

## Agents Take the Wheel

### *How agents can steer clear of uninsured/underinsured motorist errors & omissions claims*

By Kristina Miller

In today's litigious society, drivers need uninsured/underinsured motorist insurance and even umbrella coverage. Certain states have minimum automobile liability coverage requirements, while some states make UM/UIM coverage a requirement.

However, often, an at-fault driver who carries state minimum coverage limits cannot adequately compensate the injured party for their loss. Therefore, UM/UIM and umbrella coverage are all important offerings of any insurance agency that procures automobile liability policies for its customers.

Insurance agents need to be careful and take appropriate steps to avoid errors & omissions claims that allege they failed to offer UM/UIM and umbrella coverage. Such steps include:

**1) Verify state requirements.** All agencies that write auto insurance need to keep abreast of any changes in state laws regarding these requirements.

**2) Make sure the client understands who is insured.** A recent E&O claim resulted when an agency failed to clarify the extent of coverage under a law firm's commercial auto liability policy, which included UM/UIM coverage. The firm was the named insured under the policy and provided coverage to the partners when occupying a scheduled vehicle.



When one of the partners suffered significant injuries after being hit by an uninsured driver returning from court, the carrier declined UM/UIM coverage for the loss because the partner did not occupy a scheduled vehicle at the time of the loss. The claim against the agency alleged negligent misrepresentation regarding the existence of UM/UIM coverage and failure to procure portable UM/UIM coverage. An additional claim alleged that the agency failed to offer excess UM/UIM coverage.

**3) Communicate the necessity of UM/UIM coverage.** Best practice for agencies is to have written documentation with clients regarding coverages. Certain states require an agency to obtain an executed document from the customer that declines UM/UIM coverage, which means agents must ensure the form is appropriately executed.

Failing to do so could result in a customer claim that the agency failed to offer coverage. A well-documented file that contains correspondence, emails and records of phone conversations is crucial to defending any claim.

**4) Understand state umbrella insurance coverage requirements.** Recently, an agency received an E&O claim after the carrier denied coverage because the customer did not maintain the required underlying auto liability limits. The customer was hit by an at-fault uninsured driver and severely injured. The customer brought a claim against the agency for damages due to the agency's failure to procure \$1 million in umbrella UM/UIM coverage. The agency also failed to confirm the customer's underlying automobile policy had the appropriate underlying limits by obtaining a current declarations page of that policy.

*Kristina Miller is an assistant vice president and claims specialist with Swiss Re Corporate Solutions and works out of the Chicago office. Insurance products underwritten by Westport Insurance Corporation, Overland Park, Kansas, a member of Swiss Re Corporate Solutions.*

*This article is intended to be used for general informational purposes only and is not to be relied upon or used for any particular purpose. Swiss Re shall not be held responsible in any way for, and specifically disclaims any liability arising out of or in any way connected to, reliance on or use of any of the information contained or referenced in this article. The information contained or referenced in this article is not intended to constitute and should not be considered legal, accounting, or professional advice, nor shall it serve as a substitute for the recipient obtaining such advice. The views expressed in this article do not necessarily represent the views of the Swiss Re Group ("Swiss Re") and/or its subsidiaries and/or management and/or shareholders.*