

# The Newsletter<sup>®</sup>

A newsletter by the **Law Offices of J. Michael Hayes**, devoted to relevant issues of negligence and liability.  
J. Michael Hayes, 69 Delaware Avenue, Suite 1111, Buffalo, NY 14202, Telephone: (716) 852-2707

## UMBRELLA INSURANCE

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### What Is Umbrella Insurance?

We all have heard about large jury awards. Regardless of one's personal view of the tort system, if you become subject to suit, umbrella coverage will provide a level of relief and comfort. It is excess protection, usually of \$1,000,000, covering both your automobile and home. One policy covers all. The policy protects you against claims in amounts in excess of your basic limits. The cost is generally reasonable.

### SUM Rider on Your Umbrella

It is possible to obtain an underinsurance (SUM) rider on your umbrella policy which also affords you protection against the "other guy" of upwards of a million dollars.

Interestingly, many insurance companies are refusing to offer SUM riders on their umbrella policies. It is suggested that they are "playing the odds" and if they do not have an edge where they are essentially guaranteed a profit, they will not play. Or in the case of insurance companies, they will refuse to write the coverage. The carrier's risk-exposure in protecting you is significant and the premium is small. The risk to the insurance company may be greater than their benefit. That makes the reverse true: that the million dollar potential benefit to you and your family significantly outweighs your minimal cost.

***Practical Tip: Ask your agent for the cost of a SUM rider on your umbrella policy. If it is reasonable, request the coverage. If he cannot offer a quote, ask him if the carrier even offers the rider. If the coverage is unavailable, you will be in a position to make an informed decision whether to stay with that carrier.***

***So, before you dismiss SUM as just another expense, consider the carrier's reluctance. If your carrier refuses to offer SUM on your umbrella, consider contacting a different insurance company. The issue is not brand loyalty. The carrier will do that which is in their best interest. You should consider doing the same.***

### VICARIOUS LIABILITY

#### Leased Vehicles and "Tort Reform"

If our vehicle is damaged by an at fault driver, we all expect reasonable compensation, be it the repair costs or actual value of the car, whichever is less. If we ourselves are damaged or injured, should we not have at least the same rights as our car? That is the simple proposition of tort law. An individual is entitled to reasonable compensation for damage to his property or person.

The focus of proponents of "tort reform" is that someone other than themselves should pay. Car manufacturers want the benefits of retaining ownership including depreciation but none of the responsibilities (V&T Law 388). (Physicians feel that they should have similar dispensations).

Extreme caution must be exercised before changes are made. There are already numerous exemptions in the law that protect wrongdoers. For example, no fault restricts one's ability to recover against a negligent driver except for "serious injuries". More comprehensive is Workers Compensation which insulates an employer from all negligent acts. Owners of construction sites point to the employer and argue that it is unfair they then be held responsible [Labor Law 240(1)]. Of course, the employer generally repays the owner's insurance carrier for such claim.

#### "The Innocent Victims"

The problem is that if the balance is shifted as suggested, eliminating owner's responsibility, many innocent injured will receive less compensation for their permanent and disabling injuries than they receive for their damaged car. If such exemptions are to be extended, a means needs to be provided to offset those losses in protection. The insurance industry itself devised, advocated and initiated such coverage with Supplemental Underinsured Motorist (SUM). This coverage allows the person injured in a motor vehicle accident to insure themselves. It permits them to recover reasonable compensation even where the at fault driver is inadequately insured. Would mandatory SUM equal to liability limits be fair a compromise?

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact J. Michael Hayes, Esq. at 69 Delaware Avenue, suite 1111, Buffalo, NY 14202, telephone (716) 852-2707 or e-mail [jmh@jmichaelhayes.com](mailto:jmh@jmichaelhayes.com).

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