

Alabama UM/UIM

September 24, 2015

§ 32-7-23 and Exclusions

- Any policy exclusion more “restrictive” than the statute is *void and unenforceable*.
- The statutory mandates of UM coverage must be *read into every motor vehicle liability policy as if fully set forth in it*.
- Courts are required to interpret all motor vehicle liability insurance policies as providing the statutory coverage *unless an agreement to reject is in evidence*.
- Words and provisions defined in a policy are generally set out with quotation marks, italics, or printed in bold and must be given the *meaning as defined in the policy*.

§ 32-7-23 and Exclusions

- Undefined words and provisions should be given the same meaning that a person of ordinary intelligence would *reasonably conclude*.
- An insurer can limit coverage when writing policies as long as it is not in abrogation of the statute. But an insurer may not deny benefits provided by inserting provisions restricting an insured's *right of recovery*.
- Coverage may be limited by the failure of the policyholder to disclose information or facts relevant to the issuance of the policy or by the *policyholder's exclusion of a specific individual from the policy in its entirety*.

- All *rejections must be in writing and signed by the named insured*. Any purported rejection or waiver of UM coverage by one who is not the named insured is invalid.
- Electronic rejections are valid but care must be taken to ensure that a *hard copy* of same is mailed to the insured or the insured has the ability to print or otherwise store the same.
- A *corporate insured* can reject uninsured-motorist (UM) coverage for insured employees while accepting it for directors, officers, partners, owners, and their family members.

Proof, Ownership, Maintenance, Use

- There is *no requirement of physical contact* between an insured/claimant and the vehicle for UM coverage to attach. “Getting in” or “entering” are distinguished from “approaching” the vehicle.
- *Corroborative evidence requirements* in “miss and run” claims are in derogation of the statute and are disallowed. Claimant must nevertheless prove “legal entitlement” to recovery.
- The claimant must be “vehicle oriented” and engaged in a *transaction essential to the use of the insured vehicle*.

Proof, Ownership, Maintenance, Use

- The act of “getting in” or entering a vehicle is distinguished from “approaching” the vehicle – the former is an *affirmative act or movement* to enter the vehicle.
- There must be a “*causal connection*” between the use of a vehicle and the claimant’s injury in order for UM coverage to attach; a criminal act may necessarily break the causal chain.
- *Intentional acts* must be scrutinized carefully and coverage may be rejected where the use of the insured auto was “incidental” to committing the intentional act.

Stacking and Primary

Policy Type	Driver	Passenger
Fleet	1 + 2	1 + 2
Multiple	Unlimited	1

- The UM/UIM *coverage applicable to a person as a passenger is primary* – including stacked policies – and must be exhausted before such an insured may seek indemnification under his or her own uninsured motorist coverage.
- When the primary UM/UIM coverage is divided among several claimants, a settlement for the *coverage limit would not be required* before seeking indemnification under the insured's own coverage.

Notice, Opting Out and In, Subrogation

- The notice of an underlying settlement to the UIM carrier must include *sufficient details* of the proposed settlement and the terms of any release.
- On notice of the proposed settlement and UIM claim, the carrier must immediately begin investigating the claim and *conclude the investigation within 30 days*.
- The carrier may *waive its right of subrogation* by not concluding its investigation within 30 days; failing to address value-driving factors involving liability and damages with the insured or requesting additional time; by denying the claim without an adequate investigation into the facts of the claim.

Notice, Opting Out and In, Subrogation

- Opting-out *terminates* the right of the UIM carrier to participate in discovery.
- As a *practical matter* if the carrier opts-out, counsel for the UIM carrier should reach agreement with counsel for the tortfeasor to periodically receive copies of documents and medical records of the insured.
- Allowing the UIM carrier to *opt-in is not a discretionary act* of the trial court. Consequently, any action to opt-in is addressed by a notice of same to the trial court and not by motion.

- *State Farm as the liability carrier offers a settlement to the plaintiff of \$25,000.00 with a policy limit of \$25,000.00. The underinsured carrier, Alfa, is properly placed on notice of same and determines to front the \$25,000.00. State Farm defends the case to verdict and judgment.*
- Any verdict under \$25,000.00 is paid to Alfa, but any difference between the verdict and the liability offer on which Alfa fronted its money is lost.
- For example, a verdict of \$15,000.00 means that State Farm pays Alfa \$15,000.00, but the remainder paid by Alfa – \$10,000.00– is lost and the plaintiff keeps it free and clear.

Fronting Money

- *Any verdict above \$25,000.00 starts to diminish the subrogation recovery by Alfa as the verdict amount increases.* For example:
- Verdict of \$25,000.00 is a wash. State Farm pays Alfa \$25,000.00.
- Verdict of \$27,500.00. State Farm pays Plaintiff \$2,500.00 and Alfa \$22,500.00
- *Alfa is now subrogating only to a portion of its fronted money.* It is important to note at this point, that Alfa's risk remains the same as the verdict increases as if though it had consented and stepped in and defended the case. For example, if Alfa consented to the settlement of \$25,000.00 and the verdict was \$27,500.00, Alfa would only have to pay \$2,500.00 which is the amount that it has lost in the scenario of fronting.

Fronting Money

- Verdict of \$30,000.00. State Farm pays plaintiff \$5,000.00 and Alfa \$20,000.00.
- Verdict of \$40,000.00. State Farm pays plaintiff \$15,000.00 and Alfa \$10,000.00.
- Verdict of \$50,000.00. State Farm pays plaintiff \$25,000.00 and Alfa \$0. And Alfa has no subrogation coming back to it, just as if it had consented to the settlement and defended the case to a \$50,000.00 verdict.

Legally Entitled to Recover

- *“Legally entitled to recover” or “responsible” speaks to liability and damages.* In order for the claimant to recover against the insurer, the uninsured motorist must first be proven to be legally responsible for the for the injuries and damages sustained by the claimant.
- In determining the amount of damages to be awarded in an underinsured case, the jury is instructed not to be concerned with the amount of liability insurance carried by (the alleged underinsured motorist) nor the amount of insurance afforded by defendant's policy.
- In Alabama, punitive damages are recoverable in that the insured claimant would be legally entitled to recover same from the tortfeasor.

- Fully investigate and document liability and damages.
- Use experts to substantiate your findings.
- Seek the advice of counsel regarding similar cases and your evaluation of the subject claim.
- Ensure that any delay is *not occasioned by a "conscious course of conduct,"* but rather is the by-product of an effort to fully investigate the claim in respect to liability and damages – inasmuch as the insured must be able to establish fault on the part of the uninsured motorist as well as damages arising therefrom.

- The claim file should be well documented and reflect an ongoing process of evaluating the evidence available at the time and responding to such with a reasonable investigation plan. *This process should continue from the start of the claim through trial.*
- The claim file should not only document what is being done, but *why*. But care should be taken not to document random thought processes – this includes commentary on the veracity of the claimant’s allegations or injuries.
- Tell the claimant or claimant’s attorney what *specific information is needed and why*. Ensure when that information is received that it is promptly submitted to evaluation.

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September 25, 2015