

### **304.39-320 Underinsured motorist coverage -- Effect of settlement of claims.**

- (1) As used in this section, "underinsured motorist" means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident.
- (2) Every insurer shall make available, upon request, to its insureds underinsured motorist coverage, whereby, subject to the terms and conditions of the coverage not inconsistent with this section, the insurance company agrees to pay its own insured for such uncompensated damages as he or she may recover on account of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.
- (3)
  - (a) If an injured person or, in the case of death, the personal representative, agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim, then written notice of the proposed settlement shall be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage.
  - (b) The underinsured motorist insurer then has a period of thirty (30) days to consent to the settlement or retention of subrogation rights.
  - (c) An injured person, or in the case of death, the personal representative, may agree to settle a claim with a liability insurer and its insured for less than the underinsured motorist's full liability policy limits.
  - (d) If an underinsured motorist insurer consents to settlement or fails to respond as required by subsection (4) of this section to the settlement request within the thirty (30) day period, the injured party may proceed to:
    1. Execute a full release in favor of the underinsured motorist's liability insurer and its insured; and
    2. Finalize the proposed settlement without prejudice to any underinsured motorist claim.
- (4) If an underinsured motorist insurer chooses to preserve its subrogation rights by refusing to consent to settle, the underinsured motorist insurer shall, within thirty (30) days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. Thereafter, upon final resolution of the underinsured motorist claim, the underinsured motorist insurer is entitled to seek subrogation against:
  - (a) The liability insurer to the extent of its limits of liability insurance; and
  - (b) The underinsured motorist for the amounts paid to the injured party.
- (5)
  - (a) Except as provided in paragraph (b) of this subsection, the underinsured motorist insurer is entitled to a credit against total damages caused by or as a result of a motor vehicle accident in the amount of the limits of the underinsured motorist's liability policies in all cases to which this section applies, even if the settlement with the underinsured motorist under subsection (3) of this section or the payment by the underinsured motorist insurer under subsection (4) of this section is for less than the underinsured

motorist's full liability policy limits.

- (b) If the full liability limits of the underinsured motorist's liability coverage are paid to multiple injured persons, including, in the case of death, the personal representative, pursuant to a reasonable settlement with the injured persons that is based on a pro rata distribution of the underinsured motorist's liability coverage in proportion to the injured persons' total damages, the credit to which the underinsured motorist insurer is entitled under paragraph (a) of this subsection shall be limited to the amount paid to the injured party.
- (c) This subsection shall not be construed to prohibit an underinsured motorist insurer from seeking to apply or enforce other credits or offsets against total damages which are:
  - 1. Expressly included in the terms and conditions of the underinsured motorist coverage, subject to Kentucky law; or
  - 2. Otherwise authorized under Kentucky law.

**Effective:** April 2, 2024

**History:** Amended 2024 Ky. Acts ch. 27, sec. 4, effective April 2, 2024. -- Amended 1998 Ky. Acts ch. 564, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 103, sec. 2, effective December 1, 1990. -- Amended 1988 Ky. Acts ch. 180, sec. 1, effective July 15, 1988. -- Created 1974 Ky. Acts ch. 385, sec. 32, effective July 1, 1975.

**Legislative Research Commission Note** (4/2/2024). 2024 Ky. Acts ch. 27, sec. 6, provides that amendments made to this statute in that Act shall apply to insurance policies issued or renewed on or after April 2, 2024.