

## UPDATE

### **No Underinsurance Claim When Liability Limit or Proceeds Equals Underinsurance Limit**

Following on the heels of the decision of the Oregon Supreme Court in *Bergmann v. Hutton*, litigants often asked whether a liability insurance settlement might “stack” with underinsured motorist (UIM) benefits when “damages” are sufficiently large.

In *Mid-Century Ins. Co. v. Perkins*, \_\_\_ Or App \_\_\_, \_\_\_ P3d \_\_\_, 2006 WL 3616446 (December 13, 2006), the Oregon Court of Appeals held, where an underinsured motorist had liability insurance of \$100,000, and the injured person had UIM limits of \$100,000, that the offending motorist was not underinsured. The essential definition of underinsurance in ORS 742.502(2)(a) provides that UIM benefits are “equal to uninsured motorist coverage benefits less the amount recovered from other automobile liability insurance policies.” When the liability insurance was subtracted, the UIM insurer had no obligation to pay UIM benefits to the injured person. That is, liability insurance and UIM benefits do not “stack”.

CAVEAT: This Update was dated December 18, 2006. Please check whether review is sought or allowed.

NOTE: With regard to cases in which UIM limits exceed matching limits, please see reservation made in *Bergmann* opinion as to ORS 742.502(2). See also the legislative history of the 1981 underinsurance mandate, especially the pre-session 1980 minutes of the Joint Interim Judiciary Committee which drafted the language now used by the current statute (giving mathematical examples that subtracted liability proceeds from larger UM/UIM limits).