



Cover your assets

Miles B. Cooper

Protecting your family's financial safety and security in the face of uncertainty and risk takes planning and effort. Unfortunately, we frequently meet with people who have suffered an injury or death that, in addition to everything else, has impacted their financial security. We specialize in helping people get financial recovery for their losses.

But we've learned there can be roadblocks to recovery. People who have done financial planning, specifically those who have thought about insurance needs, tend to fare better during and after the lawsuit. We want to share our experiences with you.

While we hope you'll never need to call on disability, UIM, or excess insurance, it is a fact of life that some of you will need to. We suggest a call or meeting with an insurance broker or financial planner to make sure you are properly prepared. Here are some areas to discuss with them.

Car, bicycle and pedestrian accidents: Make sure you have enough uninsured/underinsured motorist coverage

In California, if you are involved in a car accident, you have a one in three chance that the driver will be uninsured or will have the statutory minimum policy of \$15,000 per injury/\$30,000 per occurrence. What does this mean to you? If you have a significant injury, the other driver may not have enough insurance to cover the incident. And drivers without enough insurance tend to be drivers without any personal assets to cover your loss.

Your best defense? Your uninsured/underinsured coverage, also known as UIM coverage. Most people don't give this aspect of their car insurance policy any thought until we have to ask them about it following an accident. In most situations, your insurer will automatically set your UIM coverage at the same level as your policy limits. This means if you carry a \$100,000/\$300,000 policy, your UIM coverage will be \$100,000. We recommend carrying a \$300,000 UIM policy and making sure you have an umbrella policy that extends UIM coverage under the umbrella policy (we'll discuss umbrella policies a little later on). Why \$300,000? This is usually the minimum requirement for an excess policy. Check with your broker or excess policy carrier to find out what their minimum is.

There is another benefit to UIM coverage. Under most policies, it will cover you even if you are a pedestrian, in another car or on a bicycle and struck by a car.

There are a couple downsides to UIM coverage. First, UIM cases are resolved via settlement or binding arbitration, meaning you do not get a jury trial. Second, your maximum UIM settlement or arbitration award payment will be reduced by any proceeds you receive from the driver who caused the accident. For example, if the driver who struck you has a \$15,000 policy and you have a \$100,000 UIM, your maximum payment would be \$85,000 from your UIM carrier after receiving the \$15,000 from the driver. The downsides should not prevent you from making sure you have a strong UIM policy since the alternative—no coverage—is far worse.

Homeowner's and renter's policies

Homeowner's and renter's policies provide two types of protection. The first is for damage or loss to items you own. For example, if there is a fire in your apartment building and your personal property is damaged, your renter's insurance would pay for your loss. This can be important in situations where the landlord's insurance or assets may not be enough to cover a large fire. The second is your personal liability, if say a visitor is injured at your place and sues. This coverage can extend to other personal liability circumstances. Again, an example. We have a case now where the homeowner's coverage is providing the defense and will pay for any liability (up to the policy limits) for an individual whose negligence on the ski slopes injured a young woman.

This is another area where you should check with your broker and set your liability limits high enough to obtain an excess or umbrella policy to further protect your assets.

Umbrella or excess policies

The purpose of liability insurance, for vehicles or homes, is to protect your assets from a judgment should you be in the unfortunate position of injuring or killing someone. There is a tendency to underestimate how much an injury can cost. A trip to the emergency room, trauma surgery, and extended stay in the ICU following a car crash



can easily incur more than \$1 million in medical bills—bills you'll be responsible for if you caused the injury. And that is just the start. Umbrella insurance is there to protect your hard-earned savings, property and future earnings from an adverse judgment.

Be sure to ask about adding UIM coverage to your umbrella policy. It will cost you a little extra and your carrier may have a maximum that it will offer—frequently \$1 million—but it is worth every penny should you be badly injured by a driver with low limits.

Disability insurance

Most cases take a long time to resolve. In the interim, our clients need to make ends meet and cannot return to work. The clients who obtained disability insurance have a much easier time financially while the case proceeds. Disability insurance makes up for a portion of your income when you are injured. There are short-term and long-term policies, each with different nuances. Deciding how much coverage requires consideration of your particular financial and family situation. Again, consulting a broker or financial planner is important.

If you did not obtain disability insurance and have suffered from an injury where you cannot work, there may be other benefits available. State disability is one. Social Security disability is another. Qualifying for these, particularly Social Security, can be burdensome. It is usually wise to consult with a lawyer on this process, particularly if you submitted an application yourself and were rejected (and if this has happened, consult one immediately because there are time limits to appeal the decision.)

We'll close by saying that we are not insurance brokers or financial planners. Our cases have taught us that these are areas where many people are not properly prepared. Our suggestion: Set this article aside to remind you to make an appointment to talk to a broker and raise each of these points to make sure you are adequately protected.

STATUTE CHANGES

January 1 usually means new statutes take effect, and this year is no exception. There are two we feel are important to highlight this year for the practitioner and the consumer. (For those of you who aren't practitioners, "consumer" means you.)

Changes in jury selection

How many times have you been in a courtroom where a judge has told you, "You have 15 minutes to question all 18 potential jurors, there will be no jury questionnaire and you cannot have the random order list"?

Members of the plaintiffs' bar, defense bar and judges recognized this as a growing issue. As a result of alternative dispute resolution and the Discovery Act, more cases settle. Some of the newer judges on the civil bench have not had the opportunity to try a large number of civil cases as lawyers nor do they understand the impact artificial time limits and the inability to get complete juror information creates.

As a result, the California Legislature amended California Code of Civil Procedure § 222.5. The statute itself, which can be viewed here (<http://1.usa.gov/zn8DrU>), is worth a read. Some of the key points are:

No arbitrary or blanket time limits. The parties' counsel have the right to examine potential jurors. The issue of time limits is specifically addressed in the statute. The judge shall not impose a blanket policy of time limits nor can specific unreasonable or arbitrary time limits be imposed in any case. While the legislative intent of this section seems clear, we expect it may be the subject of vigorous discussion in courtrooms over the coming months.

Mini-openings. The trial judge should allow "a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process." This process, sometimes referred to as the mini-opening, has been coming into vogue over the years but not enacted as a rule. There are strategy considerations for the mini-opening that would require a separate article to explore. The short version? Simply doing a shortened version of your full opening may not be the best choice.



Written questionnaires and time for review. The court may not arbitrarily or unreasonably refuse to We'll close by saying that we are not insurance brokers or financial planners. Our cases have taught us that these are areas where many people are not properly prepared. Our suggestion: Set this article aside to remind you to make an appointment to talk to a broker and raise each of these points to make sure you are adequately protected. submit reasonable written questionnaires. In addition, the parties should be given reasonable time to evaluate the questionnaires before oral voir dire. Again, we expect there will be some debate over what is considered reasonable.

Access to the random and alphabetic juror lists. In order to facilitate the jury selection process, the judge "should provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called." While it was unusual for this request to have been refused in the past, we've had experiences where the court or a clerk has refused to do so. With no rule on point, it was difficult to argue. This change should solve the problem.

We hope the Legislature's changes will help clear up any misunderstandings lawyers and judges have over jury selection's importance to the civil trial process. We're also interested in hearing from you about your experiences with the modified statute and how it is being implemented.

Small-claims court limits raised from \$7,500 to \$10,000 for individuals
Sometimes small-claims court is the right solution. Say you were in an accident, had minor car damage, saw a doctor or chiropractor a few times and your medical bills are \$1,000. You made a full recovery within a few months without any lost time at work. The response from the other driver's insurance company? Nothing for your medical expenses or the damage to you as a person for the couple months' discomfort.

Small-claims court can be a good venue for this. California just raised the limit to \$10,000 for individuals bringing suit. The limit for car accident bodily injury where the defendant is insured is \$7,500 but you can seek an additional \$2,500 for property damage. You cannot have a lawyer in a small claims case, nor can the defendant, meaning you will not be facing the insurance company's lawyer in court.

We always recommend running a case by a lawyer before you make the decision of where to pursue it, though. Our initial consultations are free and we can help make sure you are heading in the right direction.