

Lawyer's Bookshelf

New York Uninsured and Underinsured Motorist Law & Practice

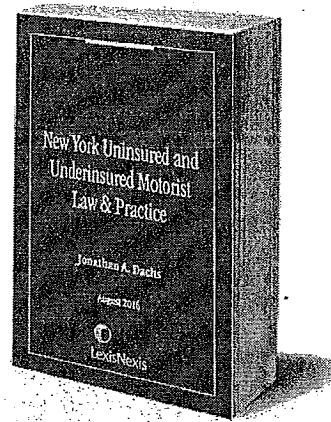
REVIEWED BY DAN D. KOHANE

By Jonathan Dachs, LexisNexis/
Matthew Bender, approximately
500 pages. \$99.

There is no lawyer more schooled and respected in the field of New York Uninsured and Underinsured Motorist coverage than Jonathan Dachs. Mr. Dachs offers a scholarly and practical treatise dedicated to two other brilliant lawyers, his late grandfather, New York Law School professor Louis E. Schwartz (author of the eight volume work, "Trial of Automobile Accident Cases"); and his late father and law partner, Norman H. Dachs, with whom he co-authored the Insurance Law column in the New York Law Journal for many years.

Dachs shares his exhaustive knowledge of both the academic and practitioner's side of this highly specialized area of practice, giving common-sense direction to those who may wander in its midst. He has produced the first, comprehensive handbook in the New York UM/UIM field. His treatise provides an historical overview, both legislative and regulatory, of the mandatory uninsured motorist scheme, with a needed focus on terms too often overlooked and misunderstood by lawyers, claims professionals and judges alike. From a discussion of the nuances between "automobile" and "motor vehicle," to a refined analysis of what constitutes an "uninsured motor vehicle," Dachs provides his readers with a comprehensive array and analysis of the development of case law in the area.

The book contains almost 6,000 citations to pertinent case law in 12 well organized chapters and my favorite, useful practice pointers for the practicing lawyer. So important to understanding this complex area of law is an understanding of how the courts define accident (Chapter 4), the scope of cover-



age (Chapter 9), and the exclusions (Chapter 8). Chapter 10 discusses conditions precedent to coverage, while Chapter 11 discusses protocols to claim resolution.

Having personally litigated offset issues in appellate courts, both in the Fourth Department and Court of Appeals, I was particularly interested in the author's handling of "other insurance," "stacking" and "offsets" questions. Chapter 9, I found, exhaustively covers the various questions of "reduction in coverage." Not only are the key Court of Appeals cases discussed (*United Community Ins. Co. v. Muscatel*, 69 NY 2d 777 (1987) and *Allstate Ins. Co. v. Stolarz*, 81 NY 2d 219 (1993) but the commentary

and footnotes add hundreds of more appellate and miscellaneous cases that provide the necessary nuance. Dachs provide openings for exceptions and reconsideration of well-worn principles and cites to developing trends emanating from the lower courts. This kind of analysis is particularly useful for appellate practitioners who are arguing for subtle changes in existing precedent.

Most useful, but not quickly discovered, were the footnotes to the UIM regulatory endorsement, which directs the reader back to the chapter and verse where the regulation subdivision is discussed. This writer would recommend a separate index or clearer direction to find those footnotes, a minor stylistic suggestion to an excellent and necessary treatise.

Dachs is one of the most prolific writers and lecturers on these topics, and his role as an educator shines through in the pages. His focus on underinsured motorist coverage, both before and after the adoption of Regulation 35-D, provides exhaustive case authority for both the lawyer and the court. From trigger, to consent, to offsets, to stacking, it is all there for the taking, along with a chapter containing the forms, charts and regulations that practitioners need to be close at hand.

This will be a wonderful desktop "handbook" when a lawyer, claim professional or judge requires clear authority and practical direction.

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