### **Table of Contents**

### PART I. —REGULATING, SELLING, AND CREATING THE INSURANCE CONTRACT

## CHAPTER 1. THE DEPARTMENT OF INSURANCE

§ 1:1 The Department of Insurance

# CHAPTER 2. INSURANCE PRODUCERS: AGENTS, BROKERS & SOLICITORS

§ 2:1 Insurance Producers: Agents, Brokers & Solicitors

# CHAPTER 3. THE INSURANCE CONTRACT

- § 3:1 The insurance binder
- § 3:2 The policy
- § 3:3 Policy as a contract
- § 3:4 Governing Law and Conflict of Laws
- § 3:5 Creation of coverage by waiver and estoppel
- § 3:6 Effect of misrepresentation

### CHAPTER 4. CANCELLATION AND RENEWAL

- § 4:1 Cancellation and notice
- § 4:2 Remedy for wrongful cancellation is in contract
- § 4:3 Effect of renewal

### PART II. —LIABILITY INSURANCE

# CHAPTER 5. LIABILITY INSURANCE IS REQUIRED

§ 5:1 Liability Insurance is Required

# CHAPTER 6. WHAT IS LIABILITY INSURANCE?

§ 6:1 What is Liability Insurance?

#### CHAPTER 7. WHO IS INSURED?

§ 7:1 Who is Insured?

# CHAPTER 8. WHAT VEHICLES ARE INSURED?

§ 8:1 What Vehicles are Insured?

#### CHAPTER 9. LIMITS OF LIABILITY

§ 9:1 Limits of liability

#### CHAPTER 10. EXCLUSIONS

§ 10:1 Exclusions

### CHAPTER 11. INSURER DUTIES: DEFENSE, INVESTIGATION, AND SETTLEMENT

- § 11:1 Duty to defend and investigate
- § 11:2 Reservation of rights and enhanced duty of good faith
- § 11:3 Duty to defend in the absence of a reservation of rights
- § 11:4 Refusal to defend
- § 11:5 Settlement and bad faith

#### CHAPTER 12. INSURED'S DUTIES

- § 12:1 Notification.
- § 12:2 Forwarding demands and papers
- § 12:3 Cooperation

### PART III. —COLLISION, COMPREHENSIVE, AND OTHER COVERAGES

## CHAPTER 13. COLLISION V. COMPREHENSIVE

- § 13:1 Generally
- § 13:2 Duty to pay claims
- § 13:3 The amount of the claim
- § 13:4 Total loss and salvage
- § 13:5 Subrogation and loan receipts—Duty to protect

#### CHAPTER 14. LOSS OF USE COVERAGE

§ 14:1 Loss of Use Coverage

### CHAPTER 15. MEDICAL PAYMENTS COVERAGE

- § 15:1 Generally
- § 15:2 Stacking medical payment coverage.
- § 15:3 Medical payment benefits and hospital liens

# PART IV. —UNINSURED MOTORIST (UM) COVERAGE

### CHAPTER 16. UNINSURED MOTORIST INSURANCE IN CERTAIN AMOUNTS IS REQUIRED UNLESS EXPRESSLY REJECTED

§ 16:1 Uninsured Motorist Insurance in Certain Amounts is Required Unless Expressly Rejected

## CHAPTER 17. WHO IS AN "UNINSURED MOTORIST"?

§ 17:1 Who is an "Uninsured Motorist"?

#### CHAPTER 18. WHO IS COVERED?

§ 18:1 Who is Covered?

# CHAPTER 19. CAUSATION AND VEHICLE ORIENTATION

§ 19:1 Causation and Vehicle Orientation

#### CHAPTER 20. EXCLUSIONS

- § 20:1 Generally
- § 20:2 Notice of the accident and prejudice

### CHAPTER 21. COMMON PROCEDURAL AND SUBSTANTIVE ISSUES IN UM CASES

- § 21:1 Contract v. Tort and statute of limitations
- § 21:2 Bankruptcy discharge
- § 21:3 Actions against the tortfeasor, insurer intervention, and default judgments
- § 21:4 Direct actions against UM carriers and opting out
- § 21:5 Burden of proof and UM carrier defenses—Jury knowledge of limits
- § 21:6 Special issues related to recovery and subrogation

#### CHAPTER 22. UM RECOVERY

- § 22:1 Generally
- § 22:2 Insurer priority
- § 22:3 The "Per Person" limit.
- § 22:4 Stacking
- § 22:5 Setoffs
- § 22:6 Pre-Judgment interest

### PART V. UNDERINSURED MOTORIST (UIM) COVERAGE

### CHAPTER 23. ORIGIN OF UNDERINSURED MOTORIST COVERAGE

§ 23:1 Origin of underinsured motorist coverage

# CHAPTER 24. OPTING OUT AND RELATED ISSUES.

§ 24:1 Opting Out and Related Issues.

#### CHAPTER 25. OPTING BACK IN

§ 25:1 Opting Back In

xviii

# CHAPTER 26. PERMISSION TO SETTLE, SUBROGATION, AND REIMBURSEMENT

- § 26:1 Generally
- § 26:2 Permission to settle and subrogation
- § 26:3 Subrogation v. Reimbursement: *Hardin*, *Bradford*, and *Ex Parte Allstate*

### CHAPTER 27. COMMON PROCEDURAL ISSUES IN UIM CASES.

- § 27:1 Underinsured carrier as defendant: Lowe v. Nationwide
- § 27:2 Juror knowledge of UIM limits.
- § 27:3 When the liability carrier settles for less than its limits

## CHAPTER 28. AMOUNT OF RECOVERY IN UIM CASES

- § 28:1 Stacking
- § 28:2 Set-off
- § 28:3 Municipalities and worker's compensation
- § 28:4 Common fund doctrine

### CHAPTER 29. UM/UIM: FAQ

- § 29:1 Who should you sue in an uninsured motorist case?
- § 29:2 Who should you sue in an underinsured motorist case?
- § 29:3 What does "opting out" mean?
- § 29:4 When is the deadline for a carrier to opt out?
- § 29:5 What are the consequences of opting out?
- § 29:6 What are the consequences if a carrier chooses not to "opt out"?
- § 29:7 How many coverages can you stack?
- § 29:8 How does the underinsured carrier decide whether to waive its right of subrogation or to advance the amount offered by the tortfeasor's carrier?
- § 29:9 Do I have to pay a subrogation claim out of proceeds from uninsured or underinsured motorist coverage?
- § 29:10 Do I have to pay workers' compensation subrogation out of the proceeds of uninsured motorist coverage?

- § 29:11 Do I have to pay a workers' compensation carrier out of proceeds received from a liability insurance carrier?
- § 29:12 How long does a UIM carrier have to respond to a liability carrier's offer of policy limits?
- § 29:13 Must an insurer be made whole before it can pursue subrogation?

#### PART VI. BAD FAITH

#### CHAPTER 30. BAD FAITH GENERALLY

§ 30:1 Bad Faith Generally

### CHAPTER 31. BAD FAITH IN UM AND UIM CASES.

§ 31:1 Bad Faith in UM and UIM Cases.

# PART VII. MOST FREQUENTLY ASKED QUESTIONS

#### CHAPTER 32. STATUTE OF LIMITATIONS

§ 32:1 Statute of Limitations

### CHAPTER 33. VENUE AND FORUM NON-CONVENIENS

§ 33:1 Venue and Forum Non-Conveniens

### CHAPTER 34. SPECIFIC DISCOVERY MATTERS

- § 34:1 The policy limits of a liability insurance policy are discoverable
- § 34:2 A recorded statement taken by insurance agent or claims adjuster is protected work product as long as it is taken in anticipation of litigation
- § 34:3 Defendant in a civil action arising out of a car accident cannot be compelled to give deposition while criminal charges are pending

#### **CHAPTER 35. TRIAL EVIDENCE**

§ 35:1 Generally

#### Table of Contents

- § 35:2 Alabama Uniform Accident Reports are usually inadmissible.
- § 35:3 Owner opinion of a vehicle's value.
- § 35:4 Spoliation

#### CHAPTER 36. JURORS' INSURANCE

§ 36:1 Jurors' Insurance.

#### CHAPTER 37. JUDGE'S INSURANCE

§ 37:1 Judge's Insurance

#### CHAPTER 38. COLLATERAL SOURCES

§ 38:1 Collateral Sources

# CHAPTER 39. WRONGFUL DEATH: UNIQUE ISSUES

§ 39:1 Wrongful Death: Unique Issues

### CHAPTER 40. INSURANCE AND POST-JUDGMENT INTEREST

§ 40:1 Insurance and post-judgment interest

#### CHAPTER 41. PRO AMI SETTLEMENTS

§ 41:1 Pro Ami Settlements

### PART VIII. —COMMON SUBSTANTIVE ISSUE IN AUTOMOBILE ACCIDENT CASES

### CHAPTER 42. NEGLIGENT ENTRUSTMENT AND VICARIOUS LIABILITY

§ 42:1 Negligent Entrustment and Vicarious Liability.

# CHAPTER 43. CONTRIBUTORY NEGLIGENCE

§ 43:1 Contributory Negligence

#### CHAPTER 44. THE GUEST STATUTE

§ 44:1 The Guest Statute

#### CHAPTER 45. DRAM SHOP LIABILITY

§ 45:1 Dram Shop Liability

# CHAPTER 46. SIGNALING MOTORIST LIABILITY

§ 46:1 Signaling Motorist Liability

# CHAPTER 47. DIRECT ACTIONS AGAINST LIABILITY INSURERS

§ 47:1 Direct Actions Against Liability Insurers

#### CHAPTER 48. LOSS OF USE DAMAGES

§ 48:1 Loss of Use Damages

#### CHAPTER 49. HOSPITAL LIENS

§ 49:1 Hospital Liens

# CHAPTER 50. AUTHORIZED EMERGENCY VEHICLES

§ 50:1 Authorized Emergency Vehicles

Table of Laws and Rules

**Table of Cases** 

**Index**