

# TECHNICAL ADVISORY

TA 104

April 11, 1997

**SUBJECT:** UNINSURED MOTORISTS - REQUIREMENTS FOR ELECTION/REJECTION FORM

**BACKGROUND:** One of the most frequent questions regarding UM is the requirement to execute a new election/rejection form, especially when there are changes in the policy.

**MAIN POINTS:** To properly understand the context of the issue, it is helpful to recall the scope of the Louisiana statutory requirement for Uninsured Motorists coverage.

First, R.S. 22:1406 provides that *“No automobile liability insurance ...shall be issued in this state with respect to any motor vehicle designed for use on public highways and required to be registered in this state...in not less than the limits of bodily injury liability provided by the policy...”*

Comment: Any Louisiana policy providing auto liability automatically includes UM at the same limit.

Next, the statute provides the insured with two options...*“however, the coverage required under this Subsection shall not be applicable where any insured named in the policy shall reject in writing, as provided herein, the coverage or selects lower limits.”*

Comment: Insureds may elect UM limits lower than liability limits, or reject UM altogether. Note that the statute gives the option only to insureds; insurers cannot refuse to write UM, or (legally) force the insured to take lower limits or reject UM. **However, any defect in an election of lower limits, or rejection, will cause the UM limits to revert to the same limits as those for liability coverage.** The Louisiana Supreme Court has stipulated that “any exception to UM coverages must be expressed clearly, unambiguously and unmistakably,” and that “the insurer must place the insured in a position to make an informed rejection of UM coverage.” In addition, the Court has said that “policies are to be liberally construed in favor of UM coverage, and any exception to the mandatory UM coverage is to be strictly construed” (emphasis added).

The statute continues...*“Such coverage need not be provided in or supplemental to a renewal, reinstatement, or substitute policy where the named insured has rejected the coverage or selected lower limits in connection with a policy previously issued to him by the same insurer or any of its affiliates....After*

*September 1, 1987, such rejection or selection of lower limits shall be made only on a form designed by each insurer. The form shall be provided by the insurer and signed by the named insured or his legal representative. The form signed by the named insured or his legal representative which initially rejects such coverage or selects lower limits shall be conclusively presumed to become a part of the policy or contract when issued and delivered, irrespective of whether physically attached thereto.*

Comments: The \$64,000 question is, what constitutes a “renewal, reinstatement or substitute policy”? **Louisiana courts are taking a narrow interpretation of this issue.** Changes in vehicles, insureds or in liability limits, have been held to require new UM election/rejection forms. In a recent case (1996), an additional driver was added to a personal auto policy in which the insured, at policy inception, had selected UM limits lower than liability limits. A new UM election/rejection form was not signed when the new driver was added. The court invalidated the initial UM election of lower limits, and restored the UM limit to equal the liability limit in the policy. The rationale of the court was that adding a driver to a personal auto policy was **not** a “renewal, reinstatement or substitute policy,” and thus a new UM form was necessary. (And with no new election/rejection form, UM limits revert to liability limits.)

For Commercial insureds, some cases have held that a new UM election/rejection form was not necessary every time vehicles or drivers were added to fleet or larger accounts, as frequent changes were contemplated by the insured when the original election/rejection form was signed. However, a 1996 case held that a new UM form was required for a particular commercial insured who added a vehicle, but did so infrequently.

Another thorny issue is who has the authority to sign the election/rejection form. The statute provides that the form be ... “*signed by the named insured or his legal representative.*” While spousal rejections have been generally upheld, corporate rejections are more inconsistent. Numerous cases have invalidated UM election/rejection forms signed by corporate directors, comptrollers, risk

managers, city/parish officials, and so forth, where there was no clear authority to do so.

It should also be noted that there are several cases of insurance agents signing the form for the insured (to “save the insured a trip to the office”), or marking a choice on the form for an insured, or allowing an insured to sign a blank form, all of which have been ruled as invalid elections/rejections.

In addition, there are many cases which invalidated election of lower limits, or rejections of coverage, by successfully attacking the format, layout, and language of the election/refection form itself (which is provided by each insurer).

One last important point about UM involves umbrellas. The Louisiana Supreme Court ruled in 1982 that the statutory requirement for UM limits to be equal to the liability limits also applies to excess and umbrella policies. The Court held that the statute applied to any policy providing automobile liability insurance, not just to an automobile liability policy.

**NECESSARY  
ACTION:**

Extreme care should be exercised when handling any policy which provides auto liability, both at initial writing, and anytime changes are made. Agencies and insurers must be consistent, careful, and well-documented in all UM transactions.