


UM: Waivers and Wonders

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LSA R.S. 22:1295 (1)(a) (previously 22:680 renumbered by Act 415 effective 1/1/09

...All auto liability insurance policies shall provide uninsured and underinsured motorist coverage in an amount equal to that liability of the policy unless the insured rejects coverage, selects lower limits or selects economic only coverage on a form prescribed by the Commissioner of Insurance.

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The Basics

- UM Coverage is provided for by statute and embodies a strong public policy.
- The requirement of UM coverage is an implied amendment to any automobile liability policy, even when not expressly addressed, as UM coverage will be read into the policy unless validly rejected.
- The liberal construction given the UM statute requires the statutory exceptions to coverage be interpreted strictly.

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- Beginning in 1977, UM rejection was to be “in writing”.
- In 1987, Louisiana law required any rejection or limits of UM to be “on a form designed by each insurer”.
- In 1997, legislature recognized the problems inherent in allowing the insurers to design their own forms and thus amended La. R.S. 22:1406 to require that rejection form to be on a form prescribed by the Commissioner of Insurance.



- The insurer cannot rely on the insurers intent to waive UM coverage to cure a defect in the form of the waiver.
- “The expression of a desire not to have UM coverage; however clear, does not necessarily constitute a valid rejection if the expression or rejection does not meet the formal requirements of law.”



Commissioner of Insurance Forms:

1. Bulletin LIRC 98-01 dated 4/28/98 issued first form and was modified through bulleting No. 01-05. Copy of this form is attached as “A”.
2. Bulletin 08-02 became effective 8/29/08 and is attached as “B”. It constitutes new form effective 9/1/08. Both forms can be used until 1/1/10. Thereafter, all waivers shall be via No. 08-02, i.e. “B” attached.



Timing of Completed Form:

Gray v. American National, 977 So., 2d 839 (2/26/08):

- La. Supreme Court invalidates waiver, holding that when the form was signed by insured, the spaces for lower limits, policy number, date and printed name of the insured or legal representative were all left blank.
- Court says that the six tasks in Duncan must be completed before UM waiver is signed.
- See also bulletin number 08-02 wherein Insurance Commissioner indicates that the lower limits of coverage must be printed on the appropriate line prior to the insured signing form.

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What constitutes valid selection or knowing waiver?

Johnson v. GEICO, 987 So. 2d 87, 3rd Cir. 4/9/08:

- Plaintiff calls agent's office saying he wants "full coverage". Agent pre-filled waiver form with all blanks indicating "N/A" except for blank to allow rejection of UM.
- Court says insured was not given opportunity to make various choices re UM.

Green v. State Farm (11/12/07) 978 So. 2d. 912:

- Ryan, a representative of Cintas Corp., placed handwritten X with circle around it next to option 5 rejecting UM coverage. Next to X were initials identified via affidavit as Ryan's. Court upholds rejection. Court distinguishes Dyess v. American National, 886 So. 2d 448 where waiver was invalidated with X alone without initials.

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Lacking Name of Insurer

Fescharek v. US Agencies, 979 So. 2d 562,(La. 5th Cir. 2/6/08):

- Waiver form had acronym for the insurer and a bar code identifying insurer. Court holds this as valid waiver notwithstanding failure to name the insurer as required by 98-01("A" attached).

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Harper v. Direct General Insurance
Company of Louisiana Supreme Court
(08-cc-2874) 2/13/09

Supreme Court holds the waiver valid where the name of named insured is typed on the rejection form and the form is signed by the insured's legal representative. Court says trial court erred in concluding that printed name must identify signatory.