverages of the auto owner's policy with respect to his activities occurring after he stopped using his grandfather's pickup. Therefore, our decision in Hornick does not require that Whicker be extended UM coverage for these later activities. In summary, Whicker was not an insured at the time of the accident simply because he had qualified as an insured earlier in connection with an activity that had ceased.

Cont'l W. Ins. Co. v. Stenstrom, 576 N.W.2d 638 (Iowa Ct. App. 1998).
The Court of Appeals, Vogel, J., held that employee was not "using" company's vehicle when she was struck by passing motorist, and thus, was not "insured" under company's policy, so as to be entitled to UIM benefits.

CLASS III – Damages to others due to bodily injuries suffered by Class I or Class II insureds. (Consortium & Bystander Claims)

Remember that UM/UIM claims are contract claims, so to recover, the claimant must have a contractual right conferred by the contract. Without

this provision, the holders of consortium and bystander claims would not have any contractual rights against the UM/UIM carrier as they are neither parties nor third-party beneficiaries to the policy. So the question is whether an insurance carrier could exclude consortium and bystander claims from UM/UIM coverage. The Iowa UM/UIM statutes state that the coverage must be "for the protection of persons insured under such policy who are legally entitled to recover damages …" [***Not sure on the answer to the question as to whether derivative claims can be expressly excluded as not being "insureds".***]

Jones v. State Farm Mut. Auto. Ins. Co., 760 N.W.2d 186, 189 (Iowa 2008).
While household exclusion operated to bar daughter's liability claim against mother, her father was not a household member and his consortium claim for daughter's injuries were independent and not derivative of her claim. State Farm asserts that this exclusion precludes coverage for Clinton's consortium damages because Clinton's loss of consortium claim is derivative of Skye's bodily injury, which was excluded from coverage by virtue of this exclusion. As noted earlier, however, a loss of consortium claim is not for an injury to the child, but for an injury to the parent. Consequently, the fact that the household exclusion applies to Skye's claim does not automatically mean that it also applies to Clinton's claim. Under the plain language of the policy, we conclude the exclusion does not apply to Clinton's independent claim for loss of consortium. It is undisputed that Clinton is not an insured under Shawna's policy, nor did he reside in her household.

Hinners v. Pekin Ins. Co., 431 N.W.2d 345, 347 (Iowa 1988).
Dahlke v. State Farm Mut. Auto. Ins. Co., 451 N.W.2d 813, 815 (Iowa 1990).
Lepic v. Iowa Mutual Insurance Co., 402 N.W.2d 758 762 (Iowa 1987).
Craig v. IMT Ins. Co., 407 N.W.2d 584, 586 (Iowa 1987).

Element 2 – Is the claimant "legally entitled to recover" from the owner or operator of the uninsured/underinsured motor vehicle?

a. A majority of jurisdictions have defined "legally entitled to recover" to mean simply that the plaintiff must be able to establish fault on the part of the uninsured or underinsured motorist which gives rise to damages and to prove the extent of those damages. Wetherbee v. Econ. Fire & Cas. Co., 508 N.W.2d 657, 661 (Iowa 1993).

b. See Leuchtenmacher, 461 N.W.2d at 293-94 (legislature did not intend the phrase "legally entitled to recover" to mean that the insured was required to establish liability in a separate lawsuit against the underinsured motorist prior to seeking benefits under the policy).

c. Green v. Cont'l W. Ins. Co., No. 01-0152, 2002 WL 100686, (Iowa Ct. App. 2002). Employer of injured plaintiff, as insured under UIM policy, has no legal right to claim damages against the at fault party. First, we conclude TPG was not legally entitled to recover damages from the tortfeasor. Our supreme court has made clear that employers have no claim for loss of an employee's time, expense of hiring a replacement worker, or increased workers' compensation premiums against a tortfeasor who injures an employee. Anderson Plasterers v. Meinecke, 543 N.W.2d 612, 615 (Iowa 1996) (adopting the modern prevailing view that there is no third-party liability to an employer in such a purely commercial relationship). In Wetherbee v. Economy Fire & Casualty Co., 508 N.W.2d 657, 658 (Iowa 1993), the supreme court interpreted the phrase legally entitled to recover damages in a UIM policy simply to mean that the insured must have suffered damages caused by the fault of the underinsured motorist and be entitled to receive those damages. Id. at 661. In this case, pursuant to the holding of Anderson Plasterers, TPG was not entitled to receive damages for expenses to hire others to replace its injured employee's services. The district court erred in concluding otherwise.

d. In Otterberg, 696 N.W.2d 24, 31 (Iowa 2005), we held an insured was not legally entitled to recover UM benefits because the injuries sustained were covered under the workers' compensation system. We distinguished Waits and Wetherbee, explaining that in those cases the "law provided for an underlying claim, but the claim could not be enforced by the insured under the particular circumstances." Id. at 30. By contrast, Otterberg never had a legal right to recovery against a co-employee. Id. Even noting the liberal interpretation given to the phrase "legally entitled to recover," we said it could not "be stretched so far as to cover situations when an insured could have never recovered from the uninsured motorist because the law did not provide for any recovery." Id. Hagenow v. Am. Family Mut. Ins. Co., 846 N.W.2d 373, 378 (Iowa 2014). Here, because the jury found Schmidt was not at fault for the collision with Dennis, we hold the Hagenows are not legally entitled to recover UM benefits from American Family. Id. at 383.

Element 3 – Is the other vehicle an uninsured or underinsured motor vehicle?

Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, 909 (Iowa 1973).
The statute does not define "uninsured motor vehicle" except to state in Iowa Code Ann. § 516A.3 that it includes "an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof." Under the uninsured motorist statute, we believe an automobile or motor vehicle liability policy must protect the insured in any case to the same extent as if the tortfeasor had carried liability insurance covering his liability to the insured in the amounts required to establish financial responsibility.

The most important thing to remember about this element is that the plaintiff bears the burden of proof to show that the other vehicle was either uninsured or underinsured. The failure to meet that burden is exemplified in Christiansen.

Christiansen v. Am. Family Mut. Ins. Grp., 683 N.W.2d 127 (Iowa Ct. App. 2004).
It is generally recognized that in order for an insured to recover under uninsured or underinsured motorist coverage, the insured has the burden to prove the uninsured or underinsured status of the other motorist. See Griffith v. Farm and City Ins. Co., 324 N.W.2d 327, 329 (Iowa 1982), cited in Frunzar v. Allied Prop. And Cas. Ins. Co., 548 N.W.2d 880, 886 (Iowa 1996). Because it is often difficult to prove the negative fact that another individual is uninsured, the Iowa courts have adopted a "reasonable efforts" standard. Id. at 888-89. If a claimant presents evidence that he or she has used "all reasonable efforts" in determining the existence of any applicable liability insurance, but remains unsuccessful, an inference may be drawn that the other vehicle was uninsured. Id. Whether a claimant seeking uninsured motorist coverage has introduced sufficient evidence to raise this inference is a question of law that the trial court may decide on a motion for directed verdict. Id. We agree with the trial court that plaintiff did not introduce substantial evidence to support a finding she made "all reasonable efforts" to contact the claimed uninsured motorist, Rittenhouse. Plaintiff's affirmative attempts to locate Rittenhouse consisted of hiring a process server for a short period of time, three years before this case was tried. This, coupled with plaintiff's testimony that she was not contacted by an insurance company following an accident where no injuries were reported, is not substantial evidence of reasonable efforts. We affirm on this issue.

Without a statutory definition, carriers may utilize their own definitions so long as they do not restrict the mandatory coverages. The ISO UM definition is provided below.

The ISO UM Endorsement provides the following definition of an uninsured motor vehicle:

> Uninsured motor vehicle means a land motor vehicle or trailer of any type:
>
> 1. To which no bodily injury liability bond or policy applies at the time of the accident.
>
> 2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case, its limit for bodily injury liability must be 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.
>
> 3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
>
> a. Your or any family member;
> b. A vehicle which you or any "family member" are "occupying"; or
> c. "Your covered auto".

4. To which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company:

a. Denies coverage; or
b. Is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member."
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises

Pudil v. State Farm Mut. Auto. Ins. Co., 633 N.W.2d 809, 812–13 (Iowa 2001).
This case involved a single vehicle accident where the vehicle's insurer, West Bend, was denied liability coverage, but paid UM coverage to the passenger. The passenger then brought suit against his own UIM carrier, State Farm, claiming that the UM payment by West Bend converted the uninsured vehicle into an underinsured vehicle.
Did the payment of UM benefits by West Bend transform the vehicle into an underinsured motor vehicle, as the plaintiffs contend? We agree with the trial court that it did not. Whether a vehicle is an underinsured motor vehicle is determined as of "the time of the accident" since the policy defines that term as a motor vehicle, the ownership or use of which is insured "for bodily injury liability at the time of the accident." Under the trial court's findings, there was no applicable bodily injury liability insurance at the time of the accident. UM benefits paid under a policy insuring the injured party do not qualify as bodily injury liability insurance so as to satisfy the policy definition of underinsured motor vehicle. See State Farm Mut. Auto. Ins. Co. v. Beavers, 321 Ark. 292, 297, 901 S.W.2d 13, 16 (1995) (stating, "[i]n short, the statute is clear that underinsured motorist coverage is triggered when the tortfeasor's insurance, not that of the insured, is less than the amount of damages incurred by the insured"); State Farm Mut. Auto. Ins. Co. v. Lindsey, 54 Ark.App. 390, 391, 926 S.W.2d 850, 851 (1996) (stating that the Arkansas "statute implies that underinsured coverage is not triggered unless the tortfeasor has insurance in the first instance"); Berg v. W. Nat'l Mut. Ins. Co., 359 N.W.2d 726, 729 (Minn. Ct. App. 1984) (holding that in order for insured to qualify for UIM benefits, there must have been a liability policy in effect; UM coverage does not satisfy this requirement). Contrary to the plaintiffs' position, the West Bend UM coverage was not coverage on the truck; it was coverage on the plaintiffs, who qualified as insureds under the UM coverage of the policy because they were injured by the driver of an uninsured vehicle. See Hornick v.

Owners Ins. Co., 511 N.W.2d 370, 372 (Iowa 1993) (stating that "uninsured and underinsured motorist coverage protects … the person, not the vehicle").

UM Acts Though Tortfeasor had Minimum Limits – Uninsured motorist coverage guarantees a minimum recovery while underinsured motorist coverage seeks to provide compensation to the extent of injury, subject to the policy limit. Kluiter v. State Farm Mut. Auto. Ins. Co., 417 N.W.2d 74, 75 (Iowa 1987).

UIM Meant to Bridge Gap Between Tortfeasor's Insurance and Full Damages - The purpose of underinsured motorist coverage is to provide compensation to the extent of injury, subject to the limits of the particular policy. American States Ins. Co. v. Tollari, 362 N.W.2d 519, 522 (Iowa 1985).

516A.3. Definition of UM includes Insolvent Liability Insurer

a. For the purpose of this chapter, the term "uninsured motor vehicle" shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

b. An insurer's insolvency protection is applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tortfeasor is insolvent at the time of such an accident or becomes insolvent after the accident.

Thomas v. Am. Family Mut. Ins. Co., 485 N.W.2d 298, 298 (Iowa 1992).
This insolvency provision, unlimited as to time, is different from Iowa Code Ann. § 516A.3, which limits uninsured coverage to insolvencies occurring within one year after the accident. In this case, the tortfeasor's insurer became insolvent more than one year after the accident. Under these facts, the insureds argued to the district court that the statute barred their uninsured motorist claims, leaving them, instead, with underinsured motorist claims under the policies. The district court thought otherwise and sustained the insurer's motion for summary judgment. We agree with the district court and affirm.

Element 4 – Do the claimant's damages arise out of bodily injury, sickness, or disease, including death?

Hinners v. Pekin Ins. Co., 431 N.W.2d 345, 347 (Iowa 1988).
The bodily injury definition did not limit it to "bodily injury to an insured" so the injury to the insured's husband which caused a consortium claim for insured (actually a resident relative) was allowed. We agree that Lori Hinners was a covered person under the policy and that coverage for her damages sustained because of the bodily injury to her husband was required by Iowa Code Ann. § 516A.1.

Wetherbee v. Econ. Fire & Cas. Co., 508 N.W.2d 657, 661 (Iowa 1993).
Iowa Code Ann. § 516A.1 does not require the insured to have sustained the bodily injury. See Hinners, 431 N.W.2d at 347. The statute requires only that there be bodily injury to a person which results in damage to the insured. Id.

Element 5 – Were the injuries and resulting damages caused by "accident"?

Am. Family Mut. Ins. Co. v. Petersen, 679 N.W.2d 571, 582 (Iowa 2004).
We conclude the term "accident" under a UM provision of an insurance policy can include the situation in which the injuries are caused by intentional conduct of an uninsured tortfeasor.

Element 6 – Did the accident and injuries arise out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident?

Hit & Run – Physical Contact Requirement –

Rohret v. State Farm Mut. Auto. Ins. Co., 276 N.W.2d 418 (Iowa 1979).
Held that Iowa's uninsured motorist statute, which provides for mandatory coverage as to uninsured motorists and also as to hit-and-run motorists where physical contact occurs, authorizes a policy clause requiring physical contact when third-party motorist is not identified, despite contention that in case of a noncontact unidentified motorist, a presumption arises that motorist was uninsured.

Country Mut. Ins. Co. v. McNelly, 772 N.W.2d 270 (Iowa Ct. App. 2009).
The court stated, "contrary to the plaintiff's contention, the physical contact requirement reflects and is consistent with the public policy of this state." Id. The court concluded that the provision of the insurance policy requiring actual physical contact between an unknown motorist's vehicle and the insured's vehicle was enforceable. Id.

Moritz v. Farm Bureau Mut. Ins. Co., 434 N.W.2d 624, 626 (Iowa 1989).
Reasonable expectations challenge rejected.

Claude v. Guar. Nat. Ins. Co., 679 N.W.2d 659, 662 (Iowa 2004).
Public policy and equal protection challenges rejected.

7. EXCLUSIONS

1. The exclusions list the types of perils or damages, which are otherwise covered in the insuring clause that are not covered by the policy. Many of the exclusions contain exceptions, which may resurrect excluded coverage.

2. Most policies (including ISO) contain the following exclusions
    i. Owned but Not Insured
    ii. Concurrent Coverage (Two policies on the same car)
    iii. Public or Livery Conveyance (Pizza Delivery Drivers & Uber Drivers)
    iv. Lack of Permission to Operate Vehicle

3. To date, Iowa courts have only dealt with the Owned but not Insured and a related exclusion of Not Owned but Insured within the UM/UIM context. There are also "permissive user" cases; however, those cases are not included as the analysis is not UM/UIM, but rather, whether the driver had permission to operate the vehicle.

Owned But Not Insured Exclusions

Westerhausen v. Allied Mut. Ins. Co., 258 Iowa 969, 140 N.W.2d 719 (1966), held that a motorcycle, which insured was riding when struck by uninsured motorist's vehicle was not an "automobile" within exclusion in uninsured motorist clause of injury sustained while occupying an automobile other than insured automobile, especially in view of definitions of "owned automobile" and "private passenger automobile" and reference to "private passenger, farm, or utility automobile," which had effect of defining "automobile" as a four-wheeled vehicle.

Kluiter v. State Farm Mut. Auto. Ins. Co., 417 N.W.2d 74 (Iowa 1987).
The court held that exclusion denying coverage to insured occupying vehicle owned by the insured, which was not insured under the policy in question was enforceable.

Ciha v. Irons, 509 N.W.2d 492 (Iowa 1993).
Riding motorcycle was not insured under policy at issue. The court held that insurer's "owned-but-not-insured" exclusion clause was statutorily authorized as exclusion designed to avoid duplicate benefits.

Dessel v. Farm & City Ins. Co., 494 N.W.2d 662 (Iowa 1993).
"Owned but not insured" exclusion from underinsured motorist coverage did not violate the governing statute and, thus, motorcyclist could not recover from insurer, where motorcyclist had not insured the motorcycle and the policy on the pickup truck excluded underinsured motorist coverage for injuries suffered while occupying any "owned but not insured" vehicle.

Walter v. Kinsey, 518 N.W.2d 370 (Iowa 1994).
The court held that "owned-but-not-insured" clause in automobile policy, which excluded coverage for injuries received by insureds' minor son while riding on motorcycle owned and driven by one insured was not invalid as against public policy.

Dilly v. Grinnell Select Ins. Co., 563 N.W.2d 197, 199 (Iowa Ct. App. 1997).

The court in Veach, when interpreting the insurance policy under the underinsurance provision, characterized the language as "not owned but insured." The "not owned but insured" language describes a type of underinsurance policy language. In this regard, the Grinnell policy has been described as an "owned but not insured" type of policy and, in some respects, is the type of policy reviewed in Kluiter, 417 N.W.2d at 75-76 (holding a person may only collect underinsured motorist coverage for injuries that he or she sustained while operating a vehicle covered under the policy insuring that vehicle); Jones v. American Star Ins. Co., 501 N.W.2d 536, 537 (Iowa 1993) (upholding a household exclusion against underinsured motorist coverage where the same policy had provided benefits from the liability portions of the policy); and Walter v. Kinsey, 518 N.W.2d 370, 372 (Iowa 1994) (upholding an "owned but not insured" exclusion to underinsured motorist coverage).

Welchans v. United Servs. Auto. Ass'n, 645 N.W.2d 1, 4–5 (Iowa Ct. App. 2002).
Driving Tractor – The "owned-but-not-insured" UIM exclusion provisions in Allied's and USAA's policies are designed to avoid duplication. Consequently, they meet the statutory requirements of Iowa Code Ann. § 516A.2 and are enforceable. The exclusionary language, although phrased differently in the two policies, excludes the tractor on which Welchans was injured. We therefore reverse the decision of the district court that UIM coverage is available to Welchans under his Allied or USAA policies. We reverse the district court and dismiss plaintiff's action.

Millers Mut. Ins. Ass'n v. Wolf, No. 02-0061, 2002 WL 31761742, at *1(Iowa Ct. App. Dec. 11, 2002).
Insured was occupying owned, but not insured motorcycle when he was just getting off the bike and hit by another motorist. We have carefully reviewed the record and we agree with the trial court that a reasonable jury would necessarily conclude Wolf was astride the cycle and consequently either upon or getting off the motorcycle at the time he was struck by the motorist's vehicle. The district court found the isolated parts of the deposition cited by Wolf were not inconsistent with this conclusion. We believe when viewed in context they are entirely consistent with it.

James v. Am. States Ins. Co., 665 N.W.2d 439 (Iowa Ct. App. 2003).
Driving tractor – We must also reject James's contention that the exclusion violates Iowa Code Ann. § 516A. Identical owned-but-not-insured language was approved in Miller v. Miller, 606 N.W.2d at 306-07.

Not Owned But Insured Exclusions

Hornick v. Owners Ins. Co., 511 N.W.2d 370, 374 (Iowa 1993).
Owner's wife was insured under policy as a relative, but exclusion stated that she had coverage unless she owned a vehicle. Owners' extension of underinsured motorist coverage to any relative who does not own a car may be viewed as an attempt to avoid duplication of insurance coverage and is therefore permitted under Iowa Code Ann. § 516A.2.

Veach v. Farmers Ins. Co., 460 N.W.2d 845, 848 (Iowa 1990).
Because the "not-owned-but-insured" clause in this case frustrates the purpose of underinsured motorist coverage and because it is contrary to "common sense and the consuming public's general understanding of coverage under these circumstances," we hold the exclusion is invalid. The goal of full compensation has not been met in this case. The ruling of the district court on this point is affirmed.

Prudential Ins. Co. of Am. V. Martinson, 589 N.W.2d 64, 66 (Iowa 1999).
Nonowned but insured vehicle exclusion was invalid under Veach.

Step-Down Exclusions

Krause v. Krause, 589 N.W.2d 721 (Iowa 1999).
"Step down" provision in endorsement, which reduced UM benefits to minimum liability "limit specified in the financial responsibility law" of state when there was no liability coverage due to family member exclusion enforceable.

Ringelberg v. EMC Ins. Grp., Inc., 660 N.W.2d 27 (Iowa 2003).
Step down for UM when Family Member Exclusion applies is valid. Insureds brought action against automobile insurer for declaratory judgment that step down endorsement violated public policy by reducing uninsured motorist (UM) benefits to the statutory minimum due to family-member exclusion. The District Court, Sioux County, Mary Jane Sokolovske, J., entered summary judgment in favor of insurer. Insureds appealed. The Supreme Court, Carter, J., held that step down endorsement that reduced UM benefits to statutory minimum, if liability coverage was excluded, was valid.

8. **POLICY LIMITS – What is the applicable Limits of Recovery on the policy and is it compliant with the UM/UIM statute?**

The Limit of Liability section of the policy/endorsement contains three separate but related issues – (1) minimum coverage; (2) intrapolicy stacking; and (3) offsets for other "duplicate" coverage or payments.

COVERAGE LIMITS

Lindahl v. Howe, 345 N.W.2d 548 (Iowa 1984).
Insurer may not sell less coverage than is required by mandatory statutory coverage requirement.

Lepic By & Through Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d 758 (Iowa 1987).
Held that "each person" liability limit of policies capped recovery for all claims arising from one bodily injury, including recovery for parents' loss of consortium damages.

Craig v. IMT Ins. Co., 407 N.W.2d 584, 586 (Iowa 1987).
Death of an unborn fetus is a separate claim from the parent's personal injury claim, thus it has a separate coverage limit under which they could bring their consortium claims even though they had already been paid under their individual limits.

Dahlke v. State Farm Mut. Auto. Ins. Co., 451 N.W.2d 813, 815 (Iowa 1990).
In Lepic v. Iowa Mutual Insurance Co., 402 N.W.2d 758 762 (Iowa 1987), we held that parents' loss of consortium as a result of injuries to their children was not a "bodily injury" under an uninsured motorist provision. In Lepic, we recognized that the loss of consortium may be a personal injury to a person who has lost a spouse or child. See, e.g., Madison v. Colby, 348 N.W.2d 202, 207 (Iowa 1984) (recovery by spouse); Handeland v. Brown, 216 N.W.2d 574, 576 (Iowa 1974) ("rule 8" claim by parent for loss of consortium of child). However, we declined in Lepic to expand on those cases by holding that such losses may also be considered bodily injuries. 402 N.W.2d at 763. THIS MEANS THAT THE CONSORTIUM CLAIM IS SUBJECT TO THE INJURED PARTIES LIMIT AND IS NOT A SEPARATE CLAIM THAT TRIGGERS NEW LIMITS.

INTRAPOLICY STACKING

Farm Bureau Mut. Ins. Co. of Iowa v. Ries, 551 N.W.2d 316, 318 (Iowa 1996).
Stacking is just another word to denote the availability of more than one policy, or one policy with multiple vehicles, providing reimbursement of the losses of the insured. Interpolicy stacking occurs when the insured recovers underinsured or uninsured benefits under more than one policy. In contrast, intrapolicy stacking occurs when the insured recovers underinsured or uninsured benefits under more than one vehicle under a single policy.

Holland v. Hawkeye Sec. Ins. Co., 230 N.W.2d 517, 520 (Iowa 1975).
Intrapolicy Stacking – Multiple Premiums – We agree with trial court that under the record, the premium charges made by Hawkeye afford no basis for "stacking" or "pyramiding."

Tri-State Ins. Co. of Minnesota v. De Gooyer, 379 N.W.2d 16 (Iowa 1985).
Automobile policy containing provision limiting liability for any one accident to amount shown on declaration page clearly limited underinsured motorist coverage to face amount of single coverage, and underinsured motorist provision which prevented stacking or pyramiding of multiple vehicle coverages was valid limitation under statute providing that underinsured coverage may include terms, exclusions, limitations, conditions, and offsets designed to avoid duplication of insurance or other benefits.

Swainston v. Am. Family Mut. Ins. Co., 774 N.W.2d 478, 483 (Iowa 2009).
Intrapolicy Stacking – Dicta: Similarly, an insurer can avoid intrapolicy stacking by stating that only one limit of liability is available regardless of the number of vehicles insured.

UM stacked on UIM in same Policy – Haines v. Progressive N. Ins. Co., 817 N.W.2d 31 (Iowa Ct. App. 2012). Wife had claim against underinsured tortfeasor and uninsured (policy exclusion) husband (driver of vehicle she was a passenger). Tortfeasor paid $100,000. UIM coverage paid $50,000 on 50/100 limit. Limit of liability stated that $50,000 was the most the insurer would pay to any person for damages arising out of an accident. The court agreed. Further, the reduction clause in the Haines insurance policy states in pertinent part: "[t]he limits of liability for Uninsured Motorist Coverage under this Part III will be reduced by all sums: 1. Paid because of bodily injury by or on behalf of any persons or organizations that may be legally responsible …." Hutchinson was legally responsible for Sara's injuries and settled with her in the amount of $100,000. Sara's entitlement to the $50,000 maximum uninsured motorist benefit from Jason is reduced by this amount. Because Sara's recovery of uninsured motorist coverage is extinguished by the reduction clause, we affirm the district court order granting summary judgment in favor of the defendants.

DUPLICATION OF BENEFITS – SETOFFS

Setoffs have two issues. First, is the other payment subtracted from the policy limit or is it subtracted from the total verdict/damages? Second, what categories of other payments can be subtracted from the carrier's exposure?

Method of Subtracting Setoffs

Iowa Code Ann. § 516A.2.
Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321 (Iowa 1976).
UM offsets can be subtracted from the policy limit, so long as it does not reduce the coverage below the statutory minimum coverage. Held that other insurance clauses which did not purport to reduce uninsured motorist insurance below statutory minimum of $10,000 for each person and $20,000 for each accident were valid; that administrator's maximum recovery was $10,000, plus interest and costs; that, by virtue of superior excess stipulation in deceased's policy, insurer of vehicle in which deceased had been riding was solely liable to administrator; and that uninsured motorist insurance remained payable to administrator, even though widow had been paid a larger amount as workmen's compensation.

States Ins. Co. v. Estate of Tollari, 362 N.W.2d 519 (Iowa 1985); and McClure v. Northland Ins. Companies, 424 N.W.2d 448, 450 (Iowa 1988).
In UIM cases, offsets are subtracted from the plaintiff's total damages in the case of a settlement, or from the verdict in the case of a verdict.

Poehls v. Guar. Nat. Ins. Co., 436 N.W.2d 62 (Iowa 1989).
However, in Poehls, the court held that in a UIM case, the carrier can subtract its own payments under the liability coverage from its payments under the UIM coverage.

Leuchtenmacher v. Farm Bureau Mut. Ins. Co., 461 N.W.2d 291, 295 (Iowa 1990).
It was error to offset medical payment coverage from UIM limit when the insured's damages exceeded the limits. We hold that it was error for the court to deduct $2,737 from the plaintiff's judgment and therefore reverse on the cross-appeal.

Miller v. Westfield Insurance Co., 606 N.W.2d 301, 304–05 (Iowa 2000).
In Miller, the court wrote: Using this common meaning of the language chosen by the legislature, there is no reasonable interpretation of the provision in question other than that the General Assembly meant to authorize exclusions that are intended to or have the purpose of avoiding duplication of benefits. Requiring the actual duplication of benefits is simply contrary to the language used by the legislature. An apparent rationale for our decision in Lindahl was our observation that "the broad mandate of coverage under Iowa Code Ann. § 516A.1 would mean little if an insurer could [rely on an exclusion] designed to prevent a possible duplication of insurance ... without regard to whether such duplication actually occurs." Id. at 345 N.W.2d at 551. In summary, under a proper application of the rules of statutory interpretation, we conclude that actual duplication of benefits is not required by Iowa Code Ann. § 516A.2(1). Our imposition of such a requirement in Lindahl was clearly wrong. (citation omitted). To make matters worse, we have not required an actual duplication of benefits when an owned-but-not-insured exclusion is contained in underinsured motorists (UIM) coverage. We have said that, in the context of UIM coverage, there is "no duplication of benefits until the victim has been fully compensated." McClure v. Northland Ins. Co., 424 N.W.2d 448, 450 (Iowa 1988) (applying section 516A.2(1)'s duplication-of-benefits provision). Yet in Kluiter v. State Farm Mutual Automobile Insurance Co., 417 N.W.2d 74, 76 (Iowa 1987), we upheld an owned-but-not-insured exclusion with no discussion of whether the insured had been fully compensated for his injuries. Instead, we merely found "potential duplication." Westfield Nat. Ins. Co. v. Estate of Frea, No. 14-1346, 2015 WL 1848693, at *2–3 (Iowa Ct. App. 2015).

Allowable Setoffs – What other payments qualify to be subtracted?

i. Liability Coverage

1. Liability Coverage in the Same Policy as the UM/UIM Coverage – Here, the district court concluded the exclusion provided in the Westfield policy is not void on public policy grounds, citing Jones v. American Star Insurance Co., 501 N.W.2d 536, 537–38 (Iowa 1993), where the court held that an exclusion denying benefits under an underinsured motorist clause of an automobile policy when the liability portion of the same policy has been paid in full, is not void on public policy grounds. The Jones court stated that in an action for underinsured motorist coverage against the driver's insurer by the estate of a passenger killed in a one-vehicle accident, we upheld a limitation on coverage to amounts paid under the policy's liability coverage. Poehls v. Guaranty Nat'l Ins. Co., 436 N.W.2d 62, 64 (Iowa 1989). We explained that the plaintiff, an insured person under the driver's policy, sought benefits flowing from the driver's negligence, as well as benefits arising because the owner purchased insufficient insurance to cover his potential liability. Id. To allow plaintiff to recover for negligence under both the liability and underinsurance provisions of the policy would, in effect, amount to a duplicate payment of liability benefits. Id. We held that limitation on coverage to amounts paid on the liability policy is valid and enforceable. Id. at 65.

2. Haines v. Progressive N. Ins. Co., 817 N.W.2d 31 (Iowa Ct. App. 2012).
   Wife had claim against underinsured tortfeasor and uninsured (policy exclusion) husband (driver of vehicle she was a passenger). Tortfeasor paid $100,000. UIM coverage paid $50,000 on 50/100 limit. Limit of liability stated that $50,000 was the most the insurer would pay to any person for damages arising out of an accident. The court agreed. Further, the reduction clause in the Haines' insurance policy states in pertinent part, "[t]he limits of liability for Uninsured Motorist Coverage under this Part III will be reduced by all sums: 1. Paid because of bodily injury by or on behalf of any persons or organizations that may be legally responsible …." Hutchinson was legally responsible for Sara's injuries and settled with her in the amount of $100,000. Sara's entitlement to the $50,000 maximum uninsured motorist benefit from Jason is reduced by this amount. Because Sara's recovery of uninsured motorist coverage is extinguished by the reduction clause, we affirm the district court order granting summary judgment in favor of the defendants.

3. Tortfeasor's Liability Coverage

Davenport v. Aid Ins. Co. (Mut.), 334 N.W.2d 711 (Iowa 1983).
Court held that a provision of the policy allowing the insurer to offset any recoveries from a third-party tortfeasor against its liability under the uninsured motorist clause was valid.

Matter of Estate of Rucker, 442 N.W.2d 113 (Iowa 1989).
The estate was assumed to have received the policy limits of the tort-feasor's liability policy for purposes of the exhaustion requirement, and estate could only recover difference between the liability policy limits and the damages suffered, subject to the underinsured motorist policy limits.

Fort Madison Bank & Tr. Co. v. Farm Bureau Mut. Ins. Co., 543 N.W.2d 591 (Iowa 1996).
(1) Son's settlement proceeds from dramshop action against tavern did not have to be offset against husband's insurer's UM liability to wife's estate; (2) probate disbursement from husband's estate to son did not have to be offset against husband's insurer's UM liability to wife's estate; and (3) husband's insurer would be entitled to offset from its UM liability any money that wife's estate received from husband's estate pursuant to the wife's estate's $300,000 judgment against husband's estate.

ii. Tortfeasor's Payments & Nonexempt Assets

1. Elliott v. Farm Bureau Mut. Ins. Co., 494 N.W.2d 731 (Iowa Ct. App. 1992).
Underinsured motorist carrier was not entitled to credit against uninsured motorist benefits for sums personally paid by tort-feasor to its insured until insured had been fully compensated for injuries; payments made by tortfeasor himself from nonexempt personal assets were not to be treated differently than amounts paid by tortfeasor's insurer to extent necessary to make insured whole.

iii. Medical Payments Coverage

1. Wilson v. Farm Bureau Mut. Ins. Co., 770 N.W.2d 324, 329 (Iowa 2009).
(Offset is not reduced by attorney fees and costs under 668). Farm Bureau is seeking to enforce a bargained for contract provision allowing it to avoid paying duplicative benefits by reducing its underinsured-motorist-coverage payment by the amount already

paid pursuant to the medical-payment-coverage section of the policy. Because the interest asserted is not a subrogation interest, the typical equitable reductions are not applicable.

iv. Worker's Compensation Payments

1. Condon v. Employers Mut. Cas. Co., 529 N.W.2d 630 (Iowa Ct. App. 1995).
   (1) Workers' compensation benefits paid to widow of decedent were not duplicative of UM insurance paid to administrator of estate, and (2) insurer was not entitled to introduce evidence of widow's right to receive workers' compensation benefits.

2. Matthess v. State Farm Mut. Auto. Ins. Co., 548 N.W.2d 562, 565 (Iowa 1996).
   In this case we held a policy provision, which provided for reduction for workers' compensation benefits received is valid as it fulfilled the object of avoiding duplication of insurance.

3. Green v. Cont'l W. Ins. Co., No. 01-0152, 2002 WL 100686, at *2 (Iowa Ct. App. 2002).
   No credit for full-amount employee could have received if it were not for the compromised settlement. Here, there will never be any duplication because Thomas has no future right to receive additional workers' compensation benefits. The district court therefore properly refused to grant Continental a credit for workers' compensation benefits Thomas might have recovered but for the special case settlement.

4. Greenfield v. Cincinnati Ins. Co., 737 N.W.2d 112 (Iowa 2007).
   Insurer was not entitled to offset entirety of employee's workers' compensation settlement against cumulative jury verdict; insurer was not entitled to an offset when determining recovery for past and future pain and suffering; insurer was not entitled to an offset when determining recovery for past and future loss of function; insurer was entitled to an offset when determining recovery for medical expenses and past wages; and insurer was not entitled to an offset when determining recovery of employee's husband for loss of consortium.

5. Rojas v. Pine Ridge Farms, L.L.C., 779 N.W.2d 223, 230–31 (Iowa 2010).
   In Iowa, we have decided, "[a] dependent's right to workmen's compensation is a distinct claim." McClure v. Employers Mut. Cas.

Co., 238 N.W.2d 321, 329 (Iowa 1976). In McClure, we found a deceased's widow had an independent claim as a dependent under our workers' compensation laws, separate and distinct from her entitlement to uninsured motorist insurance as the administrator of her husband's estate. Id. We see no reason to revisit our holding in McClure. We also believe it would be unprincipled to hold a dependent's right to workers' compensation is an independent claim for purposes of an uninsured motorist claim, but derivative for purposes of the allocation of workers' compensation death benefits. Id. at 231.

6. Rude v. Farmers Auto. Ins. Ass'n, 798 N.W.2d 350 (Iowa Ct. App. 2011).
   Bryan Rude was struck by an uninsured motorist while walking to his vehicle after work, and he entered into a workers' compensation compromise settlement with his employer under Iowa Code Ann. § 85.35(3). Rude subsequently filed a petition for declaratory judgment against his insurer, Farmers Automobile Insurance Association, seeking coverage under the uninsured motorist provisions. The district court granted summary judgment to Farmers, finding that under the policy any amounts payable would be reduced by all sums paid due to bodily injury under workers' compensation law. The court concluded Farmers could offset its payment by the total received in the settlement, and in this case, "Rude received more from the settlement than the maximum liability of his insurer; therefore, he is not entitled to declaratory relief." See Greenfield v. Cincinnati Ins. Co., 737 N.W.2d 112, 118–21 (Iowa 2007) (noting "[a]ny recovery from a third party is duplicative' in the context of uninsured motorist coverage"). We find no error in the district court decision and affirm.

v. Social Security Disability

1. Gentry v. Wise, 537 N.W.2d 732, 737–38 (Iowa 1995).
   In another case involving uninsurance, we held the insurer may receive credit against the insured's Social Security disability benefits attributable to the accident.

vi. Health and Disability Insurance Policies

1. Jackson v. Farm Bureau Mut. Ins. Co., 528 N.W.2d 516, 517 (Iowa 1995).
   Similarly, where an insurance policy provided a reduction for "disability benefits," we held the insurer was permitted to reduce a

jury verdict awarded in favor of the insured by the amount of disability benefits received under a disability policy.

2. Shatzer v. Globe Am. Cas. Co., 639 N.W.2d 1, 5 (Iowa 2001).
In the case before us, the language of the policy provision does not clearly and unambiguously provide UIM benefits will be reduced by the amount of private disability benefits received by the insured from his or her employer. The insurance contract states Globe's limit of liability payable for UIM coverage will be reduced by "amounts paid or payable under any workers' compensation, medical or disability benefits law or any similar law." It clearly does not count private disability benefits as a reduction.

vii. Iowa Insurance Guarantee (Insolvent Insurers)

1. Stecher v. Iowa Ins. Guar. Ass'n, 465 N.W.2d 887, 890 (Iowa 1991).
In summary, a reasonable interpretation of Iowa Code Ann. § 515B.9(1) leads us to conclude that the legislature intended uninsured motorist coverage to be included within the definition of "another insurance policy" which must be credited against the liability of the IGA. This means, in effect, that UM/UIM can be offset against what would have been the liability payment by the tortfeasor.

9. OTHER INSURANCE PROVISIONS

1. Other insurance really means – UM/UIM coverage that is provided by a separate policy. An "Other Insurance" provision in a policy generally has three related issues: 1) Interpolicy stacking – Can you stack the policies to obtain all of the applicable limits?; 2) Is this policy's coverage primary or excess as to the other policies?; and 3) Among the same class (primary v. excess) of policies, who pays first, or is it pro-rated among the class members?

2. **Read the Policy**

i. Veach v. Farmers Ins. Co., 460 N.W.2d 845, 848 (Iowa 1990).
The "other insurance" clause has no application to the facts of this case. Only one policy was issued to Greg Veach as the named insured. He was not the named insured of the policy issued to his mother. By definition in the policy the "other insurance" clause relates to any other applicable insurance issued to the named insured. It does not refer to other family members. As an insured, Veach is entitled to recover the full amount of the limits provided under the underinsured coverage. The district court judgment for $25,000 must be reversed and judgment entered for $50,000

3. **Selecting Policy to Make a Claim Under**

    i. Lemrick v. Grinnell Mut. Reinsurance Co., 263 N.W.2d 714 (Iowa 1978). Where uninsured motorist clause covering automobile involved in accident had limit of $10,000 per person and $20,000 per accident, such clause covered all three insureds involved in accident, but one of insureds was also covered by his own uninsured motorist clause which was issued by same insurer, other insurance paragraph in policies did not require insured who was covered under both policies to look first to policy which provided coverage to all three insureds and thus did not require all three insureds to divide among themselves the $20,000 limit of uninsured motorist clause covering the automobile involved in accident.

4. **Iowa ISO Policy Language**

    i. If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the Policy:

        1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

        2. Any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance providing such coverage on a primary basis.

        3. If the coverage provided under this Policy is provided:
            a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
            b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

5. Swainston v. Am. Family Mut. Ins. Co., 774 N.W.2d 478, 482 (Iowa 2009).

The basic difference between the concept of stacking and the operation of other insurance clauses can be simply stated as: other insurance clauses address rules for determining responsibility if more than one coverage is considered to apply, while stacking addresses whether more than one coverage, which would otherwise be applicable should, in fact, be applied at all. As such, the "other insurance" clauses should only come into play after the determination of whether the insured has the right to stack coverages at all. "Other insurance clauses are generally of three types: (1) calling for proration of coverage between the multiple policies; (2) stating that the policy will be 'excess' to any other applicable coverage; (3) seeking to avoid any contribution at all." Id. at 483; *Couch on Insurance* § 169:9, at 169–23 (footnote omitted). When another insurance provision is of the last type, providing that the coverage will not apply when other applicable coverage exists, "the other insurance provision may be considered either to preclude the issue of stacking by rendering the additional coverage inapplicable, or to represent a policy provision which prohibits stacking." Id. at § 169–24, 169–32, 169–73 ("The insurer may also avoid stacking by using an 'other insurance' or 'excess escape' clause which is unambiguous .... " (Footnote omitted.)).

6. **Inter-policy Stacking**

   i. Background on Statutory Amendments

      1. Farm Bureau Mut. Ins. Co. of Iowa v. Ries, 551 N.W.2d 316, 319 (Iowa 1996).

         We examined the legislature's intent behind the 1991 Amendment in Mewes. In Hernandez, we expressly applied broad coverage analysis to an insurer's policies, which sought to limit an injured party's total underinsurance recovery to the maximum policy limit of the insurer's policies. We held that since the insurer's antistacking provisions would have left the injured party without full compensation, the provisions were contrary to public policy and unenforceable. The general assembly responded to this analysis in Hernandez by expressly abrogating the opinion to the extent that we held that interpolicy stacking of underinsured benefits could occur despite specific contract or policy language to the contrary. In the unnumbered paragraph in Iowa Code Ann. § 516A.2(1), the legislature specifically stated that enforcement of limiting provisions ... will not frustrate the protection that Iowa Code Ann. § 516A.2(1) provides an insured. The legislature's abrogation of Hernandez and Iowa Code Ann. § 516A.2(3) limitations on recovery under multiple policies demonstrate a clear intention on the part of the legislature to allow insurers to limit underinsured motorist benefits. Since our decision in Mewes, we have revisited the history of our law on antistacking provisions in motor vehicle insurance policies. In

Barron v. State Farm Mutual Automobile Insurance Co., 540 N.W.2d 423 (Iowa 1995), we stated that "following the 1991 Amendment to Iowa Code Ann. § 516A.2, anti-stacking policy provisions pertaining to underinsured motorist coverage are valid and enforceable. This is true even when the various policies involved are issued by different insurers." Id. at 425.

ii. Iowa Code Ann. § 516A.2 (Current Version) -

1. To the extent that Hernandez v. Farmers Insurance Company, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under Iowa Code Ann. § 516A.1.

2. Pursuant to Iowa Code Ann. § 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.

3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

iii. Mortensen v. Heritage Mut. Ins. Co., 590 N.W.2d 35, 37 (Iowa 1999), holding modified by Swainston v. Am. Family Mut. Ins. Co., 774 N.W.2d 478 (Iowa 2009).
Plaintiff hit by uninsured driver while riding his bike. He had a policy with Milwaukee for his car and a policy with Heritage for his motorcycle. Milwaukee had $100,000 in UM and Heritage had $20,000 in UM. His

damages exceeded $120,000. There was not a stacking provision in either policy, so they claimed that section (3) of Iowa Code Ann. § 516A.2 meant he was only entitled to the highest single limit of $100,000. The court found that that argument was correct. To find what proportion of the $100,000 each owed the court took $120,000 (the total of all limits as stated in the clause) divided by the insurers limit.

iv. Nationwide Mut. Ins. Co. v. Kelly, 687 N.W.2d 272, 274 (Iowa 2004).
The highest single limit is the limit stated in the policy and not the amount that the insured actually received. Meaning that the other insurer cannot take the position that the insured received the full limit when he only received a partial payment of the limit stated in the policy.

v. Ewing v. Am. Nat. Prop. & Cas. Co., 752 N.W.2d 31 (Iowa Ct. App. 2008).
Interpolicy stacking disallowed. Ewing claims the payment of multiple premiums and the absence of any antistacking language would cause a reasonable person to believe Ewing purchased $400,000 of UIM coverage.

vi. Farm Bureau Mut. Ins. Co. of Iowa v. Ries, 551 N.W.2d 316, 319 (Iowa 1996).
The Farm Bureau endorsement limits the underinsured coverage for an insured injured while occupying a vehicle not owned by the named insured to an "amount that does not exceed the applicable minimum limit required by Iowa law for bodily injury liability." Iowa Code Ann. § 516A.2(1) specifically states that an insurer will not be required to offer uninsured or underinsured motorist coverage "in excess of those ... prescribed in subsection 10 of Iowa Code Ann. § 321A.1." We find the language of Iowa Code Ann. § 516A.2 permits the Farm Bureau endorsement limiting underinsured motorist benefits. Both Ries and the district court rely on Veach v. Farmers Insurance Co., 460 N.W.2d 845 (Iowa 1990), in finding the Farm Bureau policy unenforceable. The insurer in Veach sought to totally exclude coverage under its underinsured motorist policy when the insured was a passenger in a non-owned automobile. Id. at 846. We held the exclusion was invalid. Id. at 848. The Farm Bureau endorsement at issue here, however, is a limitation not an exclusion. Under its policy, Farm Bureau agrees the statutory minimum of $20,000 is payable to the insured. We hold the Farm Bureau endorsement is valid and enforceable. The district court judgment is reversed.

vii. Mewes v. State Farm Auto Ins. Co., 530 N.W.2d 718 (Iowa 1995). automobile policies which provide both UIM coverage and uninsured motorist (UM) coverage are not excluded from the antistacking provisions of amended version of UM/UIM statute; (2) automobile policy provisions limiting interpolicy stacking of UIM benefits are enforceable under

amended version of UM/UIM statute, and are not limited to cases in which one insurer issued all of the policies in question; and (3) "antistacking" provision of insureds' automobile policy applied to insureds' claim, even though one of the other policies which provided them with UIM coverage for the accident had been purchased by third party unrelated to them.

viii. Rodish v. State Farm Mut. Auto. Ins. Co., 501 N.W.2d 514 (Iowa 1993). Held that statutory amendment did not entitle insureds to additional benefits where policy in question contained valid "other insurance" provision and recovery from other carrier exceeded statutory minimum for uninsured coverage.

7. **Primary v. Excess**

i. Grinnell Mut. Reinsurance Co. v. Globe Am. Cas. Co., 426 N.W.2d 635, 637 (Iowa 1988).
Thus, where an "excess insurance" clause pertains to nonownership coverage, the conclusion is generally reached, no matter how various the reasoning adopted in support of it in the different cases may be, that the policy issued to the owner of the vehicle is the "primary" policy, and the company issuing it is liable up to the limits of the policy without apportionment. 7A Am.Jur.2d, *Automobiles and Highway Traffic* § 434, at 83-84 (1980). Iowa cases have followed this general rule. See, e.g., McClure, 238 N.W.2d at 328; Burcham, 255 Iowa 69, 73, 121 N.W.2d 500, 502 (Iowa 1963); Motor Vehicle Casualty Co., 116 N.W.2d 434, 437 (Iowa 1962) (rule characterized as "overwhelming majority view").

ii. Rodish v. State Farm Mut. Auto. Ins. Co., 501 N.W.2d 514, 515 (Iowa 1993).
Principal was liable for the primary coverage because its insured vehicle was the one involved in the accident. State Farm's policy provides only "excess" coverage.

8. **Calculating Exposure With Multiple Carriers in the Same Class (E.G., Primary v. Excess)**

i. Swainston v. Am. Family Mut. Ins. Co., 774 N.W.2d 478, 487 (Iowa 2009). In Swainton, the plaintiffs sued State Farm, which had $250,000 per person and $500,000 per accident. Because there were other claimants, the $500,000 was exhausted and Kale received $195,000 and Stephanie received $54,000. They then looked inter-policy to American Family, which had a $100,000/$300,000 policy. The court said that the policy was silent so section (3) applied; therefore, the highest single limit was the SF policy and they could each recover up to the $100,000 limits in the American

Family Policy. Remember, it does not increase an insurer's exposure above the limits, it just allows you to put those limits into the plantiff's pool to fill the pool to the highest single limit. Under the default rule of Iowa Code Ann. § 516A.2(3), an insured's recovery will be restricted by two sets of limits: the highest applicable limit of all policies providing coverage (here $250,000/$500,000) and the limit of the policy under which recovery is sought (here $100,000/$300,000). Thus, Kale, who has already been paid $195,000, can recover, at the most, $55,000 under the American Family policy, nothwithstanding American Family's per-person limit of $100,000, because his total recovery is limited to the highest applicable limit of $250,000. In contrast, Stephanie has only recovered $54,000, leaving her $196,000 short of the $250,000 highest limit. Nonetheless, her potential recovery under American Family policy is capped at $100,000, the per-person limit of that policy.

ii. Westhoff v. Am. Interinsurance Exch., 250 N.W.2d 404 (Iowa 1977).
Held that "other insurance" provisions of motor vehicle liability insurance policies are not contrary to Iowa law; and that in respect to one of the two individuals injured, while riding on a motorcycle, as the result of a collision with an uninsured motorist, the motorcycle insurer's other insurance clause was inapplicable since the aforesaid accident victim was not a "named" insured in another policy, but in respect to the second motorcycle rider, the "other insurance" provisions of the three policies in question were in obvious conflict, meaning that, under a pro rata approach, the motorcycle insurer was potentially liable for one-third of the $10,000 recoverable by that victim and the other insurer, which had issued two applicable policies, were potentially liable for the other two-thirds.

iii. Grinnell Mut. Reinsurance Co. v. Globe Am. Cas. Co., 426 N.W.2d 635, 637 (Iowa 1988).
It has been noted that [other insurance] clauses are of three principal kinds: (1) those providing that in the event of other insurance, the insurer issuing the policy in question is not liable at all, usually called "escape" clauses; (2) those providing that in the event of other insurance, the coverage offered by the policy in question shall be "excess" coverage, that is, the insurer is liable only if the loss is in excess of the limits of the other policy or policies, usually called "excess" clauses; and (3) those providing that in the event of other insurance, the insurer issuing the policy in question shall be liable only for the proportion of the loss that represents the ratio between the limit of liability stated therein and the total limit of liability of all valid and collectible insurance covering the loss, usually called "prorate" clauses. In this situation, the general rule is stated – [W]here one of the policies contains an "excess insurance" clause and the other a "pro rata" clause, effect generally is given to the "excess insurance" clause.

iv. Motor Club of Iowa Ins. Co. v. Iowa Mut. Ins. Co., 508 N.W.2d 634 (Iowa 1993) (1) neither policy was ambiguous, and each provided excess coverage, and (2) given "mutually repugnant" excess clauses, each company was obligated to share in cost of settlement, pro rated within their combined underinsured motorist limits.

10. CONDITIONS

1. **Policy Conditions – Generally**

i. Simpson v. U.S. Fid. & Guar. Co., 562 N.W.2d 627, 631–32 (Iowa 1997). Whenever policy provisions are conditions precedent to coverage under an insurance contract, an insured must show substantial compliance with such conditions. Fireman's Fund Ins. Co. v. ACC Chem. Co., 538 N.W.2d 259, 264 (Iowa 1995); Met-Coil Sys. Corp. v. Columbia Cas. Co., 524 N.W.2d 650, 654 (Iowa 1994). If an insured cannot prove substantial compliance, he or she must show that (1) failure to comply was excused, (2) the requirements of the condition were waived, or (3) failure to comply was not prejudicial to the insurer. If an insured fails to prove substantial compliance, excuse, or waiver, prejudice to the insurer is presumed. Met-Coil Sys. Corp., 524 N.W.2d at 654. Although this presumption is rebuttable, it will defeat an insured's recovery unless it is overcome by a satisfactory showing of lack of prejudice. The burden to show actual prejudice does not shift to the insurer until the insured has satisfactorily shown excuse or legal justification, such as reasonable mistake or trivial occurrence.

ii. Iowa Code Ann. § 515.101.
    1. Any condition or stipulation in an application, policy, or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provision or the violation thereof did not contribute to the loss.
    2. Any such condition or stipulation in an application, policy, or contract of insurance that refers to any of the following shall not be changed or affected by the provisions of subsection 1:
        a. Any other insurance, valid or invalid.
        b. Vacancy of the insured premises.
        c. The title or ownership of the property insured.
        d. Liens or encumbrances on the property insured created by the voluntary act of the insured and within the insured's control.

e. Suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium.
f. The assignment or transfer of such policy of insurance before the loss occurs without the consent of the insurance company.
g. The removal of the property insured.
h. A change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous.
i. Fraud, concealment, or misrepresentation of an insured.

2. Exhaustion of Underlying Limits

   i. Matter of Estate of Rucker, 442 N.W.2d 113 (Iowa 1989).
   Application of the provision of underinsured policy requiring exhaustion of liability limits violated public policy when estate reached settlement with tortfeasor's liability insurer for less than the full policy limit.

3. Notice to the Carrier

   i. Simpson v. U.S. Fid. & Guar. Co., 562 N.W.2d 627, 632 (Iowa 1997). Failure to notify carrier of offer to confess and subsequent acceptance of it until after it had occurred was found to be a breach of the notice and cooperation provisions. We conclude Simpson did not show he made a reasonable effort to determine the existence of coverage. At the time of the negotiations with the Warrens, Simpson knew that they were uninsured and that he would have difficulty collecting on any judgment. Despite this, however, apparently no inquiry was made as to what coverage Simpson had through his employer, Des Moines Waterworks.

4. Statute of Limitations & Contractual Limitation on Time to bring Suit

   i. Iowa Code Ann. § 614.1(5) – Contractual UM/UI claims are subject to the 10-year statute of limitations. However, the insurer may limit the time period to bring suit via the contract.

   ii. Robinson v. Allied Prop. & Cas. Ins. Co., 816 N.W.2d 398, 405 (Iowa 2012).
   We hold it is reasonable, as a matter of law, for a UIM insurer to select the same two-year deadline from the date of the accident to file a UIM claim as the legislature prescribed for filing a personal injury tort action.

   iii. Osmic v. Nationwide Agribusiness Ins. Co., 841 N.W.2d 853 (Iowa 2014). Policy's two-year contractual limitation on claims to recover UIM benefits

was reasonable. Passenger, as third-party beneficiary, was subject to provisions of policy, including requirement that actions to recover UIM benefits be brought within two years of accident. Insurer has no affirmative duty to disclose deadline for filing suit under contractual limitations period to additional insureds. Equitable estoppel did not apply to bar insurer from asserting policy's two-year limitations period; and Insurer could enforce policy's two-year limitations period for bringing UIM claims against passenger. The Iowa Supreme Court has "held that parties to an insurance contract can modify the deadline for bringing suit," but the limitation is only enforceable if reasonable. In the context of uninsured (UM) and underinsured (UIM) claims, the court has held a contractual two-year limit on filing suit to be reasonable. ("In certain prior cases, we have upheld contractual limitations provisions that require suit to be brought for UIM or uninsured motorist ... benefits within two years of the accident. There is no question that the two-year contractual limit was reasonable in this case." (citation omitted). We note the contractual two-year limit in those cases mirrors the two-year statute of limitations for personal injuries. See Iowa Code Ann. § 614.1(2).

iv. Jones v. Lockner, 829 N.W.2d 589 (Iowa Ct. App. 2013).
This requirement of filing suit within two years is separate and distinct from the provisions of the contract that provide the means of notifying Nationwide of a possible suit, such as the "Notification of Underinsurance Claim" sent to Nationwide on August 19, 2011. The Joneses claim multiple times that their brief "notice" was given only three days after the running of the limitation period, this however is an incorrect representation. The provision of the contract regarding the initiation of legal action would not have been satisfied until the suit was actually filed on November 4, 2011, months after the running of the statute.

v. Hruby v. Allied Ins. & Cas. Co., 829 N.W.2d 191 (Iowa Ct. App. 2013).
The Hrubys allege that because there was an additional party, Alvarez, involved in the original action and no settlement or other disposition of Alvarez's claim had occurred, "even a search conducted with full diligence would not have indicated to the Hrubys how much, if any, insurance will be available to pay their claim after Alvarez's claim is paid and therefore how much underinsured motorist coverage is necessary."

vi. Blanchard v. Country Preferred Ins. Co., 808 N.W.2d 756 (Iowa Ct. App. 2011).
As in Nicodemus v. Milwaukee Mut. Ins. Co., 612 N.W.2d 398 (Iowa 2000), Country Preferred required Blanchard to bring suit against it for underinsured coverage within two years of the accident. And, as in

Nicodemus, Country Preferred required Blanchard to first exhaust the limits of the tortfeasor's policy.

vii. Taylor v. Allied Prop. & Cas. Ins. Co., 805 N.W.2d 398 (Iowa Ct. App. 2011).
Taylor was not faced with a Nicodemus-style exhaustion requirement. While the full-compliance clause in Taylor's policy was similar to the full-compliance clause at issue in Nicodemus, the Allied policy contained no additional exhaustion requirement. As the district court stated, "[n]othing in Allied's insurance policy prevented [Taylor] from suing Allied within two years of the accident during the exact same time that he could have filed suit against the other driver thereby complying with both the two-year contractual and statutory limitations periods governing the two claims."

viii. Hesseling v. State Farm Mut. Auto. Ins. Co., 795 N.W.2d 99 (Iowa Ct. App. 2010).
In light of the inference of uninsured status that arises when plaintiffs demonstrate they used all reasonable efforts in an unsuccessful attempt to ascertain a tortfeasor's liability coverage, the Hesselings' argument that they could not affirmatively ascertain the tortfeasors' insured status in two years does not demonstrate the two-year period was unreasonable.

ix. Rolf v. Nationwide Mut. Ins. Co., 766 N.W.2d 648 (Iowa Ct. App. 2009).
"Under the discovery rule, 'the statute of limitations does not begin to run until the injured person has actual or imputed knowledge of all the elements of the cause of action." Hook v. Lippolt, 755 N.W.2d 514, 521 (Iowa 2008). With respect to imputed knowledge, our Supreme Court has stated that a "person is charged with knowing on the date of the accident what a reasonable investigation would have disclosed." Id. The limitations period thus begins when a claimant has knowledge sufficient to put that person on inquiry notice.

5. Consent to Settlement

i. Bellville v. Farm Bureau Mut. Ins. Co., 2005, 702 N.W.2d 468 (Iowa 2005).
Consent-to-settlement clause in an insurance policy providing underinsured motorist (UIM) coverage not only imposes an express duty on the insured to obtain the insurer's consent to settlement with the tortfeasor, but also imposes an implied reciprocal duty on the insurer to consent unless it has a reasonable basis for refusing to do so.

ii. Hale v. Classified Ins. Co., Inc., 535 N.W.2d 164 (Iowa App. 1995).
Insured's breach of consent-to-settlement clause in her uninsured/underinsured motorist (UM/UIM) policy precluded recovery of

UIM benefits under the policy, where breach caused prejudice to insurer's contractual subrogation right, as tortfeasor had assets to satisfy judgment to limits of insured's UM/UIM coverage.

iii. Kapadia v. Preferred Risk Mut. Ins. Co., 418 N.W.2d 848, 852 (Iowa 1988). Holding an "insurer may establish the breach of the consent-to-settlement clause as an affirmative defense to recovery on the underinsurance endorsement if it proves that, absent such a breach, it could have collected from the tortfeasor under its rights embraced by the contractual subrogation clause."

iv. Grinnell Mut. Reinsurance Co. v. Recker, 561 N.W.2d 63 (Iowa 1997). Insured's failure to notify UIM insurer of liability insurer's policy limits settlement offer breached UIM policy's consent-to-settlement clause; by accepting settlement offer after limitations period expired, insured prejudiced UIM insurer by effectively precluding it from exercising its subrogation rights; UIM insurer did not waive right to rely on consent to settlement clause.

v. Hale v. Classified Ins. Co., 535 N.W.2d 164 (Iowa Ct. App. 1995). Held that insured's breach of policy's consent-to-settlement clause precluded recovery of UIM benefits under the policy, since breach caused prejudice to insurer's contractual subrogation right.

6. Consent to Sue or Consent to be Bound

i. Mizer v. State Auto. & Cas. Underwriters, 195 N.W.2d 367 (Iowa 1972). If insurer refuses to consent to suit, then it cannot use the underlying verdict as res judicata against the insured when the insured sues the insurer. Held that because insured in suit against uninsured motorist had full opportunity to litigate her claim for personal injuries including permanent disability, the same elements she realleged in her subsequent suit against insurer on uninsured motorist coverage, despite lack of privity or mutuality, it would not otherwise be unfair to hold under doctrine of issue preclusion that insured was bound by the damage verdict in first suit, but since insurer refused to consent to first suit and insisted on arbitration in accordance with policy terms, insurer was estopped from claiming that insured was bound by the lower verdict in first suit.

ii. Wilson v. Farm Bureau Mut. Ins. Co., 714 N.W.2d 250, 258 (Iowa 2006). We hold that a consent-to-be-bound provision, like the one in this case, is valid and enforceable provided the insurer does not withhold or refuse its consent without a reasonable basis to do so. For example, here, the UIM policy provision requires the insured to provide the insurer a copy of all suit

papers when the insured sues the underinsured motorist. In addition to complying with this condition, the insured must obtain a valid judgment against the underinsured motorist. Implicit in this last requirement is that the suit must be defended. Default judgments, insubstantial defenses, and collusion between the insured and the underinsured motorist will preclude the insured from satisfying the legally entitled to recover condition. In short, the insurer will not be bound by a judgment obtained through any of these means. Once the insured satisfies the legally entitled to recover condition of the UIM coverage, the insurer has an implied reciprocal duty to refrain from withholding or refusing its consent to be bound by the judgment without a reasonable basis to do so.

iii. Handley v. Farm Bureau Mutual Insurance Co., 467 N.W.2d 247 (Iowa 1991).
We held in that case that it was an abuse of discretion not to sever the tort claim against the underinsured motorist from the contract claim against the insurer for UIM benefits.

iv. Brown v. Kassouf, 558 N.W.2d 161 (Iowa 1997).
Driver and passenger who were injured in automobile accident brought suit against one alleged tortfeasor. Passenger settled with tortfeasor prior to litigation. Following jury's verdict that tort-feasor was not at fault, driver's underinsured motorist (UIM) carrier sought determination that doctrine of issue preclusion prevented driver and passenger from relitigating apportionment of fault in trial against UIM carrier for UIM benefits. The District Court, Linn County, Lynne E. Brady, J., held that settling passenger was bound by jury's verdict that tortfeasor was not at fault, and passenger appealed. The Supreme Court, Lavorato, J., held that passenger was so connected in interest with driver as to have had full and fair opportunity to litigate issue of tortfeasor's fault in the suit, and thus, passenger would be bound by jury's determination.

7. Mexico Coverage Condition

i. Kvalheim v. Farm Bureau Mut. Ins. Co., 195 N.W.2d 726 (Iowa 1972).
Held that where policy defined uninsured automobile to include hit-and-run automobile, but included condition that policy applied to loss while "the automobile" was in United States or in Mexico, within 75 miles of United States boundary, "the automobile" did not refer to automobile owned by insured and insurer was not liable for death of insured in hit-and-run accident in Mexico more than 75 miles from United States boundary on theory that the owned automobile was in Iowa at the time of accident and thus within area specified in the condition so that the policy applied to losses occurring throughout the world.

11. PRE – AND POST – JUDGMENT INTEREST

1. Vasquez v. LeMars Mut. Ins. Co., 477 N.W.2d 404 (Iowa 1991).
   The applicable interest statute was the general interest statute rather than the interest provision of the comparative fault chapter, and prejudgment interest for breach of policy provisions for failure to pay underinsured motorist limits was not subject to the policy limits.

2. Opperman v. Allied Mut. Ins. Co., 652 N.W.2d 139, 143 (Iowa 2002).
   In computing the interest to be paid by the carrier, the plaintiffs should receive interest on all of the past damages from the date the original petition was filed against the tortfeasors, to when judgment was entered against the carrier. As each payment set out above was received by the plaintiffs, the amount of principal on which interest was computed, should be reduced by those amounts as of the time the payments were received. All payments credited to the carrier shall first be credited to the interest then due and the balance, if any, to principal. See 47 *C.J.S. Interest & Usury* § 74, at 164 (discussing the general rule, which is known as the "United States Rule," to apply payments first to interest, and the balance, if any, to principal); see also Christensen v. Snap–On Tools Corp., 554 N.W.2d 254, 262 (Iowa 1996).

3. Wilson v. Farm Bureau Mut. Ins. Co., 770 N.W.2d 324, 333 (Iowa 2009).
   As each payment ... was received by the plaintiffs, the amount of principal on which interest was computed should be reduced by those amounts as of the time the payments were received. All payments credited to [the insurer] shall first be credited to the interest then due and the balance, if any, to principal.

4. Houselog v. Milwaukee Guardian Ins., 473 N.W.2d 52 (Iowa 1991).
   Prejudgment interest on judgment for damages against tort-feasor was included in underinsurance coverage for damages "for bodily injury" or "because of bodily injury," and inasmuch as carrier was not party to underlying lawsuit and could not stop accumulating interest, prejudgment interest commenced on date insureds sued carrier.

12. LIENS & SUBGROGATION

1. Generally, hospital, Medicare and Medicaid liens attach to UM/UIM proceeds.

2. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 129 (Iowa 2004).
   Workers' compensation payments are not a lien against UM/UIM proceeds.

3. Subrogation – Iowa Code Ann. § 516A.4. In the event of payment to any person under the coverage required by this chapter and subject to the terms and

conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

4. Must Obtain Waiver of Subrogation Rights – Matter of Estate of Allgood, 509 N.W.2d 486, 487 (Iowa 1993).
   An insurer who has provided uninsured motorist coverage can recover from a tortfeasor's payments to the insured regardless of whether the insured has been fully compensated. Davenport v. AID Ins. Co. (Mutual), 334 N.W.2d 711, 715 (Iowa 1983). Christopher's estate recovered in an action brought pursuant to the Dram Shop Act, Iowa Code Ann. § 123.92–.94. We adhere to our treatment of underinsured motorist coverage when dram shop recoveries are involved. Zurn v. State Farm Mut. Auto. Ins. Co., 482 N.W.2d 923, 926–27 (Iowa 1992). Similarly, we hold an insurer retains full subrogation rights for uninsured motorist coverage against an insured's dramshop recovery.

5. Ludwig v. Farm Bureau Mut. Ins. Co., 393 N.W.2d 143, 147–48 (Iowa 1986).
   We hold it was error to deny Farm Bureau's subrogation claim to the excess of Ludwig's recovery over and above her medical expenses. We remand for entry of judgment accordingly. On remand, the court shall consider whether Ludwig should be given credit for a portion of the attorney fees incurred in the collection of this amount from the third party. See generally Skauge v. Mountain States Telephone Co., 172 Mont. 521, 565 P.2d 628 (1977); United Pacific Insurance Co. v. Boyd, 34 Wash.App. 372, 661 P.2d 987 (1983); State Farm Mutual Auto Insurance Co. v. Geline, 48 Wisc.2d 290, 179 N.W.2d 815 (1970); 6A *Appleman*, supra, § 4096, at 287-88; 44 *Am.Jur.2d Insurance* § 1820, at 808. We express no view as to whether such allowance should be made.

6. Cont'l W. Ins. Co. v. Krebill, 492 N.W.2d 405 (Iowa 1992).
   Insurer sought reimbursement of underinsured motorist benefits paid to insured following insured's recovery from tortfeasors. The District Court for Lee County, R. David Fahey, J., entered summary judgment in favor of insured. Insurer appealed. The Supreme Court, Harris, J., held that insurer was not entitled to reimbursement where injuries exceeded total recovery.

13. CONFLICT OF LAWS

1. Bartels v. Wisconsin Mut. Ins. Co., 737 N.W.2d 326 (Iowa Ct. App. 2007).
   Accident occurred in Iowa and suit was filed in Iowa. Court found that Wisconsin law applied. Plaintiff had accepted less than full policy limit from tortfeasor, which barred UIM claim under Wisconsin law. Given the types of contacts we are to consider, we must conclude Wisconsin law should apply. First, all appellants are

residents of Wisconsin and were residents of that state at the time of the accident. Second, the insured vehicle is garaged in Wisconsin. Third, the insurance policy was purchased in Wisconsin from an agent located in Wisconsin. Fourth, appellee is incorporated and headquartered in Wisconsin. It is not authorized to do business in Iowa and does not underwrite insurance in Iowa. Fifth, appellants paid their premiums in Wisconsin, and any payments appellee would make to appellants would be delivered to their residence in Wisconsin. Finally, appellants can neither rely on Rucker nor point out other law for the proposition that Iowa public policy concerning UIM overrides the significant contacts test.

14. TRIAL

1. Leuchtenmacher v. Farm Bureau Mut. Ins. Co., 461 N.W.2d 291, 294-295 (Iowa 1990).
   The terms of the insurance policies are relevant and admissible when the carrier is disputing the elements (other than damages) of the plaintiff's claims.

2. Waits v. United Fire & Cas. Co., 572 N.W.2d 565 (Iowa 1997).
   Evidence of tortfeasor's settlement payment to insured was not relevant to only issue of extent of insured's injuries; and references to settlement payment in instructions resulted in reversible error.

3. Handley v. Farm Bureau Mut. Ins. Co., 467 N.W.2d 247 (Iowa 1991).
   Underinsured motorist coverage and bad faith claims asserted against insurer were not premature, although amount of damages owed by allegedly negligent driver had not been determined; refusal to sever claims against insurer for separate trial from claim against driver was abuse of discretion; and discovery of insurer's files concerning bad faith claim would not be stayed until prima facie case of bad faith was established.

4. Paine v. Am. Family Mut. Ins. Co., 899 N.W.2d 741 (Iowa Ct. App. 2017).
   Although American Family agreed Paine sustained damages "in some amount," the insurer did not agree on the extent of those damages. This was a matter to be proven at trial. Because the total damages had yet to be determined, the district court did not err in denying the Paines' summary judgment motion on the UIM claim and setting the matter for trial to determine precisely what the Paines were "entitled to recover."

15. BAD FAITH

1. Dolan v. Aid Ins. Co., 431 N.W.2d 790, 792 (Iowa 1988).
   i. First party bad faith adopted in Iowa.

2. Villarreal v. United Fire & Cas. Co., 873 N.W.2d 714, 728–29 (Iowa 2016).

For all these reasons, we join the other jurisdictions that follow the Restatement (Second) and hold a first-party bad-faith claim based on denial of insurance benefits without a reasonable basis ordinarily arises out of the same transaction as a breach-of-contract claim for denial of those same benefits. This means a final judgment in the breach-of-contract case would bar the bringing of a subsequent, separate bad faith lawsuit. As in other jurisdictions, the potential prejudice from introducing evidence relevant only to the insurer's bad faith can be resolved by bifurcating the trial into a breach-of-contract phase and a bad faith phase.

16. NAMED DRIVER EXCLUSIONS

1. Iowa Code Ann. § 515D.5. A notice of exclusion of a person under a policy pursuant to Iowa Code Ann. § 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner pursuant to Iowa Code Ann. § 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

2. Taylor v. Pekin Ins. Co., 797 N.W.2d 131 (Iowa Ct. App. 2010).
In Thomas, the insured purchased an automobile liability insurance policy from Progressive and specifically listed her husband as a driver excluded from coverage for any claims arising from his operation of the insured vehicle. Thomas, 749 N.W.2d at 687. The husband was then injured in an accident while driving the insured vehicle, and eventually sought underinsured motorist (UIM) coverage. In finding that coverage should be denied, the court determined that the named driver exclusion was unambiguous and excluded coverage for the husband.

17. UMBRELLA & EXCESS POLICIES

1. Freese v. Bituminous Cas. Corp., 549 N.W.2d 525, 526–27 (Iowa 1996).
In The Travelers v. Mays, 434 N.W.2d 133 (Iowa App.1988), the court of appeals determined that an umbrella policy providing excess liability coverage overstated amounts in an underlying automobile policy did not provide uninsured motorist coverage. In that case as in the present case, an argument was made that the reference to the underlying insurance policy in the umbrella policy incorporated all of the coverages of the underlying policy. In rejecting this claim, the court of appeals stated: The mere reference to the comprehensive automobile policy does not change the undertaking of the insurance contract to indemnify the insured for all sums which the insured shall be obligated to pay by reason of its liability.

2. Jalas v. State Farm Fire & Cas. Co., 505 N.W.2d 811, 813 (Iowa 1993).

Just as "motor vehicle liability policy" in chapter 321A applies only to liability coverage providing our statutory minimum of financial responsibility, "automobile liability or motor vehicle liability insurance policy" in section 516A.1 applies only to the primary, first tier, basic insurance coverage. Any excess or umbrella coverage is not governed by the dictates of chapter 516A. Therefore, we hold that Iowa Code Ann. § 516A does not require excess or "umbrella" liability insurers to provide additional coverage beyond the requirements placed on the primary policy insurer in Iowa Code Ann. § 516A.1.

18. FILED & APPROVED POLICY FORMS

1. Iowa Code Ann. § 515.129A. The form of all policies, and of applications, and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, that are issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance. Iowa Code Ann. § 515.102.
    i. A form filing which has not been previously approved, disapproved, or questioned shall be deemed approved on or after 30 days from its receipt. Iowa Admin. Code r. 191-20.4.

2. Underwriting Period – After a personal lines policy or contract of insurance has been in effect for sixty days or more, the policy or contract shall not be canceled except by notice to the insured as provided in this chapter.

19. REJECTION OF UM/UIM COVEAGE

1. Iowa Code Ann. § 516A.1. However, the named insured may reject all of such coverage, or reject the uninsured motor vehicle (hit-and-run motor vehicle) coverage, or reject the underinsured motor vehicle coverage, by written rejections signed by the named insured. If rejection is made on a form or document furnished by an insurance company or insurance producer, it shall be on a separate sheet of paper that contains only the rejection and information directly related to it. Such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

2. Preferred Risk Ins. Co. v. Cooper, 638 N.W.2d 717, 720 (Iowa 2002).
As we have noted, the issue that has been presented is whether Kimberly later declined the underinsured motorist coverage that existed when the policy was issued. Based on our conclusion that she did not, the limits are those that the policy provided.

3. Langstraat v. Midwest Mut. Ins. Co., 217 N.W.2d 570, 572 (Iowa 1974).
   We decide only that a written rejection of uninsured motorist coverage is not invalid on the sole ground the assured is a minor.

4. Preferred Risk Ins. Co. v. Cooper, 638 N.W.2d 717, 719 (Iowa 2002).
   We agree with the district court's conclusion that, because Kimberly Cooper did not reject the underinsured motorist coverage existing under the family auto policy, that coverage continued in force as to her, notwithstanding Kenneth's later declination of such coverage.

5. Preferred Risk Mut. Ins. Co. v. Federated Mut. Ins. Co., 611 N.W.2d 283, 285–86 (Iowa 2000).
   We also hold, and in so doing reject Preferred Risk's contention on its cross-appeal, that the absence of a valid declination renders Federated Mutual responsible for uninsured motorist coverage to Thomas and Holly, each, in the minimum amount of $20,000, as required by Iowa Code Ann. §§ 516A.2 and 321A.1(10). There is no basis for them to claim the higher limit applicable to directors, officers, partners, or owners of Midwest Equipment, Inc. because the endorsement expressly limits the category of insureds to which that limit applies.

6. Cronbaugh v. Farmland Mut. Ins. Co., 475 N.W.2d 652, 654 (Iowa Ct. App. 1991).
   Danny, the named insured, signed a rejection of underinsured motorist coverage on May 15, 1981. The rejection form prepared by the defendant was a separate sheet of paper. It contained only the rejection and information directly related to the rejection. The policy in effect at the time of Judith's injury was a renewal of the policy that was in effect when Danny signed the rejection. The rejection complied with the dictates of Iowa Code Ann. § 516A.1.

7. Named Driver Exclusion – Kats v. Am. Family Mut. Ins. Co., 490 N.W.2d 60, 62 (Iowa 1992).
   According to Iowa Code Ann. § 516A.1, providing underinsured motorist coverage is only required "for the protection of persons insured under such policy". In Kats, the named insured signed an amendment to his automobile liability policy that added a named driver exclusion listing his stepson. We concluded the stepson was not otherwise insured under the policy "because of the specific exclusion for the [stepson]." Id. Therefore, we held the insurer was not required to provide UIM coverage for the stepson.

8. Named Driver Exclusion – Thomas v. Progressive Cas. Ins. Co., 749 N.W.2d 678, 686–87 (Iowa 2008).
   Like the stepson in Kats, Scott was specifically excluded from coverage by the named driver exclusion. Because Scott had no liability coverage under the policy, Progressive was not required to offer UIM coverage to him. Therefore, Iowa Code

Ann. § 516A.1 does not require a written rejection of UIM coverage as a condition of Progressive's exclusion of Scott from UIM coverage.

9. Preferred Risk Ins. Co. v. Cooper, 638 N.W.2d 717, 719 (Iowa 2002).
   All named insureds must sign a rejection.

10. Effect of Corporate Restructuring

    i. Iowa Code Ann. § 516A.1.
    Such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

    ii. The transfer of a policy between affiliates of an insurance company shall not be considered a nonrenewal. Iowa Code Ann. § 515.129B. However, a notice of intention not to renew is not required if the insured is transferred from an insurer to an insurance company admitted in Iowa which is an affiliate of, as defined in Iowa Code Ann. § 521A.1, the transferring insurer and all of the following conditions are met:
        1. The transfer does not result in an interruption in coverage.
        2. The rating of the affiliate from the A.M. Best Company or a substitute rating service acceptable to the commissioner is the same or better than the rating of the transferring insurer.
        3. The transfer results in the same or broader coverage.
        4. Notice of the transfer is delivered to the insured or sent by first class mail to the insured's last known address not less than thirty days prior to the transfer. The notice required by this paragraph is not required in the event that the insured requests or consents to the transfer.
        5. The notice of transfer provides the name and telephone number of the insured's insurance producer, agent, or agency, if any.
        Iowa Code Ann. § 515.125.

            a. "Affiliate" means any company that controls, is controlled by, or is under common control with another company. Iowa Code Ann. § 515.103.

        6. If an insurer fails to comply with the notice requirements of this section, the policy or contract shall be extended on the same terms and conditions for another policy or contract term or until the effective date of similar insurance procured by the insured, whichever is earlier. Iowa Code Ann. § 515.129C.

7. "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the previous policy term a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the coverage of the policy beyond its original term. Iowa Code Ann. § 515D.2.

20. STATUTES, REGULATIONS, INSURANCE DIVISION

i. **Iowa Code**

1. **Iowa Code Ann. § 516A.1 Coverage included in every liability policy rejection by insured.**
   a. Mandatory Coverage – No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident.

      Limits: Both the uninsured motor vehicle or hit-and-run motor vehicle coverage, and the underinsured motor vehicle coverage shall include limits for bodily injury or death at least equal to those stated in Iowa Code Ann. § 321A.1, subsection 11. The form and provisions of such coverage shall be examined and approved by the commissioner of insurance.

   b. Rejection of Coverage: However, the named insured may reject all of such coverage, or reject the uninsured motor vehicle (hit-and-run motor vehicle) coverage, or reject the underinsured motor vehicle coverage, by written rejections signed by the named insured. If rejection is made on a form or document furnished by an insurance company or insurance producer, it shall be on a separate sheet of paper which contains only the rejection and information directly related to it. Such coverage need not be provided in or supplemental to a renewal policy if the named insured has

rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

2. **Iowa Code Ann. § 516A.2. Construction – minimum coverage – stacking**

Only Minimum Limits Mandatory: 1. a. Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and-run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in Iowa Code Ann. § 321A.1, subsection 11.

Exclusions to Avoid Duplication: Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

Antistacking Language is Enforceable: b. To the extent that Hernandez v. Farmers Insurance Company, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under Iowa Code Ann. § 516A.1.

2. Pursuant to Iowa Code Ann. § 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.

Default Interpolicy Stacking is Highest Single Limit: 3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any

priority of coverage provisions contained in the policies insuring the injured person.

3. **516A.3 UM Also Means Insolvent Underlying Insurer**
   For the purpose of this chapter, the term "uninsured motor vehicle" shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

   An insurer's insolvency protection is applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tortfeasor is insolvent at the time of such an accident or becomes insolvent after the accident.

4. **Iowa Code Ann. § 516A.4. Insurer Making Payment — Reimbursement (Subrogation)**
   a. In the event of payment to any person under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. The person to whom said payment is made under the insolvency protection required by this chapter shall to the extent thereof, be deemed to have waived any right to proceed to enforce such a judgment against the assets of the judgment debtor who was insured by the insolvent insurer whose insolvency resulted in said payment being made, other than assets recovered or recoverable by such judgment debtor from such insolvent insurer.

5. **Iowa Code Ann. § 516A.5. Tolling of Statute for UM/UIM Carrier's Subrogation Claim**
   a. Commencement of an action by an insured under a provision included in an automobile liability or motor vehicle liability insurance policy pursuant to Iowa Code Ann. § 516A.1 tolls the statute of limitations for purposes of the insurer's subrogated cause of action against a party, as defined in Iowa Code Ann. § 668.2. Iowa Code Ann. § 668.8 is also applicable to an action commenced as described in this section.

ii. **Iowa Administrative Code**

1. 15.10(1) Contents of notice. Automobile insurance policies delivered in this state shall include a notice which contains and is limited to the following language:

   NOTICE REGARDING UNINSURED/UNDERINSURED COVERAGE

   Uninsured/underinsured coverage does not cover damage done to your vehicle. It provides benefits only for bodily injury caused by an uninsured or underinsured motorist. If you wish to be insured for damage done to your vehicle, you must have collision coverage. Please check your policy to make sure you have the coverage desired.

2. 15.10(2) Form of notice. Notice may be provided on a separate form or may be stamped on the declarations page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application, but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the notice in this rule is required by the insurance division.

iii. **SERFF (Iowa Insurance Carriers' Forms)**
   1. https://filingaccess.serff.com/sfa/home/IA