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NAVIGATING THE ROADWAYS OF AUTOMOBILE LIABILITY INSURANCE

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Motor vehicle financial responsibility statutes vary from state to state, but every state requires motorists to purchase some form of automobile liability insurance.[1] Pursuant to the Motor Vehicle Financial Responsibility Act, Colorado requires automobile owners purchase automobile liability insurance for losses arising out of the "ownership, maintenance or use of a motor vehicle."[2] "Motor vehicle" includes automobiles, low-powered scooters, trailers, and semitrailers.[3] Motor vehicle does not include toy vehicles, snowmobiles, off-highway vehicles, or vehicles designed to be used primarily on rails.[4]

Liability insurance provides coverage for "bodily injury" to another person or property damage to another person's vehicle or property.[5] Colorado is a "tort state," meaning fault determines who is liable for injuries resulting from an auto accident.[6]

Minimum Coverages

The minimum liability insurance coverages required in Colorado include:

- $25,000 for bodily injury or death to any one person not at fault for an accident;

- $50,000 for bodily injury or death to all persons not at fault for an accident;

- $15,000 for property damage in any one accident.[7]

Motorists may purchase automobile liability policies providing coverages more extensive than the minimums.[8]

MedPay

Medical payments coverage for bodily injury, sickness, or disease resulting from the ownership, maintenance, or use of a motor vehicle is optional.[9] Rejections of medical payments coverage must be in writing or in the same manner in which the application for the policy was taken.[10]

UM/UIM Coverage

Colorado also has a statute governing uninsured motorist (UM) coverage and underinsured motorist (UIM) coverage.[11] Insurers must offer UM/UIM coverage in an amount equal to the insured's bodily injury liability limits, but insurers are not required to offer limits higher than an insured's bodily injury liability limits.[12]

UM/UIM coverage is mandatory; however, the coverage may be rejected.[13] Colorado requires an insured's rejection of UM/UIM coverage to be in writing, or the rejection is invalid.[14]

A.   UM Coverage

The term "uninsured" simply means that the owner or driver of a vehicle is not insured.[15]

UM coverage is available for damages resulting from bodily injury or death that an insured is legally entitled to collect from the at-fault owner or driver of an uninsured vehicle arising out of the operation, maintenance or use of an uninsured vehicle.[16]

B.   UIM Coverage

An underinsured vehicle is one for which there may be bodily injury liability coverage in effect, but the limits of such coverage are less than the damages sustained by the insured.[17]

UIM coverage is available for damages resulting from bodily injury or death that an insured is legally entitled to collect from the at-fault owner or driver of an underinsured vehicle arising out of the operation, maintenance or use of an underinsured vehicle.[18] UIM covers the difference between the limits of any legal liability coverage and the

damages sustained, excluding exemplary damages, up to the limit of UIM coverage.[19]

Can Insureds Bring a Cause of Action for Bad Faith for Failure to Pay UM/UIM Benefits?

Yes, Colorado recognizes a cause of action for bad faith for the unreasonable delay or denial of benefits.[20] The Colorado Consumer Protection Act also provides a cause of action for deceptive trade practices.[21]

Mere delay may not constitute unreasonable delay in investigating a claim if there is a reasonable and good faith basis to dispute liability and that basis is conveyed to the insured.[22] Similarly, if there is a bona fide dispute on the issue of damages, mere delay in payment may not rise to the level of bad faith.[23]

Practice Tips Related to UM/UIM Claims for Insurance Carriers and Counsel:

1. UM/UIM claims are among the most likely to give rise to extra-contractual claims.[24] As a result, it is important to be aware of practices that courts have found to be unreasonable or unwise.

2. Colorado requires that a UIM insurer fully investigate a UIM claim regardless of whether the tortfeasor's limits of liability are exhausted.[25]

3. Diligently investigate the facts, fairly evaluate the claim, and act promptly and reasonably when a claim is filed by the insured.

4. Conclude the investigation within a reasonable time and notify the insured of any action with respect to the claim for UM/UIM benefits.

5. A refusal to settle must be reasonable.[26]

6. As an insurer, determine whether to intervene in the litigation between the insured and the tortfeasor.

7. Determine whether there are undisputed amounts with respect to medical bills which may or should be paid while the claim is investigated. *Fisher v. State Farm Mutual Auto. Ins. Co.* requires a UIM carrier to tender the undisputed amount owed as soon as it is determined, regardless of whether other benefits are contested.[27]

Uninsured Motorist Property Damage Coverage ("UMPD")

In Colorado, UMPD is available to persons insured who are legally entitled to recover damages from the owner or operator of an uninsured or underinsured vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance or use of the uninsured or underinsured vehicle.[28]

Conclusion

When assigned a new auto claim or case, familiarize yourself with the applicable statutes. Even if you handled a case two years ago, check the current statutes because automobile insurance laws change frequently. Additionally, review case law to determine whether a new ruling affects the handling of the case.

[1] Jeffrey W. Stempel, *The Insurance Policy as Social Instrument and Social Institution,* 51 Wm. & Mary L. Rev. 1489, 1497-98, (Mar. 2010) ("[E]very state effectively requires auto insurance in order to license a car.").

[2] C.R.S. § 42-7-101, *et seq.*; C.R.S. § 10-4-635(1)(a).

[3] C.R.S. § 10-4-601(6); C.R.S. § 42-7-103(8).

[4] C.R.S. § 10-4-601(6).

[5] C.R.S. § 42-7-103(2).

[6] Trevor M. Gordon, *To Reform or Repudiate? An Argument on the Future of No-Fault Auto Insurance,* 17 Quinnipiac Health L.J. 63, 75, 2013-2014.

[7] C.R.S. § 10-4-620; C.R.S. § 42-7-103(2).

[8] C.R.S. § 10-4-621(1).

[9] C.R.S. § 10-4-635.

[10] C.R.S. § 10-4-635(1)(b).

[11] *See* C.R.S. § 10-4-609.

[12] C.R.S. § 10-4-609(2).

[13] *See* C.R.S. § 10-4-609.

[14] *See* C.R.S. § 10-4-609(1)(a).

[15] 9 Steven Plitt, et al., <u>Couch on Ins.</u> § 123:36 (3d ed. 2018).

[16] *See, e.g.,* C.R.S. § 10-4-609(1)(a).

[17] *Pham v. State Farm Auto. Ins. Co.,* 296 P.3d 1038, 1042 (Colo. 2013); *Rivera v. American Fam. Ins. Group,* 292 P.3d 1181, 1182 (Colo. App. 2012).

[18] C.R.S. § 10-4-609(1)(a).

[19] C.R.S. § 10-4-609(c).

[20] C.R.S. §§ 10-3-1115, 10-3-1116.

[21] C.R.S. § 6-1-105.

[22] *See Sanderson v. American Fam. Mut. Ins. Co.,* 251 P.3d 1213, 1220-21 (Colo. App. 2010).

[23] Francis C. Amendola, J.D., et al., *Adjustment of Loss or Settlement in Cases Involving Uninsured or Underinsured Motor Vehicle Insurance,* 46A C.J.S. Insurance § 2343 (March 2019 Update).

[24] D. Duff McKee, J.D., *Punitive Damages Against an Insurer for the Bad-Faith Handling of a First-Party Claim,* 18 Am. Jur. Proof of Facts 3d 323, § 1 (Feb. 2019 Update) (bad faith claims are "attractive" because of the availability of extra-contractual damages); *see* C.R.S. § 10-3-1116(1).

[25] *See Tubbs v. Farmers Ins. Exch.,* 353 P.3d 924, 926–27 (Colo. App. 2015) (an insured's recovery of the full amount or nothing from a liable party's insurer has no impact on the UIM insurer's obligation to pay benefits).

[26] C.R.S. § 10-3-1115.

[27] *Fisher v. State Farm Mut. Auto. Ins. Co.*, 418 P.3d 501, 506 (Colo. 2018).

[28] *See* C.R.S. § 10-4-610(1).

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