



NEW STACKING REGULATIONS OPEN THE DOOR FOR WISCONSIN INSURED

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Recent legislation will now enable Wisconsin drivers and passengers injured in auto accidents to “stack” their uninsured/underinsured motorist coverage to recover up to three-times the amount of money they used to be able to.

In the realm of automobile insurance, “stacking” is the process that allows an insured plaintiff to recover the same benefits under multiple uninsured/underinsured motorist policies. To understand how stacking works, an example is required. Say Joe owns three vehicles and he has purchased \$100,000 in underinsured motorist (UIM) coverage for each vehicle. One day, Joe gets into a head-on collision with Bob, a driver who’s liability policy limit is \$100,000. Joe is severely injured and racks up over \$300,000 in medical bills (he has no health insurance).

How is he going to pay for everything? Well, traditionally, Joe would get \$100,000 from Bob’s insurance company (the policy limit), but would get nothing else as under Wisconsin law, a person claiming benefits under a UIM policy is only allowed to “recover” *up to* their UIM policy limit (here, \$100,000). Because Joe recovered \$100,000 from Bob’s insurance company, he has technically recovered *up to* Joe’s UIM policy limit; therefore, Joe’s UIM insurer does not have to pay anything more. Unfortunately, though, this leaves Joe with \$200,000 in medical bills unpaid.

Under the stacking principle, though, Joe would be allowed to “tap into” each of his three vehicle’s UIM coverage. This would mean that Joe could seek up to \$300,000 (\$100,000 + \$100,000 + \$100,000) in UIM benefits as opposed to \$100,000. Consequently, instead of being stuck with \$200,000 in medical bills, Joe is left with **\$0**.

The benefits of “stacking” are obviously enormous to plaintiffs (and medical providers seeking to get paid for services provided to injured drivers/passengers), so insurance companies have traditionally included “stacking exclusions” that limit recovery of UM/UIM benefits to a single vehicle’s policy maximum. Thus, in the above example, is likely that Joe’s insurance policy would restrict him from stacking his three vehicles’ UIM coverage in the event of an auto accident, thus limiting him to a maximum of \$100,000 in UIM benefits.

Fortunately, in Wis. Act. 28 § 3171 the Wisconsin Legislature opened the door for “stacking” claims by barring insurance companies from inserting “anti-stacking” exclusions. Regarding the new regulations, Governor Doyle stated that the policy changes were implemented to “ensure that policyholders obtained the full benefit of the coverage they have purchased . . . [these and other] reforms are necessary to protect consumers and to ensure that people injured in accidents are shielded from excessive financial loss due to insufficient coverage.”

There are several key points to take away from the Act 28 provisions:

1. The anti-stacking prohibition only applies to UM/UIM benefits.
2. Insurers are not required to issue new policy materials with “altered terms” addressing the removal of anti-stacking clauses unless the new changes to the policy will increase the insured’s premiums by 25% or more. This means that the language of some current policies may still include “anti-stacking” provisions, despite the fact that these provisions are now invalid.
3. The maximum number of policies you can “stack” is three.
4. The changes to Wis. Stat. 632.32 by Act 28 are applicable to any insurance policy issued after November 1, 2009. Consequently, any insured in an accident prior to November 1, 2009 would not be able to take advantage of the new provisions.

Obviously, this change in Wisconsin’s insurance law could drastically increase the amount of money an insured could seek and recover from its own UM/UIM insurer in auto accident cases, and for people like Joe, the change couldn’t have come any sooner.

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