

Table of Contents

Volume 1

PART 1. THE FINANCIAL RESPONSIBILITY ACT

CHAPTER 1. MECHANICS OF THE FINANCIAL RESPONSIBILITY ACT

- § 1:1 Security suspension provisions
- § 1:2 Security requirement—Policy not applicable to accident
- § 1:3 Financial security requirements—Extraterritorial coverage increases
- § 1:4 Application of security suspension provisions to uninsured motorist coverage
- § 1:5 Reciprocal security suspension provisions
- § 1:6 Security suspension section—Constitutionality
- § 1:7 SR 21 filings—Conclusive or not?
- § 1:8 Security deposits
 - § 1:9 —Deposit amount—Commissioner discretion
 - § 1:10 —Asset transfer avoidance
 - § 1:11 —Bond coverage—Lack of insurance aspects
 - § 1:12 —Collision carrier subrogation
 - § 1:13 —Priorities: uninsured motorist carrier vs. uninsured motorist insured
 - § 1:14 —Surety disclaimer
 - § 1:15 Self insurance
 - § 1:16 —Self-insured car rental agency—Limits problems
 - § 1:17 Releases
 - § 1:18 Duration of suspension
 - § 1:19 Entry of judgment—Suspension effect
 - § 1:20 Effect of bankruptcy
 - § 1:21 License suspension—Insurer at fault—Damages recovery
 - § 1:22 Security suspension and limits requirements

CHAPTER 2. THE MOTOR VEHICLE LIABILITY POLICY

- § 2:1 Proof of financial responsibility

AUTOMOBILE LIABILITY INSURANCE

- § 2:2 Automobile liability policy—Impediments to coverage
- § 2:3 ——Misrepresentations
- § 2:4 ——Exclusions
- § 2:5 ——Notice of accident requirement
- § 2:6 ——Notice of suit and suit paper delivery requirement
- § 2:7 ——Cooperation requirement breach
- § 2:8 Motor vehicle liability policies—Absolute liability to third parties
- § 2:9 ——Application to inter-insurer disputes
- § 2:10 ——Application to compulsory coverages
- § 2:11 ——Limitations on absolute liability requirements
- § 2:12 Motor carrier financial responsibility
- § 2:13 —The MCS-90 endorsement
- § 2:14 ——MCS-90 scope of protection
- § 2:15 ——Obligation to pay under the MCS-90
- § 2:16 ——Cancellation
- § 2:17 Conformity clause
- § 2:18 Insurer reimbursement rights
- § 2:19 Bodily injury liability limits—Damages recoverable; “per person” and “per accident”—Single or multiple accidents
- § 2:20 ——Punitive damages and damages caps
- § 2:21 ——Availability of “per accident” limits for derivative and consequential damages claims: Loss of consortium and loss of services; negligent infliction of emotional distress
- § 2:22 ——Single or multiple accidents—Availability of “per accident” limits for derivative and consequential damages claims: Wrongful death
- § 2:23 —Liability limits stacking restriction; availability of separate liability limits for separate negligent acts
- § 2:24 —Liability limits stacking restriction; availability of separate liability limits when multiple insured autos are involved in one accident
- § 2:25 Assigned risk plans

CHAPTER 3. TYPES OF MOTOR VEHICLE LIABILITY POLICIES

- § 3:1 Certification of policies
- § 3:2 Owner’s policy coverage—Designated vehicle coverage
- § 3:3 —Newly acquired and replacement vehicle coverage
- § 3:4 ——Replacement vehicle coverage
- § 3:5 ——Effect of certification
- § 3:6 ——Effect on SR22 filing
- § 3:7 ——Notification requirement; Temporary substitute vehicle coverage
- § 3:8 —Definition of insured

TABLE OF CONTENTS

- § 3:9 —Omnibus clause
- § 3:10 —Obligation to defend: Permissive use allegation
- § 3:11 —Obligation to defend: Late notice effect
- § 3:12 Operator's policy—Nonowned vehicle coverage
- § 3:13 —Actual versus fictitious ownership
- § 3:14 —“Any” vehicle coverage
- § 3:15 —Use or operation of vehicle
- § 3:16 Operator's policy—Newly acquired vehicle coverage
- § 3:17 Mandatory insurance laws—Validity and applicability of exclusions
- § 3:18 —Applicability to statutory and excess limits
- § 3:19 —Car rental agency shift of liability coverage obligation to renter
- § 3:20 —Florida rental car coverage “shifting clause”
- § 3:21 —Commercial policies
- § 3:22 Territorial requirements
- § 3:23 Umbrella policies and “Excess” coverage—Coverage expectations
- § 3:24 Business auto and commercial policies

CHAPTER 4. LIABILITY COVERAGE: ACCIDENT REQUIREMENT

- § 4:1 The “accident” requirement—In general
- § 4:2 Intentional injuries as accident
- § 4:3 Intentional injury exclusion
- § 4:4 —Application to “self-defense”
- § 4:5 Mandatory coverage—Accident requirement
- § 4:6 Punitive damages coverage
- § 4:7 —Insurer bad faith liability for refusal to pay punitive damages award
- § 4:8 Negligent entrustment coverage

CHAPTER 4A. LEGAL LIABILITY REQUIREMENT

- § 4A:1 Legal liability requirement—Scope of requirement

CHAPTER 5. OWNERSHIP, MAINTENANCE, OR USE REQUIREMENT

- § 5:1 Ownership, maintenance, or use requirement—Scope of coverage
- § 5:2 ——“Involved in accident,” “accident involving automobile,” “caused by automobile accident” requirements
- § 5:3 ——Non-moving vehicle
- § 5:4 Activities constituting “maintenance” or “use”—“Maintenance” requirement

AUTOMOBILE LIABILITY INSURANCE

- § 5:5 —“Use as vehicle” requirement
- § 5:6 —Motion of vehicle as causal factor
- § 5:7 —Carbon monoxide asphyxiation and cookstove explosion cases
- § 5:8 —Loading and unloading injuries, strains, back injuries, and heart attacks
- § 5:9 —Mental distress claims; family member viewing accident—Ownership, maintenance, or use coverage applicability
- § 5:10 —Slip and fall cases
- § 5:11 —Injuries related to police activity
- § 5:12 —Gunshot and drive-by shooting cases—Ownership, maintenance or use coverage applicability—Gunshot injuries and drive-by shootings
- § 5:13 ——Gunshot injuries connected with hunting trips
- § 5:14 —Assault cases—Ownership, maintenance or use coverage applicability—Robbery and carjacking
- § 5:15 ——Altercations between drivers
- § 5:16 ——Assaults directed at individuals—Traps and personal vendettas
- § 5:17 ——Assault directed at vehicle
- § 5:18 ——Vehicle as accessory to crime—“Use” coverage applicability
- § 5:19 ——Common carrier coverage for sexual assault
- § 5:20 —Common carrier coverage for assaults between fellow passengers
- § 5:21 —Dog bite cases—Use coverage applicability
- § 5:22 —Business premises and loading and unloading exclusions—Business premises exclusion
- § 5:23 —Loading and unloading as “use” of the vehicle;
Loading and unloading exclusions

CHAPTER 6. LIABILITY POLICIES: EXCLUSIONS

- § 6:1 Exclusions—In general; Severability clause effect
- § 6:2 Intentional acts exclusion
- § 6:3 Employee and employment exclusions—In general
- § 6:4 —Workers’ compensation exclusion
- § 6:5 Employee and Employment exclusions—Employee exclusion
- § 6:6 —Fellow employee or cross-employee exclusion
- § 6:7 Insured injury exclusion
- § 6:8 Household or “intra-family” exclusion—In general
- § 6:9 —Foreign state accident: Effect on enforceability
- § 6:10 Owned-uninsured vehicle, or vehicle furnished or available for regular use exclusion
- § 6:11 Non-owned auto exclusion

TABLE OF CONTENTS

- § 6:12 Felony use or criminal activity exclusion
- § 6:13 Named driver exclusion
- § 6:14 Unlicensed driver exclusion; Reasonable belief exclusion—applicability to newly licensed drivers
- § 6:15 Unlisted driver exclusion; Unlisted household residents
- § 6:16 Underage driver exclusion
- § 6:17 “Auto business” and “Repair shop” exclusions
- § 6:18 Business use and public or livery conveyance exclusions—operation of the “persons or property for a fee” exclusion
- § 6:19 Rental agreement exclusions—Intoxication
- § 6:20 —Unauthorized driver prohibitions
- § 6:21 —Traffic law violations
- § 6:22 —Use restrictions and high-risk use restrictions
- § 6:23 —Policy limits differentiation
- § 6:24 Miscellaneous other exclusions
- § 6:25 Uninsured motorist coverage—Effect on Liability exclusion enforcement

CHAPTER 7. LIABILITY POLICIES: OVERLAPPING COVERAGES; CONFLICTS BETWEEN CERTIFIED AND VOLUNTARY POLICIES; CONFLICTS OF LAWS

- § 7:1 Generally
- § 7:2 “Other insurance” clauses
- § 7:3 —Conflicting clauses in competing policies
- § 7:4 Defective cancellation—Effect on “other insurance”
- § 7:5 Policy limits recovery under voluntary policy—Effect on certified policy
- § 7:6 Stacking of separate coverages
- § 7:7 Conflicts of Laws

CHAPTER 8. CANCELLATION

- § 8:1 Generally
- § 8:2 Cancellation by insured
- § 8:3 —Surrender of policy and lost policy receipts
- § 8:4 —Written notice requirement
- § 8:5 —“Effective date” of cancellation requirement
- § 8:6 —Interested parties notice requirement
- § 8:7 —Insured’s replacement of policy as cancellation; The “automatic termination” clause
- § 8:8 —Termination by sale of insured vehicle
- § 8:9 Cancellation by insurer
- § 8:10 —Time Defect in Notice: Effect on Cancellation
- § 8:11 —Cancellation Notice: Appropriate Wording

AUTOMOBILE LIABILITY INSURANCE

- § 8:12 —Change of Address Problems
- § 8:13 —Binders: Cancellation Notice Requirements
- § 8:14 —Insurer Substitution as Cancellation
- § 8:15 —Insured's Waiver of Notice
- § 8:16 —Insurer Forbearance of Cancellation as Consideration for Policy Modification
- § 8:17 —Premium refund requirements
- § 8:18 —Rescission ab initio: Rights of third parties
- § 8:19 —Statutory cancellation and non-renewal restrictions
- § 8:20 ——The 60-Day Unrestricted Cancellation Period
- § 8:21 ——Assigned Risk Policies—Applicable Cancellation Notice for Nonpayment of Premium
- § 8:22 ——Automatic Renewal—Premium Payment Obligations
- § 8:23 ——Short term policies
- § 8:24 ——Reinstatement Policies—Cancellation Requirement
- § 8:25 ——Nonpayment of renewal premium
- § 8:26 —Cancellation for nonpayment of installment premiums
- § 8:27 ——Late Payment Acceptance—Waiver and Estoppel Effect
- § 8:28 —Premium payment date disputes; the Postal Acceptance Rule
- § 8:29 —Notice contents; statement of reason for cancellation requirement
- § 8:30 —Unilateral reduction of policy term
- § 8:31 —Insured's right to hearing
- § 8:32 —Damages for wrongful cancellation
- § 8:33 —Insurer waiver of cancellation
- § 8:34 Failure to notify insurance department
- § 8:35 —Insurer cancellation
- § 8:36 —Lapse of Policy Term—Notice Requirement
- § 8:37 —Insured cancellation
- § 8:38 —Effect on other insurance
- § 8:39 —Effect on excess coverage limits
- § 8:40 —Requirement of notice of cancellation for non-payment of premium
- § 8:41 —Sufficiency of notice
- § 8:42 —Insurer's reimbursement right
- § 8:43 —Filing based on erroneous driving conviction
- § 8:44 Insurance department error—Effect on insurer duty to notify
- § 8:45 Interim repeal of statute—Effect on insurer duty to notify
- § 8:46 Failure to cancel SR-22 filing—Effect on coverage
- § 8:47 Changes in renewal policy—Requirement of notice to insured

TABLE OF CONTENTS

CHAPTER 9. COVERAGE ENFORCEMENT: DIRECT ACTION AND OTHER TACTICS

- § 9:1 Right of direct action
- § 9:2 —Direct action statutes
- § 9:3 —Direct action under the financial responsibility act
- § 9:4 —Direct action by attachment
- § 9:5 —Direct action under contract and tort theories
- § 9:6 —Third-party interpleader of insurer
- § 9:7 —The insurer pre-answer security requirement
- § 9:8 Stipulated judgments and non-levy agreements
- § 9:9 —Effect of fraud and collusion; “extrinsic” and “intrinsic” fraud distinguished
- § 9:10 —Insurer’s right to vacate judgment
- § 9:11 —Enforceability
- § 9:12 —Actual trial requirement
- § 9:13 —Non-levy agreements: suggested forms
- § 9:14 —Stipulated damages: the “reasonableness” requirement
- § 9:15 —Insurer limitation on vacation of default judgment
- § 9:16 Right of direct action against insurer after judgment against insured
 - § 9:17 —Venue
 - § 9:18 —Final judgment rule; stay of judgment; supersedeas
 - § 9:19 —Failure to file supersedeas as bad faith
 - § 9:20 —Final judgment rule; statute of limitations
 - § 9:21 —Recovery under supersedeas: the turnover order
 - § 9:22 —Insurer liability for taxable costs under Supplementary Payments provision

CHAPTER 10. MULTIPLE TORTFEASORS AND MULTIPLE INSURERS: SELECTIVE ENFORCEMENT AND SETTLEMENT TACTICS

- § 10:1 Joint and several liability—Statutory changes
- § 10:2 Selective settlements with joint tortfeasors
- § 10:3 —Mary Carter agreements; Hi-Lo agreements; Secret agreements
- § 10:4 —Loan receipt agreements
- § 10:5 —Covenants not to sue
- § 10:6 —*Pierringer* releases
- § 10:7 Admissibility of settlement with joint tortfeasors
- § 10:8 Selective settlements with multiple insurers of single tortfeasors
- § 10:9 Less-than-limits settlements with primary insurers—
Excess carrier exposure

§ 10:10 Selective settlements: Suggested forms

CHAPTER 11. MULTIPLE COMPETING CLAIMS AND CLAIMANTS

- § 11:1 Insurer's obligation to prioritize claims for settlement—The "first come, first served" rule
- § 11:2 The Florida multiple claimant good faith settlement process; Bad faith Avoidance
- § 11:3 Insurer's obligation to protect multiple co-insureds
- § 11:4 Application of coverage or separate policy limits for imputed negligence

CHAPTER 12. DUTY TO DEFEND: THE DEFENSE OBLIGATION

- § 12:1 Triggering the Duty to defend: "Tender of defense" requirement; The "Four Corners" and "Eight Corners" rules; Duty to pay pre-tender defense costs
- § 12:2 Termination of the defense obligation—Effect of policy limits exhaustion
- § 12:3 Insurer's obligation to obtain release
- § 12:4 Insurer's gratuitous defense—Liability for mishandled defense
- § 12:5 Allocation of defense costs between covered and non-covered claims
- § 12:6 Conflict of interest
- § 12:7 Attorney's liability for expert's fees
- § 12:8 Excess insurer's duty to defend
- § 12:9 Duty to defend under Form F—The intrastate motor carrier state financial responsibility filing

CHAPTER 13. RESERVATION OF RIGHTS AND NONWAIVER AGREEMENTS

- § 13:1 Reservation of rights and nonwaiver agreements
- § 13:2 —Insured consent requirement
- § 13:3 —Third party consent
- § 13:4 —Insurer reimbursement provision
- § 13:5 —Insured's right to settle
- § 13:6 Nonwaiver agreements and reservation of rights notices—Form and contents
- § 13:7 Right to change coverage denial grounds; waiver and estoppel principles
- § 13:8 Right to deny coverage after unconditional defense; waiver and estoppel
- § 13:9 Assigned counsel conduct—Undivided loyalty requirement
- § 13:10 Insurer conflict of interest—Avoidance requirement

TABLE OF CONTENTS

- § 13:11 Insurer's right to withdraw from defense
- § 13:12 Insured's right to appointment of independent counsel
- § 13:13 The defective reservation of rights agreement—An example

CHAPTER 14. REFUSAL TO DEFEND

- § 14:1 Refusal to defend—Loss of right to control defense
- § 14:2 Wrongful refusal to defend—Insurer's liability for within-limits judgment
 - Insurer's liability for excess judgment
- § 14:4 Wrongful refusal to defend and wrongful refusal to settle; relationship; excess judgment liability
 - Settlement demand requirement
- § 14:6 Wrongful refusal to defend—Effect on policy defenses and coverage denials
 - Insurer's liability despite lack of coverage
 - Liability for emotional distress
 - Cause of action accrual and statutes of limitation
 - Untimely declaratory judgment filing; estoppel effect
 - Legal expense recovery
- § 14:12 Initial wrongful refusals to defend or settle—Ultimate payment of policy limits—Insurer's liability for independent counsel fees
- § 14:13 Insurer's mistaken insurer defense—Right to withdraw defense
- § 14:14 Insurer's disclaimer of indemnity obligation as refusal to defend
- § 14:15 Insurance Guaranty Fund or Association—Refusal to Defend

PART 2. BAD FAITH

CHAPTER 15. BAD FAITH: IN GENERAL

- § 15:1 Time limit demands: the bad faith setup
 - Failure to communicate demand to insured as evidence of bad faith
- § 15:3 —No bad faith where award is less than insurer's settlement offer
- § 15:4 Insurer bad faith conduct—Misappropriation of insured's expert
 - Failure to investigate medical condition
 - Failure to investigate claim
- § 15:7 —Misrepresentation of policy limits; attorney/insurer liability
 - Adjuster financial incentives

AUTOMOBILE LIABILITY INSURANCE

- § 15:9 —Failure to pay undisputed damages
- § 15:10 —Adjuster misconduct
- § 15:11 ——Conduct constituting “practice of law”
- § 15:12 —Use of in-house defense counsel
- § 15:13 —Litigation tactics as bad faith
- § 15:14 Liability for defense counsel’s negligence or legal malpractice
- § 15:15 —Liability of insured’s counsel to excess carrier for legal malpractice
- § 15:16 Defenses to bad faith—The “fairly debatable” defense
- § 15:17 —The Florida “totality of the circumstances” test; Bad faith avoidance procedure; “Reverse” bad faith
- § 15:18 —The “advice of counsel” defense
- § 15:19 ——Failure to follow advice of counsel
- § 15:20 Coverage requirement as prerequisite for bad faith action
- § 15:21 Excess judgment as condition to bad faith claim jurisdiction
- § 15:22 —Excess judgment averted by insured’s contribution—Availability of bad faith claim
- § 15:23 —Insurer good faith as defense to excess judgment liability
- § 15:24 —Excess judgment liability for failure to settle within policy limits
- § 15:25 —Payment of excess judgment as bad faith cure
- § 15:26 Excess judgment collection—Direct action against insurer
- § 15:27 ——Bad faith actions; accrual of cause of action; statute of limitations
- § 15:28 Assignment of bad faith claim; by-pass and non-levy agreements
- § 15:29 —Necessity for prior judgment
- § 15:30 —Activation of applicable statute of limitations
- § 15:31 —Assignability of punitive damages claim
- § 15:32 —Split action warning
- § 15:33 —Modified non-execution agreement form
- § 15:34 Other elements of bad faith damages
- § 15:35 Bad faith damages—Damages for emotional distress
- § 15:36 —Punitive and otherwise
- § 15:37 —Attorney fees
- § 15:38 —Assignee’s right to post-judgment interest
- § 15:39 Contribution between bad faith insurers
- § 15:40 Insured’s comparative bad faith; insurer setoff rights
- § 15:41 ERISA pre-emption of bad faith actions
- § 15:42 Insolvency of tortfeasor—Effect on excess judgment recovery
- § 15:43 Voluntary assignment refusal; effect of insured’s release of insurer; remedial action

TABLE OF CONTENTS

- § 15:44 Insured arbitration demand—Effect on insured's rights to assert bad faith claim
- § 15:45 Effect of statutory changes affecting bad faith claims

CHAPTER 16. DISCOVERY RIGHTS IN BAD FAITH ACTIONS

- § 16:1 Bad faith actions: right to examine insurer's claim file; right to examine insurer's "bad faith" file
- § 16:2 Bad faith actions: right to examine insurer's claim file—The "work-product" defense
- § 16:3 —The "crime-fraud" exception to the "work-product" privilege
- § 16:4 —Production of insured's statement
- § 16:5 —Discovery of material produced after suit filed
- § 16:6 —Discovery of use of computer-assisted evaluators ("Colossus"); use of evaluators as bad faith
- § 16:7 Right to examine insurer's records
- § 16:8 —Production of insurer's prior bad faith litigation records and investigation files
- § 16:9 —Production of insurer's in-house claims manuals and newsletters; adjuster personnel files and claim records; admissibility
- § 16:10 —Discovery of "underwriting intent"
- § 16:11 —Discovery of past liability for excess judgments
- § 16:12 —Discovery of email and attached documents (e-discovery)
- § 16:13 —Discovery of insurer's reserves
- § 16:14 Right to examine insurer's records—Discovery of other claims
- § 16:15 Insurer's discovery rights
- § 16:16 —Insured's "work-product" and "attorney-client" privileges
- § 16:17 Discovery Rights: first and third party actions
- § 16:18 —Insurer's right to ex parte interviews with claimant's physicians
- § 16:19 —Discovery of medically privileged records
- § 16:20 —Discovery of insurer's handling of other claims; relevance
- § 16:21 —Discovery of asset information
- § 16:22 Attorney-client privilege
- § 16:23 —Application in third party cases
- § 16:24 —Application to statements given to adjusters and insurers
- § 16:25 —Application in first party cases
- § 16:26 —Effect of absence of dual relationship on application of the privilege
- § 16:27 —Cooperation clause as check on privilege

- § 16:28 —Review mechanism
- § 16:29 —In camera inspection
- § 16:30 —Applicable law in federal proceedings
- § 16:31 —Collateral estoppel effect of privilege determination
- § 16:32 —Waiver of privilege: automatic and implied waiver
- § 16:33 —Waiver of privilege: “vital to claim or defense” approach
- § 16:34 —Waiver of privilege: waiver disallowed for non-use of privileged material
- § 16:35 Insurer as defendant: right of defendant’s insureds to serve as jurors
- § 16:36 Insurer as defendant: use of insured’s treating physician as defense expert
- § 16:37 Remedies for discovery delay or refusal
- § 16:38 Reimbursement of discovery compliance costs

Volume 2

CHAPTER 17. EXCESS JUDGMENT: INSURER LIABILITY

- § 17:1 The supplementary payments provision: Insurer liability for post-judgment interest
- § 17:2 The supplementary payments provision: insurer liability for post-judgment interest—Liability for interest where tender rejected
- § 17:3 —Deposit of funds for appeal purposes: effect on additional interest accrual
- § 17:4 —Judgment requirement
- § 17:5 —Applicability to uninsured motorist coverage
- § 17:6 Insurer liability for pre-judgment interest
- § 17:7 —Excess limits liability
- § 17:8 —Interest on punitive damages
- § 17:9 —Accrual as of date liability established in bifurcated proceedings
- § 17:10 —Accrual during appellate proceedings
- § 17:11 Excess carrier liability for interest on excess judgment
- § 17:12 Taxation of prejudgment interest

CHAPTER 18. PRIMARY CARRIER BAD FAITH: EXCESS CARRIER REMEDIES

- § 18:1 Primary carrier bad faith: excess carrier remedies
- § 18:2 The self-insured as primary carrier: duty to protect excess carrier
- § 18:3 Settlement with primary carrier—Preservation of right to excess coverage

TABLE OF CONTENTS

§ 18:4	— —Less-than-primary limits settlement: effect of partial release agreement
§ 18:5	— —Excess carrier's right to settlement information
§ 18:6	Primary carrier refusal to defend—Excess insurer's duty to defend
§ 18:7	Activation of excess carrier's defense obligation
§ 18:8	Excess carrier's right to indemnification for costs of defense
§ 18:9	—Recovery within primary limits only
§ 18:10	—Recovery exceeding primary limits
§ 18:11	Liability of primary carrier's defense counsel to excess carrier for negligent handling of defense
§ 18:12	Primary carrier insolvency—Excess carrier "drop-down" obligation

PART 3. UNINSURED MOTORIST COVERAGE

CHAPTER 19. UNINSURED MOTORIST LEGISLATION

§ 19:1	Background and legislation
§ 19:2	Coverage forms and format
§ 19:3	Policies affected
§ 19:4	—Umbrella policies
§ 19:5	—Motor carrier policies
§ 19:6	—Commercial and fleet policies
§ 19:7	—Government policies
§ 19:8	Coverage rejection or selection of other limits— Renewal, replacement, and substitute policies
§ 19:9	—Who may reject coverage
§ 19:10	—Rejection by rental vehicle lessor and renters
§ 19:11	Coverage rejection or selection of other limit—Form of rejection
§ 19:12	Coverage rejection or selection of other limits— "Informed" rejection requirement
§ 19:13	—Renewal, replacement, and substitute policies
§ 19:14	—Partial rejection; rejection of specific persons or classes
§ 19:15	—Multi-state rejections
§ 19:16	—Restriction for non-listed driver
§ 19:17	Optional uninsured motorist coverages
§ 19:18	—“Offer” requirement
§ 19:19	—Request for “full coverage”: Duty of insurer to disclose
§ 19:20	—Request for “full coverage”: effect on optional uninsured and underinsured motorist coverages

AUTOMOBILE LIABILITY INSURANCE

- § 19:21 —“Make available” and “opportunity to purchase” requirements
- § 19:22 —Insurer’s affirmative duties
- § 19:23 —Who must receive offer
- § 19:24 —Insured’s waiver of right to information
- § 19:25 —Application for coverage as acceptance of offer
- § 19:26 —Renewal and reissued policies
- § 19:27 Self-Insurers: uninsured motorist coverage obligations
- § 19:28 Proposition 213—The California Personal Responsibility Act of 1996
- § 19:29 Louisiana “no pay, no play” statute
- § 19:30 “Deemer” statute application to uninsured and underinsured motorist coverages

CHAPTER 20. UNINSURED MOTORIST COVERAGE: INSURING AGREEMENT

- § 20:1 Legal liability requirement
- § 20:2 —Workers’ compensation effect; fellow servant and employer immunity
- § 20:3 —Governmental immunity
- § 20:4 —Spousal immunity
- § 20:5 —Unemancipated child immunity
- § 20:6 —Guest passenger statute bar
- § 20:7 —Statute of limitations bar
- § 20:8 —Res judicata bar
- § 20:9 —Tort action dismissal effect; Defense verdict on liability effect
- § 20:10 —No-fault threshold effect
- § 20:11 —Contributory negligence effect
- § 20:12 —Bankruptcy discharge effect
- § 20:13 —“Fault” as the sole test of legal liability
- § 20:14 Bodily injury requirement
- § 20:15 Accident requirement
- § 20:16 —Intentional injury effect
- § 20:17 Ownership, maintenance, and use requirements
- § 20:18 —Negligent repair
- § 20:19 Jointly liable tortfeasors: effect on uninsured motorist coverage
- § 20:20 —Right of insured tortfeasor to setoff of uninsured motorist recovery

CHAPTER 21. UNINSURED MOTORIST COVERAGE: DEFINITION OF INSURED

- § 21:1 Insured classifications
- § 21:2 Named insureds
- § 21:3 —Listed drivers

TABLE OF CONTENTS

§ 21:4	—Corporations, partnerships, and government entities
§ 21:5	—Employees of corporations
§ 21:6	—Policies issued under trade or partnership name
§ 21:7	—Union members, religious orders, and trust beneficiaries
§ 21:8	Resident relatives
§ 21:9	—Children absent from household
§ 21:10	—The “living with” requirement
§ 21:11	—Children of separated or divorced parents
§ 21:12	—Separated or divorced couples
§ 21:13	—Divorced or separated named insureds: validity of residency requirement
§ 21:14	—Children of unmarried couples
§ 21:15	—Sham marriages
§ 21:16	—Foster children, illegitimate children, stepchildren, and wards
§ 21:17	—Contemplated residence; neo-natal circumstances
§ 21:18	—Roommate and “domestic partners”: status as “household residents”
§ 21:19	Restrictions on “resident relative” coverage— Exclusion for relatives owning automobiles; Exclusion for unlisted resident relatives
§ 21:20	—Non-designated driver limits reductions
§ 21:21	—Restriction to “covered” vehicle
§ 21:22	“Occupant” coverage
§ 21:23	—“Occupancy” defined
§ 21:24	—“Zone of safety” rule
§ 21:25	—School bus occupancy: “zone of safety” for children
§ 21:26	—“Thrown from the vehicle” exception to owned-uninsured vehicle exclusion
§ 21:27	—Good Samaritans and rescuers
§ 21:28	—Non-family guest passenger exclusion
§ 21:29	—“Pedestrian” coverage
§ 21:30	—Occupant coverage under driver’s policy
§ 21:31	“Use” coverage
§ 21:32	—Passenger as “user”
§ 21:33	—Passenger grabbing the wheel: “use” coverage applicability
§ 21:34	“Derivative” insured
§ 21:35	“Automatic” uninsured motorist coverage: protection for classes insured for liability

CHAPTER 22. UNINSURED MOTORIST COVERAGE: DEFINITION OF “INSURED VEHICLE”

§ 22:1	“Insured vehicle”; “covered auto”: defined
--------	--

- § 22:2 Furnished for regular use exclusion
- § 22:3 Non-permissive use exclusion

CHAPTER 23. UNINSURED MOTORIST COVERAGE: “UNINSURED AUTOMOBILE” DEFINED

- § 23:1 “Uninsured automobile” defined
- § 23:2 “No applicable liability bond or policy” requirement
- § 23:3 Liability exclusions: creating uninsured motorists; activating uninsured motorist coverage
 - Uninsured motorist coverage not available: decisional authority
 - Uninsured motorist coverage available: decisional authority
 - Household exclusion
 - Step-down uninsured motorist coverage
 - Named-driver exclusion
 - Cross-employee exclusion
 - Underage driver exclusion
 - Unlicensed driver exclusion
 - Intentional injury exclusion
 - Motor vehicle operated for a fee exclusion
 - Self-insured vehicle exclusion
 - Guest passenger exclusion
- § 23:16 Threshold bar: effect on uninsured motorist coverage activation
- § 23:17 Statute of limitations bar: effect on uninsured motorist coverage activation
- § 23:18 Liability policy breach: effect on uninsured motorist coverage activation
- § 23:19 “Less-than-minimum liability limits” requirement
- § 23:20 —Non-complying liability limits
- § 23:21 —Non-compliance with foreign state liability limits
- § 23:22 —Depletion of complying limits by multiple claimants
- § 23:23 —Inadequacy of complying limits
- § 23:24 Uninsured owner and Insured driver: effect on uninsured motorist coverage activation
- § 23:25 Liability carrier “denial of coverage” requirement
- § 23:26 —Uninsured motorist insured’s obligation to establish validity of denial
 - Denial by self-insured tortfeasor
 - Subsequent discovery of liability coverage: effect on activated uninsured motorist coverage
- § 23:29 —Settlement with liability carrier disputing coverage: right to uninsured motorist coverage
- § 23:30 Liability carrier insolvency requirement

TABLE OF CONTENTS

- § 23:31 Uninsured “motor vehicle” or “automobile” defined
- § 23:32 —Application of statutory definitions
- § 23:33 —Vehicles designed for use “off public roads”
- § 23:34 —Farm wagons and horses
- § 23:35 —Airplanes
- § 23:36 —Snowmobiles
- § 23:37 —“All Terrain” vehicles (ATVs) and “Utility-Terrain” vehicles (UTVs)
- § 23:38 —Bicycles, e-bikes, mopeds, and scooters
- § 23:39 —Disabled vehicles
- § 23:40 —Government vehicles
- § 23:41 “Insured vehicle” and “owned vehicle” exclusions
- § 23:42 “Non-permissive use” of tortfeasor vehicle: effect on uninsured motorist coverage activation
- § 23:43 Proof of “uninsured automobile” status
- § 23:44 —The “fruitless search” principle
- § 23:45 —Statutory methods of proof

CHAPTER 24. “HIT AND RUN” AND PHANTOM VEHICLES

- § 24:1 “Hit and run” automobile: defined
- § 24:2 Physical contact requirement
- § 24:3 —Validity as to uninsured motor vehicles
- § 24:4 —Validity as to uninsured motorists
- § 24:5 —Validity as to “owners and operators” of uninsured vehicles
- § 24:6 —Actual contact required
- § 24:7 —Physical impact not required
- § 24:8 —Conflict of laws
- § 24:9 The “corroboration” rule: effect of evidence substantiating “hit and run” vehicle involvement
- § 24:10 Indirect contact with “hit and run” vehicle
- § 24:11 Physical contact and corroboration rules: constitutionality
- § 24:12 “Hit and run” driver identification
- § 24:13 Police report requirement
- § 24:14 Sworn statement requirement
- § 24:15 —Validity
- § 24:16 —Applicability
- § 24:17 —Applicability as to Class II insureds
- § 24:18 —Applicability as to minors
- § 24:19 —Insolvency of tortfeasor’s insurer
- § 24:20 —Waiver

CHAPTER 25. UNINSURED MOTORIST COVERAGE: EXCLUSIONS

- § 25:1 Settlement without consent exclusion

AUTOMOBILE LIABILITY INSURANCE

- § 25:2 —Application when tortfeasor is insured
- § 25:3 —Effect of insurer's refusal to consent
- § 25:4 —Effect of lack of prejudice
- § 25:5 —Waiver of enforcement
- § 25:6 —Application to judgments and settlements
- § 25:7 —Application to driver's license and contingent releases
- § 25:8 Owned-uninsured motor vehicle exclusion
- § 25:9 —Application to different vehicle types
- § 25:10 Nonowned-insured vehicle exclusion
- § 25:11 Public or livery conveyance exclusion
- § 25:12 —The "pizza delivery" cases
- § 25:13 Non-permissive use exclusion
- § 25:14 Workers' compensation exclusion
- § 25:15 "Consent to sue" exclusion
- § 25:16 —Non-binding tort result clause
- § 25:17 Self-insured vehicle exclusion
- § 25:18 Named driver exclusion
- § 25:19 —Liability coverage application
- § 25:20 —Effect of permissive use
- § 25:21 Liability exclusions: activating uninsured motorist coverage
- § 25:22 Miscellaneous exclusions

CHAPTER 26. UNINSURED MOTORIST COVERAGE: CONDITIONS

- § 26:1 Insurer's subrogation and reimbursement rights
- § 26:2 —Subrogation and reimbursement distinguished
- § 26:3 —"Settlement without consent" exclusion
- § 26:4 —Application to tortfeasors: insured and uninsured
- § 26:5 —Effect of limited releases in avoiding "settlement without consent" exclusion
- § 26:6 —"Settlement without consent" exclusion inapplicable as to insurer's reimbursement rights
- § 26:7 —Insured's prior right to full compensation
- § 26:8 —Insurer subrogation against own insured: the "anti-subrogation rule"
- § 26:9 The trust agreement provision: insurer's interest in tort recovery proceeds
- § 26:10 —Insured recovery required for activation
- § 26:11 —Compatibility with "settlement without consent" exclusion
- § 26:12 —Insurer liability for proportionate attorney fees
- § 26:13 Timely notice of accident or claim condition
- § 26:14 —Prejudice requirements
- § 26:15 Notice of tort suit requirement

TABLE OF CONTENTS

- § 26:16 —Non-binding tort result clause
- § 26:17 Insured's duty to comply with compulsory medical examination (CME) and examination under oath (EAO) requirements
- § 26:18 Territorial coverage restrictions
- § 26:19 Passenger and pedestrian insureds' obligations to comply with policy conditions and exclusions

CHAPTER 27. UNINSURED MOTORIST COVERAGE: DAMAGES RECOVERABLE

- § 27:1 “Per person” and “per accident” limits provisions
- § 27:2 Wrongful death damages
- § 27:3 —Wrongful death and survival claims distinguished
- § 27:4 —Unworthy next-of-kin: recovery rights
- § 27:5 —Parent's right to recover for wrongful death of minor child
- § 27:6 Direct and consequential damages for bodily injury
- § 27:7 —Medical expense as property damage
- § 27:8 —Recoverable medical expense: “billed” vs. “discounted” expenses
- § 27:9 —Loss of services as bodily injury
- § 27:10 —Loss of income as bodily injury
- § 27:11 —Emotional distress of bystander as separate bodily injury
- § 27:12 —Emotional distress for failure to provide insurance coverage as bodily injury
- § 27:13 —Employer's right to damages for injury to employee
- § 27:14 Consequential damages and derivative claims: availability of multiple injury limits
- § 27:15 —Statutory challenges to unavailability of multiple injury limits
- § 27:16 —Necessity for award apportionment
- § 27:17 —Minority position: Multiple injury limits available
- § 27:18 —The “reasonable expectations” argument
- § 27:19 Punitive damages
- § 27:20 —Recovery of compensatory damages as prerequisite
- § 27:21 —Availability of “per accident” limits
- § 27:22 —Proportionality between punitive and compensatory damages
- § 27:23 —Constitutionality
- § 27:24 —Allocation between liability and uninsured motorist carriers of award containing both punitive and compensatory damages
- § 27:25 —Deductibility of prior joint tortfeasor settlement
- § 27:26 Insured's right to recovery for death or injury of uninsured parent, child, or spouse
- § 27:27 Insurer's obligation to prioritize settlements between uninsured motorist coverage claimants

CHAPTER 28. CREDITS AND OFFSETS AGAINST UNINSURED MOTORIST BENEFITS

- § 28:1 The reduction provision: in general
- § 28:2 Tortfeasor recovery reduction
- § 28:3 Workers' compensation reduction
- § 28:4 —Statutory authorization
- § 28:5 —Enforceability
- § 28:6 —Reduction from actual damages vs. Reduction from policy limits
- § 28:7 —Reduction of future workers' compensation benefits
- § 28:8 —Effect of employer immunity on right to uninsured motorist coverage
- § 28:9 Medical payments reduction
- § 28:10 —“Reduction” vs. “Elimination” clauses
- § 28:11 —Validity of “reduction” clause
- § 28:12 —Validity of “elimination” clause
- § 28:13 —PIP benefits offset
- § 28:14 Social Security and “Disability benefits” reduction
- § 28:15 Credit for advance payments
- § 28:16 Bad faith recovery reduction

CHAPTER 29. STACKING OF UNINSURED MOTORIST COVERAGES

- § 29:1 “Stacking”: Defined
- § 29:2 Stacking allowed, restricted, or prohibited: Statutory and public policy considerations
- § 29:3 “Anti-stacking” provisions: the “other insurance” clause
- § 29:4 —“Similar coverage” and “available” defined
- § 29:5 “Anti-stacking” provisions: the “excess-escape” clause
- § 29:6 —Passenger-host coverage stacking
- § 29:7 —Validity as to passenger-host stacking
- § 29:8 —Validity as to driver-host stacking
- § 29:9 —Primary limits exhaustion requirement
- § 29:10 “Anti-stacking” provisions: the “proration” clause
- § 29:11 —Validity
- § 29:12 —Effect of sufficiency of primary limits
- § 29:13 —Effect on umbrella policy coverage
- § 29:14 —Effect on retained limits
- § 29:15 “Anti-stacking” provisions: the “limits of liability” restriction
- § 29:16 —Validity
- § 29:17 —Statutory authority
- § 29:18 —Effect of ambiguity

TABLE OF CONTENTS

- § 29:19 —The “sum of the limits of liability” clause
- § 29:20 “Anti-stacking” provisions: mutually repugnant excess coverage clauses
- § 29:21 “Anti-stacking” provisions: the “owned-uninsured vehicle” exclusion
- § 29:22 The separation clause: effect on “anti-stacking” provisions
- § 29:23 Occupant stacking of vehicle owner’s multiple uninsured motorist coverages
- § 29:24 —Fleet coverage for employer’s vehicles
- § 29:25 —Employer’s fleet coverage for employee’s vehicles
- § 29:26 —Named-insured vs. occupant: priority of coverage
- § 29:27 —Selective exhaustion of limits prohibited
- § 29:28 Statutory amendments affecting stacking: retroactivity

CHAPTER 30. UNINSURED MOTORIST COVERAGE BENEFIT ACTIONS

- § 30:1 Direct actions for benefits
- § 30:2 —Necessity for prior judgment against the tortfeasor
- § 30:3 —No requirement for prior judgment in the absence of statutory or policy proscription
- § 30:4 —Tortfeasor suit requirement
- § 30:5 —Joint insured and uninsured tortfeasors: exhaustion of remedies not required
- § 30:6 Conclusive effect of tort judgment
- § 30:7 Insurer’s right to implead tortfeasor
- § 30:8 Insurer’s right to join additional insurer
- § 30:9 Insurer’s right to appear in the insured’s tort action
- § 30:10 Combined tort and uninsured motorist benefits actions: court-ordered joinder
- § 30:11 Combined actions for benefits and bad faith: trial severance requirement
- § 30:12 Consolidation of arbitration and tort actions: joinder requirement
- § 30:13 Admissibility of policy limits

CHAPTER 31. ACTIONS AGAINST TORTFEASORS

- § 31:1 Suit against tortfeasor: insurer consent requirement
- § 31:2 Suit against tortfeasor: notice to insurer
- § 31:3 Suit against tortfeasor: insurer’s right to intervene
- § 31:4 —Effect of confession of judgment by tortfeasor on intervening uninsured motorist insurer
- § 31:5 —Insurer’s right to defend tortfeasor
- § 31:6 Insurer’s failure to intervene in suit against tortfeasor:

- conclusiveness of adverse judgment; Dismissal of insurer from lawsuit due to lack of personal jurisdiction: conclusiveness of adverse judgment
- § 31:7 Insurer's failure to intervene in suit against tortfeasor: conclusiveness of adverse judgment—Default judgment against tortfeasor: conclusiveness of liability finding
- § 31:8 Suit against tortfeasor: joining the uninsured motorist insurer

CHAPTER 32. ACTIONS AGAINST UNINSURED MOTORIST POLICY: LIMITATION PERIODS

- § 32:1 Limitation periods for actions against uninsured motorist policies
- § 32:2 —Applicability of tort or contract limitation periods
- § 32:3 —Policy prescribed limitation periods: validity
- § 32:4 Limitation periods for subrogation actions against tortfeasors
- § 32:5 —Subrogee's right to minor's extension of limitation period
- § 32:6 Arbitration demands: applicable limitation periods
- § 32:7 —Date of loss as "accrual date"
- § 32:8 —Waiver and estoppel
- § 32:9 —Time limitation in which to conclude arbitration
- § 32:10 Activation of uninsured motorist limitation periods
- § 32:11 Activation of underinsured motorist limitation periods
- § 32:12 —Subrogation limitation periods
- § 32:13 Tolling the limitation period
- § 32:14 Time limitation for action against insurance agent

Volume 3

CHAPTER 33. ACTIONS AGAINST UNINSURED MOTORIST INSURERS: JURISDICTIONAL FACTORS

- § 33:1 Federal court jurisdiction: removal to federal court
- § 33:2 State court jurisdiction over non-resident insurers; Forum Selection Clauses

CHAPTER 34. ARBITRATION AND LITIGATION

- § 34:1 Uninsured motorist arbitration: background

TABLE OF CONTENTS

§ 34:2	The arbitration requirement
§ 34:3	—Statutory authority
§ 34:4	—Duty to inform insured of right to arbitrate
§ 34:5	—Obligation of non-party to policy to arbitrate
§ 34:6	—Multiple insureds: obligation to arbitrate inter se
§ 34:7	—Accident state arbitration jurisdiction over foreign insurer
§ 34:8	—Federal arbitration act preemption
§ 34:9	—Attorney's authority to bind claimant to stipulation to arbitrate
§ 34:10	Arbitration Agreements: terms of the agreement
§ 34:11	—Provisions for “bearing” or “sharing” costs: validity
§ 34:12	—Attorney fee provisions and assessment
§ 34:13	—Requirement for written demand
§ 34:14	—Time limitations
§ 34:15	—Effect of insured's failure to comply with policy conditions
§ 34:16	Loss of right to arbitration: effect of insured's suit against tortfeasor
§ 34:17	Loss of right to arbitration: effect of insured's suit against insurer
§ 34:18	Loss of right to arbitration: waiver or estoppel by insurer
§ 34:19	—Effect of coverage denial
§ 34:20	—Effect of insurer refusal to arbitrate
§ 34:21	—Effect of insurer indifference to insured's claim
§ 34:22	—Effect of insurer delay in asserting right to arbitrate
§ 34:23	—Effect of insurer's failure to advise insured of right to arbitration
§ 34:24	Stay of arbitration pending tort action
§ 34:25	Stay of tort action pending arbitration: discovery procedures during stay
§ 34:26	Order compelling arbitration: appealability
§ 34:27	Disqualification of arbitrator
§ 34:28	—Procedure
§ 34:28.10	Arbitrator immunity
§ 34:29	Arbitrators' powers
§ 34:30	—Authority to order medical examinations
§ 34:31	—Authority to order depositions
§ 34:32	—Authority to award prejudgment interest
§ 34:33	—Authority to offset preliminary insurance payments
§ 34:34	—Authority to award punitive damages
§ 34:35	Arbitration award requirements

AUTOMOBILE LIABILITY INSURANCE

- § 34:36 —Necessity for written award; record
- § 34:37 —Necessity for arbitrators to participate
- § 34:38 —Necessity for arbitration award to be signed
- § 34:39 Right to withdraw from arbitration proceedings
- § 34:40 Appealability of award: validity of nonbinding award provisions
- § 34:41 Appealability of award: right to trial de novo
- § 34:42 Scope of arbitration
- § 34:43 —Limited to liability and damages
- § 34:44 —Extension to coverage issues
- § 34:45 —Stacking, reduction clause, and bad faith issues
- § 34:46 —Waiver issues
- § 34:47 —Factual predicates as preconditions for coverage
- § 34:48 —Procedure where judicial action involves issues within scope of arbitration requirement
- § 34:49 Excess arbitration awards: policy limits disputes
- § 34:50 Judicial review of arbitration rulings: vacation and confirmation of arbitration awards
- § 34:51 —Time limitations
- § 34:52 —Time limitation tolled during reconsideration
- § 34:53 —Trial court jurisdiction to reduce award
- § 34:54 —Trial court authority to award prejudgment interest
- § 34:55 Res judicata application: effect of arbitration on subsequent arbitration
- § 34:56 Res judicata application: effect of arbitration award on subsequent tort action
- § 34:57 Res judicata application: effect of adverse tort result on insured's right to arbitration
- § 34:58 Res judicata application: effect of tort result on insurer's right to arbitration
- § 34:59 Res judicata application: effect of tort result on PIP insurer's right to indemnity
- § 34:60 Res judicata application: effect of voluntary submission of matters not within scope of arbitration
- § 34:61 Insurer liability for arbitration award less than insured's tort recovery; estoppel application
- § 34:62 Litigation: splitting causes of action between uninsured and underinsured motorist coverage in benefits actions
- § 34:63 Litigation: tortfeasor's right to contest court approval of uninsured motorist coverage settlement agreement

TABLE OF CONTENTS

**CHAPTER 35. RIGHT TO RECOVERY AND
SUBROGATION AGAINST UNINSURED
MOTORIST COVERAGE**

- § 35:1 Uninsured motorist carrier subrogation or indemnification obligation
- § 35:2 Uninsured motorist carrier liability for contribution to tortfeasor payment
- § 35:3 Right of collision carrier to subrogate against uninsured motorist carrier
- § 35:4 Right of health carrier to subrogate against uninsured motorist carrier; right of insured to assign UM/UIM benefits to medical provider
- § 35:5 Right of Medicaid to assert lien against uninsured motorist benefits
- § 35:6 Right of employer or workers' compensation carrier to subrogate against uninsured motorist benefits

**CHAPTER 36. UNINSURED MOTORIST
COVERAGE: CLAIM DENIALS AND BAD
FAITH REMEDIES**

- § 36:1 Bad faith claim denial: tort and contract remedies
- § 36:2 Bad faith standards in first party claims
- § 36:3 —Post-denial investigation justifying conduct: effect on bad faith claim
- § 36:4 —Belated payment as cure for bad faith
- § 36:5 Third party rights to bad faith remedies
- § 36:6 “Comparative bad faith” as affirmative defense
- § 36:7 “Reverse bad faith” as independent tort
- § 36:8 Contribution between multiple bad faith insurers
- § 36:9 Limitation periods for bad faith actions

**CHAPTER 37. BAD FAITH CLAIM DENIAL:
UNFAIR CLAIMS PRACTICES ACT;
STATUTORY REMEDIES**

- § 37:1 The Unfair Claims Practices Act
- § 37:2 —Availability of private right of action
- § 37:3 —Availability to third party claimants
- § 37:4 —Application to adjusters and claims representatives
- § 37:5 —Application to bond sureties
- § 37:6 —Application to guaranty funds
- § 37:7 Unfair Claims Practices: “business practice” defined
- § 37:8 Unfair Claims Practice: bad faith “leveraging” prohibited
- § 37:9 Unfair Claims Practice: failure to disclose coverage information

- § 37:10 Unfair Claims Practice: unreasonable release demand
- § 37:11 Joinder of tort and Unfair Claims Practices claims
- § 37:12 —Tort liability determination requirement
- § 37:13 Joinder of third party tort and bad faith claims: bifurcation requirement

PART 4. UNDERINSURED MOTORIST COVERAGE

CHAPTER 38. UNDERINSURED MOTORIST COVERAGE LEGISLATION

- § 38:1 Underinsured motorist coverage: background
- § 38:2 Underinsured motorist coverage: statutory provisions
- § 38:3 The underinsured motorist coverage models
- § 38:4 Comparison of limits approach
- § 38:5 —Uninsured motorist limits must exceed tortfeasor limits for coverage activation
- § 38:6 —Uninsured motorist limits and damages must exceed tortfeasor limits for coverage activation
- § 38:7 —Underinsured motorist limits must exceed tortfeasor limits for coverage activation
- § 38:8 —Underinsured motorist limits and damages must exceed tortfeasor limits for coverage activation
- § 38:9 —“Gap” coverage models: “gap” coverage, “excess” coverage, and “floating layer of coverage”
- § 38:10 —Effect of limits comparison language ambiguity
- § 38:11 —Effect of mismatched limits
- § 38:12 —Effect of multiple claims reduction of tortfeasor limits
- § 38:13 —Effect of illusory coverage: comparison of minimum limits coverages
- § 38:14 —Effect of tortfeasor excess coverage
- § 38:15 —Effect of statutory amendment
- § 38:16 Uncompensated damages approach
- § 38:17 —Damages exceeding tortfeasor limits required for coverage activation
- § 38:18 —“actual” damages: defined
- § 38:19 Insurer obligation to provide underinsured motorist coverage
- § 38:20 Optional underinsured motorist coverage: method, form, and content of offer
- § 38:21 —Agent’s duty to offer optional underinsured motorist coverage
- § 38:22 —Duty of assigned risk carrier to offer optional underinsured motorist coverage
- § 38:23 —Application to binders

TABLE OF CONTENTS

- § 38:24 —Offer of increased limits
- § 38:25 —Waiver of written offer and rejection requirements: enforceability
- § 38:26 —Timeliness of offer
- § 38:27 —Effect of statutory abrogation of offer requirement
- § 38:28 Failure to offer optional uninsured motorist coverage: “implied-in-law” coverage
- § 38:29 —Reformation of policy
- § 38:30 —Limitations period for action to enforce “implied-in-law” coverage
- § 38:31 Insured obligation to request coverage: effect of request for “full coverage”
- § 38:32 Retroactivity of amendments to underinsured motorist legislation
- § 38:33 —Effect of amendments to limits requirements
- § 38:34 —Effect of repeal of statute
- § 38:35 —Effect of post-amendment modifications to policy

CHAPTER 39. UNDERINSURED MOTORIST COVERAGE: EXCLUSIONS

- § 39:1 The owned-uninsured motor vehicle exclusion
- § 39:2 The nonowned-uninsured vehicle exclusion
- § 39:3 The insured vehicle as “uninsured vehicle” exclusion
- § 39:4 The self-insured vehicle as “uninsured vehicle” exclusion
- § 39:5 The government vehicle as “uninsured vehicle” exclusion
- § 39:6 The “owned or furnished or available for regular use” exclusion
- § 39:7 The Public or livery conveyance exclusion
- § 39:8 The snowmobile exclusion
- § 39:9 The “consent to sue” exclusion
- § 39:10 —Expiration of limitation period to sue underinsured motorist: effect
- § 39:11 The “double dip”: recovery under liability and underinsured motorist coverages
- § 39:12 —Passenger recovery under host policy
- § 39:13 —Class I insured’s right to same policy liability and underinsured motorist recovery
- § 39:14 Umbrella policies—“Follow the form” provision impact
- § 39:15 The “operating motor vehicle” exclusion

CHAPTER 40. UNDERINSURED MOTORIST COVERAGE: REDUCTION CLAUSES

- § 40:1 The uncompensated insured: enforceability of reduction clauses

AUTOMOBILE LIABILITY INSURANCE

- § 40:2 Types of reduction clauses
- § 40:3 Full compensation approach: reduction from damages
- § 40:4 —Applicability to dram shop and non-motorist setoffs
- § 40:5 Tortfeasor recovery offset approach: reduction from underinsured motorist limits
- § 40:6 —Effect of allocation of tort settlement damages
- § 40:7 —Effect of distribution of tortfeasor recovery
- § 40:8 —Effect of tortfeasor personal contribution
- § 40:9 —Pierringer recovery: effect on underinsured motorist coverage activation
- § 40:10 Multiple claims reduction of tortfeasor limits: effect on underinsured motorist coverage activation
- § 40:11 —Right to offset aggregated payments to multiple claimants against single underinsured motorist claim
- § 40:12 —Right to offset aggregated multiple liability coverages against underinsured motorist limits
- § 40:13 —Right of insured to designate offset from joint tortfeasor with lowest limits; offset from “empty chair”
- § 40:14 Multiple underinsured motorist coverages: application of reduction clause
- § 40:15 Single limit tortfeasor policies: offset against underinsured motorist limits
- § 40:16 Application of reduction clause between primary and excess carriers
- § 40:17 Offset enforcement in arbitration
- § 40:18 Underinsured motorist recovery setoff from tort award
- § 40:19 —Tortfeasor’s right to setoff
- § 40:20 —Reduction of setoff credit for attorneys’ fees
- § 40:21 Collateral benefit setoffs
- § 40:22 Social security disability benefit setoffs
- § 40:23 Policy amendment creating ambiguity: “Dear Policyholder” letters

CHAPTER 41. UNDERINSURED MOTORIST INSURANCE: COVERAGE ACTIVATION

- § 41:1 Stacking of underinsured motorist coverages for coverage activation
- § 41:2 Stacking of underinsured motorist coverages for uncompensated damages
- § 41:3 Aggregation of liability coverages to defeat underinsured motorist coverage
- § 41:4 Inclusion of prejudgment interest as damages for underinsured motorist coverage activation
- § 41:5 Statutory caps on tort recoveries: effect on underinsured motorist coverage activation

TABLE OF CONTENTS

- § 41:6 Insured automobile exclusion: effect on underinsured motorist coverage activation
- § 41:7 Denial of liability coverage: effect on underinsured motorist coverage activation
- § 41:8 Release of tortfeasor: effect on underinsured motorist coverage activation
- § 41:9 Jointly liable insured and underinsured tortfeasors: effect on underinsured motorist coverage activation
- § 41:10 —Applicability of reduction clause
- § 41:11 —Applicability of consent-to-settle exclusion
- § 41:12 Multiple underinsured motorist coverages: right to select coverage with highest limits
- § 41:13 Timely notice of underinsured accident or claim condition

CHAPTER 42. UNDERINSURED MOTORIST COVERAGE: LIMITS EXHAUSTION AND CONSENT-TO-SETTLE REQUIREMENTS

- § 42:1 The “settlement without insurer consent” exclusion
- § 42:2 —Enforceability
- § 42:3 —Denial of coverage as waiver
- § 42:4 —Nondisclosure of coverage information as waiver
- § 42:5 —Insurer’s settlement with the tortfeasor: estoppel effect
- § 42:6 —Impact on additional insured
- § 42:7 —Judicial nullification
- § 42:8 Limits exhaustion requirements
- § 42:9 —Access to underinsured motorist coverage prior to limits exhaustion
- § 42:10 —Strict application: total limits exhaustion mandated
- § 42:11 —Application to multiple tortfeasors
- § 42:12 —Effect of less-than-limits settlements
- § 42:13 —Effect of third party contribution to settlement
- § 42:14 —Non-limits settlement as conclusive determination of damages
- § 42:15 —Effect of conflict with limitations periods
- § 42:16 The “gap” coverage concept
- § 42:17 The “substitute payment” procedure
- § 42:18 Identification of the insurance carrier as party in subrogation action

CHAPTER 43. INSOLVENT LIABILITY CARRIER: GUARANTY FUND AS REPLACEMENT

- § 43:1 Guaranty funds: background
- § 43:2 Guaranty fund offset requirements: “covered claim” and “exhaustion” provisions

AUTOMOBILE LIABILITY INSURANCE

- § 43:3 —Application to uninsured motorist covered claim
- § 43:4 —Application to health insurance covered claim
- § 43:5 —Application to PIP or no-fault covered claim
- § 43:6 —Application to workers' compensation covered claims
- § 43:7 —Application to third party claims
- § 43:8 —Application to underinsured motorist covered claims
- § 43:9 —Application to secondarily liable or excess carrier covered claims
- § 43:10 Guaranty fund "non-duplication" provision: primary status of other applicable policies
- § 43:11 Guaranty fund coverage: uninsured or underinsured motorist covered claims
- § 43:12 —Effect of failure to claim uninsured/underinsured motorist coverage
- § 43:13 —Effect of failure to exhaust uninsured/underinsured motorist coverage; less-than-limits settlements
- § 43:14 —Effect of less-than-limits uninsured/underinsured motorist arbitration awards
- § 43:15 —Effect of untimely claim against uninsured/underinsured motorist coverage
- § 43:16 Guaranty fund coverage: bad faith claims against insolvent insurer
- § 43:17 —Liability for penalties and attorneys' fees
- § 43:18 Guaranty fund coverage: claims against insolvent insurer of government entity
- § 43:19 Guaranty fund coverage: enforcement of workers' compensation liens
- § 43:20 Guaranty fund coverage: enforcement of subrogation claims
- § 43:21 Guaranty fund coverage: obligation to honor pre-insolvency obligations
- § 43:22 —Rights vest as of date of insurer liquidation
- § 43:23 —Right to vacate judgment against insolvent insurer
- § 43:24 —Obligation to pay interest, penalties, and attorneys' fees
- § 43:25 Guaranty fund immunity for bad faith
- § 43:26 Guaranty fund subrogation recovery: retention of proceeds
- § 43:27 Forum state jurisdiction over foreign state guaranty funds
- § 43:28 Retroactivity of amendments to Guaranty Fund acts
- § 43:29 Insolvent non-admitted carrier: agent liability for non-coverage by guaranty fund

TABLE OF CONTENTS

CHAPTER 44. CONCURRENT UNINSURED AND UNDERINSURED MOTORIST COVERAGES

- § 44:1 Right to recover under concurrent uninsured and underinsured motorist coverages
- § 44:2 —Effect of definition ambiguity
- § 44:3 —Application to hit-and-run accidents
- § 44:4 Insurer's right to aggregate underinsured limits to tortfeasor limits for underinsured motorist coverage disqualification

CHAPTER 45. UNDERINSURED MOTORIST INSURER: BAD FAITH

- § 45:1 Underinsured motorist insurer liability for excess judgment

PART 5. NO-FAULT INSURANCE AND PERSONAL INJURY PROTECTION (PIP) COVERAGE

CHAPTER 46. NO-FAULT INSURANCE: BACKGROUND

- § 46:1 History
- § 46:2 Joint no-fault and liability coverages

CHAPTER 47. NO-FAULT INSURANCE: OPTIONAL DEDUCTIBLE AND COVERAGE INCREASES

- § 47:1 Optional deductibles
- § 47:2 —Method of computing benefits—Deductible applicable
- § 47:3 Optional increased benefits
- § 47:4 No-fault benefits deduction—Uninsured motorist coverage
- § 47:5 —Liability coverage in same policy

CHAPTER 48. NO-FAULT INSURANCE: ASSIGNED CLAIMS PLANS

- § 48:1 Assigned claims plans
- § 48:2 —Eligibility requirement: complying coverage
- § 48:3 —Claimant disqualification—Survivor coverage
- § 48:4 —Priority, subrogation, and indemnity
- § 48:5 —Overdue payment penalties—Assigned claims plan liability

Volume 4

CHAPTER 49. NO-FAULT INSURANCE: INSURED DEFINED

- § 49:1 Generally
- § 49:2 Named insured group
- § 49:3 —Separated couples and their children
- § 49:4 —Unborn child
- § 49:5 —Children of divorced parents
- § 49:6 —Unmarried couples
- § 49:7 —Sham marriages
- § 49:8 Members of religious orders
- § 49:9 —Unions and trusts
- § 49:10 Corporation coverage—Officer as “named insured”
- § 49:11 ——Lessee as class II insured
- § 49:12 ——Partnership and trade names
- § 49:13 “Any” motor vehicle accident coverage
- § 49:14 Insured occupant
- § 49:15 —Unauthorized operator coverage
- § 49:16 —Non-owned vehicle—Occupant coverage under driver’s policy
- § 49:17 Insured pedestrian or nonoccupant—In general
- § 49:18 —Physical contact requirement
- § 49:19 —Subrogation to pedestrian’s tort recovery
- § 49:20 —Stolen vehicle—Pedestrian coverage requirement
- § 49:21 —Occupants of dwellings
- § 49:22 —Passenger thrown from car
- § 49:23 —Moped accidents
- § 49:24 Uninsured pedestrian or non-occupant; uninsured vehicle; insured driver

CHAPTER 50. NO-FAULT INSURANCE: APPLICATION TO MOTOR VEHICLES

- § 50:1 Application to types of vehicles—Exempted classifications
- § 50:2 ——Exempted vehicles
- § 50:3 ——Disabled vehicles
- § 50:4 ——Highway operation test—Loss of exemption
- § 50:5 ——Semi-trailers—Free standing
- § 50:6 ——Dirt bikes, trail bikes, snowmobiles
- § 50:7 ——Dune buggy—Qualification as private passenger automobile
- § 50:8 “Owner” defined—Effect of sale of vehicle
- § 50:9 Involvement of unregistered or exempted motor vehicle

TABLE OF CONTENTS

**CHAPTER 51. NO-FAULT INSURANCE:
PENALTIES FOR NON-COMPLIANCE**

- § 51:1 Penalties
- § 51:2 —Secondarily liable insurer—Replacement for noncomplying owner

**CHAPTER 52. NO-FAULT INSURANCE:
EXCLUSIONS**

- § 52:1 Generally
- § 52:2 Intentional injury exclusion
- § 52:3 Commission of felony
- § 52:4 Conversion and unauthorized use exclusions—Good faith belief
 - Stolen vehicle—Voluntary occupation
 - § 52:6 —Permission requirements
 - § 52:7 —“Unlawful taking” application
 - § 52:8 Drug and alcohol exclusion
 - § 52:9 Owned uninsured vehicle exclusion
 - § 52:10 Named driver exclusion
 - § 52:11 The motorcycle exclusion
 - § 52:12 Government vehicle exclusion
 - § 52:13 Miscellaneous exclusions—Relatives’ vehicles
 - § 52:14 —Hired car exclusion
 - § 52:15 —Business Use exclusion; Ridesharing use exclusion
 - § 52:16 —“Regular use” exclusion
 - § 52:17 Anti stacking provisions

**CHAPTER 53. NO-FAULT INSURANCE:
NONRESIDENT COVERAGE
REQUIREMENTS**

- § 53:1 Nonresident coverage obligation
- § 53:2 —Nonresident complying coverage requirements—Application—Constitutional problems
- § 53:3 —Nonresident vehicles: physical presence requirement

CHAPTER 54. NO-FAULT COVERAGE: OUT-OF-STATE ACCIDENTS

- § 54:1 Out-of-state accidents
- § 54:2 —Voluntary foreign coverage extension
- § 54:3 —Territorial restrictions

CHAPTER 55. NO-FAULT COVERAGE: LOSS OF INCOME BENEFITS

- § 55:1 Basic indemnification obligations

AUTOMOBILE LIABILITY INSURANCE

- § 55:2 Income, wage, and earnings losses
- § 55:3 —Occupational status requirements
- § 55:4 —Temporary employment coverage
- § 55:5 —Loss of unemployment compensation benefits
- § 55:6 —Absence of prior work history; Unemployed status at time of accident
- § 55:7 —Impairment of earning capacity vs. actual loss
- § 55:8 —Temporary unemployment—Calculation of benefits
- § 55:8.10 —Owner of “S” corporation
- § 55:9 —Earnings records requirements
- § 55:10 —Federal income tax return—Binding effect
- § 55:11 —Actual loss—Employment condition variables—
 - Effect of strike during disability
 - Partial disability
 - Wage scale changes
 - Sick leave and vacation loss
 - Loss of equipment rental earnings
 - Loss of job
 - Plant closure during disability
 - Receipt of retirement benefits
 - Concurrent independent disability
 - Incarceration
 - Loss of unemployment compensation credits
 - Voluntary payment of salary—Deductibility
 - Sick pay and social security benefits—
 - Deductibility
 - Determination of earnings loss-self employment
 - Duty to seek substitute employment and suitable medical treatment
- § 55:26 —Time periods for income loss benefits

**CHAPTER 56. NO-FAULT COVERAGE:
MEDICAL EXPENSE BENEFITS**

- § 56:1 Medical expense—Time period coverages
- § 56:2 —“Incurred” medical expense—Defined
- § 56:3 —Medicare benefits—Treatment
- § 56:4 —The medicare secondary payer act
- § 56:5 Federal Medical Care Recovery Act
- § 56:6 —U.S. reimbursement rights against PIP carrier
- § 56:7 —U.S. rights against tortfeasor
- § 56:8 —Husband’s recovery right
- § 56:9 —Parent recovery rights
- § 56:10 —Insurer obligation to honor assignments to medical providers
- § 56:11 —Allowable medical expense parameters—Reference to

TABLE OF CONTENTS

- worker's compensation schedules; Medicare rates; Regional medical rates; Medicaid benefits
- § 56:12 —Duplicate coverage—Health care providers—Double recovery
- § 56:13 Medical expense—Allowable treatment—Doctor ordered expense—Insurer's right to question
- § 56:14 ——Negligent medical treatment—Coverage requirement
- § 56:15 ——Coverage for palliative treatments and custodial care
- § 56:16 ——Hospital bills—Diagnostic related group cost or actual cost
- § 56:17 ——Housing accommodations, food, and travel as medical expense
- § 56:18 ——Guardianship expense as medical expense
- § 56:19 Lapse of statute of limitations—Effect as to ongoing medical expense
- § 56:20 ——Jury verdict-effect as to future medical expense
- § 56:21 Statutory hospital liens—Application to uninsured motorist coverage

**CHAPTER 57. NO-FAULT COVERAGE:
ESSENTIAL SERVICE BENEFITS**

- § 57:1 Essential service benefits
- § 57:2 —“Ordinary and necessary” service defined
- § 57:3 —Necessity that expense actually be “incurred”
- § 57:4 —Rendition of services by family
- § 57:5 —Coverage periods
- § 57:6 —Survivor's replacement services loss benefits
- § 57:7 —Other “allowable expenses”; food

**CHAPTER 58. NO-FAULT COVERAGE:
SURVIVOR'S BENEFITS**

- § 58:1 Survivor's benefits
- § 58:2 —Survivor's right to decedent's work loss benefits
- § 58:3 —Pension and social security benefits—Inclusion as income loss
- § 58:4 —Dependency test
- § 58:5 —Disqualification of deceased—Effect as to dependents
- § 58:6 —Occurrence of death—Time limits
- § 58:7 Economic loss—Sale of a business
- § 58:8 Death benefit deduction—Avoided expense
- § 58:9 Death benefits—Subrogation and indemnity
- § 58:10 “Dead man's” statute—Effect on dependency testimony

CHAPTER 59. NO-FAULT INSURANCE: COORDINATION OF BENEFITS PROVISIONS

- § 59:1 Coordination of benefits provisions
- § 59:2 —No-fault requirement—Application to health plans
- § 59:3 —Conflicting coordination provisions
- § 59:4 —Medicare coverage: coordinated coverage application
- § 59:5 ERISA—Its application in conflicting coordination of benefits cases
- § 59:6 ——ERISA subrogation restriction
- § 59:7 Scope of application—Persons bound
- § 59:8 Insured's right to elect between primary and secondary coverage
- § 59:9 —Insured's right to favorable allocation of losses
- § 59:10 Priority problems—Coordinated and uncoordinated no-fault policies
- § 59:11 Actions to recover benefits—Statute of limitations application

CHAPTER 60. MAKING AND ENFORCING NO-FAULT AND PIP CLAIMS

- § 60:1 Time limits requirements
- § 60:2 Notice directed to other coverages—Applicability as no-fault notice
- § 60:3 Sufficiency of notice; unreasonable delay
- § 60:4 Filing the claim—Time limits for filing proof of loss
- § 60:5 —Sufficiency of proof
- § 60:6 —Medical information requirement
- § 60:7 —Earnings information
- § 60:8 —Public record information requirement—Furnishing intoxication test results to the insurer
- § 60:9 Denial notice requirements
- § 60:10 Termination of benefits—“Informed decision” required
- § 60:11 —Initial payment without protest—Estoppel effect
- § 60:12 Form of action against insurer
- § 60:13 —Contempt proceeding to enforce judgments for payment of future benefits
- § 60:14 Timely benefits payment requirement—Penalties for overdue payment
 - § 60:15 ——Imposition of punitive damages penalties
 - § 60:16 ——Recoverability of attorneys' fees
- § 60:17 Cancellation or rescission of policy
- § 60:18 Effect of adverse tort on PIP claim; collateral estoppel; res judicata
- § 60:19 Time limitations for action on policies

TABLE OF CONTENTS

- § 60:20 —The Kentucky rule
- § 60:21 —The Michigan rule
- § 60:22 —The New Jersey rule
- § 60:23 —The New York rule
- § 60:24 —The Pennsylvania rule
- § 60:25 —Tort threshold qualification limitations periods
- § 60:26 Time limitations for subrogation actions—Florida
- § 60:27 —Kansas
- § 60:28 —Kentucky
- § 60:29 —New York
- § 60:30 Release of all claims—Effect as release of future benefits

CHAPTER 61. THE INDEPENDENT MEDICAL EXAMINATION: PHYSICAL AND MENTAL I.M.E.S IN NO-FAULT AND TORT CLAIM SETTINGS

- § 61:1 “Good cause” requirement
- § 61:2 Place of medical examination
- § 61:3 Coping with unreasonable medical examination demands
- § 61:4 The biased medical examiner—Right to record, observe, or have counsel present at examination
- § 61:5 Delay in payment of I.M.E. expense—Insurer bad faith liability
- § 61:6 Claimant’s right to acquire adverse medical report
- § 61:7 Tort defendant’s right to depose no-fault carrier’s examining physician
- § 61:8 Negligent adverse medical examination report—Physician’s liability to insured
- § 61:9 Injury caused by I.M.E. physician—Physician’s liability to insured for negligence or malpractice
- § 61:10 The biased medical examiner—Right to disclosure of physician bias

CHAPTER 62. NO-FAULT INSURANCE: TORTFEASOR EXEMPTIONS AND TORT RECOVERY THRESHOLDS

- § 62:1 Introduction
- § 62:2 Thresholds—Death, disfigurement and fracture
- § 62:3 Permanent injury
- § 62:4 Monetary thresholds
- § 62:5 —Medical expense qualification
- § 62:6 —Proof—Expert testimony—Itemized bills
- § 62:7 —Necessity for qualification prior to trial

AUTOMOBILE LIABILITY INSURANCE

- § 62:8 Pleading and procedure—Pleading burdens
- § 62:9 —Summary judgment practice—Threshold determination
- § 62:10 —Precluded medical expense—Admission into evidence
- § 62:11 —Consolidation of actions against tortfeasor and insurer
- § 62:12 —Reduction of verdict by PIP recovery—Statute of limitations bar
- § 62:13 Derivative claims and punitive damages claims—
 - Derivative claims
- § 62:14 —Punitive damage claims
- § 62:15 Threshold application—Suit by nonresident
- § 62:16 Tortfeasor exemption—Applicability to noncomplying or exempt defendant
 - Application to voluntarily insured motorist
 - § 62:18 —Application to uninsured motorist claims
 - § 62:19 —Application to employers' subrogation rights
 - § 62:20 —Application to exempted plaintiff
 - § 62:21 —Nonmotorist tortfeasor—Right to tort exemption
 - § 62:22 —Application to nonresidents
 - § 62:23 Limitations activation: date of accident or date of threshold qualification

CHAPTER 63. NO-FAULT INSURANCE: CONFLICT OF LAWS ISSUES

- § 63:1 Generally
- § 63:2 —Benefits questions
- § 63:3 —Tort exemption questions
- § 63:4 —PIP set-off questions—Introduction of medical bills
- § 63:5 —Subrogation questions
- § 63:6 —Statute of limitation questions
- § 63:7 —Physical contact requirement
- § 63:8 —Res judicata application
- § 63:9 —Personal jurisdiction over foreign insurer
- § 63:10 Question of extra-territoriality
- § 63:11 —Territorial restrictions
- § 63:12 —Voluntary foreign coverage extension
- § 63:13 Nonresident application
- § 63:14 —Nonresident complying coverage requirements—
 - Application—Constitutional problems
- § 63:15 Nonresident vehicles: physical presence requirement

CHAPTER 64. NO-FAULT INSURANCE: SUBROGATION, REIMBURSEMENT, AND INDEMNITY

- § 64:1 Subrogation, reimbursement, and indemnity—
 - Distinctions

TABLE OF CONTENTS

- § 64:2 ——Contribution and subrogation distinctions—
Application to inter-insurer claims
- § 64:3 Statutory treatment—Application to extra-system
accidents
- § 64:4 —Application to complying tortfeasor
- § 64:5 —Application to noncomplying owner
- § 64:6 —Application to excess and umbrella carriers
- § 64:7 —Prohibited or restricted reimbursement
- § 64:8 —Application to optional benefits
- § 64:9 Insurer-insured priority conflicts—Inadequate
liability limits—In general
- § 64:10 —Policy limits settlement—Right to offset PIP
receipts
- § 64:11 Insurer’s Right to Recovery from Insured; Insurer’s Right to
Reimbursement or Subrogation
- § 64:12 PIP insured’s unauthorized recovery of PIP covered
losses—To whom belongs the spoils?—Deduction
from award—Problems encountered
- § 64:13 —Setoff procedures
- § 64:14 Reimbursement—Necessity for duplicative damages—
Duplication specifically required by statute
- § 64:15 —Duplication—No statutory requirement
expressed
- § 64:16 —Equitable subrogation-right to recover actual
payment
- § 64:17 —Equitable subrogation-applicability of no-fault
statute of limitations
- § 64:18 Release of tortfeasor as bar to further PIP benefits
- § 64:19 Release of tortfeasor as bar to insurer subrogation
- § 64:20 —Limited releases
- § 64:21 —Adverse tort judgment—Subrogation effect
- § 64:22 —Mediation settlement as bar to reimbursement
- § 64:23 —Voluntary dismissal or nonsuit—Effect on
subrogation rights
- § 64:24 The “anti-subrogation rule”—Insurer’s right of
subrogation against its own insured

**PART 6. NO-FAULT (PIP) AND UM/
UIM BASIC PROVISION
SUMMARIES, BY STATE**

**CHAPTER 65. ALABAMA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 65:1 Alabama uninsured/underinsured motorist summary

§ 65:2 No-fault

**CHAPTER 66. ALASKA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 66:1 Alaska uninsured/underinsured motorist summary
§ 66:2 No-fault

**CHAPTER 67. ARIZONA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 67:1 Arizona uninsured/underinsured motorist summary
§ 67:2 No-fault

**CHAPTER 68. ARKANSAS NO-FAULT AND
UNINSURED/UNDERINSURED MOTORIST
SUMMARY**

§ 68:1 Arkansas uninsured/underinsured motorist summary
§ 68:2 Arkansas no-fault summary

**CHAPTER 69. CALIFORNIA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 69:1 California uninsured/underinsured motorist summary
§ 69:2 No-fault

**CHAPTER 70. COLORADO NO-FAULT AND
UNINSURED/UNDERINSURED MOTORIST
SUMMARY**

§ 70:1 Colorado uninsured/underinsured motorist summary
§ 70:2 Colorado no-fault summary

**CHAPTER 71. CONNECTICUT UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 71:1 Connecticut uninsured/underinsured motorist
summary
§ 71:2 No-fault

**CHAPTER 72. DELAWARE NO-FAULT AND
UNINSURED/UNDERINSURED MOTORIST
SUMMARY**

§ 72:1 Delaware uninsured/underinsured motorist summary

TABLE OF CONTENTS

§ 72:2 Delaware no-fault summary

**CHAPTER 73. DISTRICT OF COLUMBIA
NO-FAULT AND UNINSURED/
UNDERINSURED MOTORIST SUMMARY**

§ 73:1 District of Columbia uninsured/underinsured motorist summary

§ 73:2 District of Columbia no-fault summary

**CHAPTER 74. FLORIDA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 74:1 Florida uninsured/underinsured motorist summary

§ 74:2 Florida no-fault summary

**CHAPTER 75. GEORGIA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 75:1 Georgia uninsured/underinsured motorist summary *[Reserved]*

§ 75:2 No-fault

**CHAPTER 76. HAWAII NO-FAULT AND
UNINSURED/UNDERINSURED MOTORIST
SUMMARY**

§ 76:1 Hawaii uninsured/underinsured motorist summary

§ 76:2 Hawaii no-fault summary

**CHAPTER 77. IDAHO UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 77:1 Idaho uninsured/underinsured motorist summary *[Reserved]*

§ 77:2 No-fault

**CHAPTER 78. ILLINOIS UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 78:1 Illinois uninsured/underinsured motorist summary *[Reserved]*

§ 78:2 No-fault

**CHAPTER 79. INDIANA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

§ 79:1 Indiana uninsured/underinsured motorist summary *[Reserved]*

§ 79:2 No-fault

CHAPTER 80. IOWA UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 80:1 Iowa uninsured/underinsured motorist summary *[Reserved]*
§ 80:2 No-fault

CHAPTER 81. KANSAS UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 81:1 Kansas uninsured/underinsured motorist summary
§ 81:2 Kansas no-fault summary

CHAPTER 82. KENTUCKY UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 82:1 Kentucky uninsured/underinsured motorist
summary *[Reserved]*
§ 82:2 Kentucky no-fault summary

CHAPTER 83. LOUISIANA UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 83:1 Louisiana uninsured/underinsured motorist
summary *[Reserved]*
§ 83:2 No-fault

CHAPTER 84. MAINE UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 84:1 Maine uninsured/underinsured motorist summary *[Reserved]*
§ 84:2 No-fault

CHAPTER 85. MARYLAND UNINSURED/ UNDERINSURED MOTORIST AND NO- FAULT SUMMARY

§ 85:1 Maryland uninsured/underinsured motorist
summary *[Reserved]*
§ 85:2 Maryland no-fault summary

TABLE OF CONTENTS

**CHAPTER 86. MASSACHUSETTS
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 86:1 Massachusetts uninsured/underinsured motorist summary *[Reserved]*
- § 86:2 Massachusetts no-fault summary

**CHAPTER 87. MICHIGAN UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 87:1 Michigan uninsured/underinsured motorist summary *[Reserved]*
- § 87:2 Michigan no-fault summary

**CHAPTER 88. MINNESOTA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 88:1 Minnesota uninsured/underinsured motorist summary *[Reserved]*
- § 88:2 Minnesota no-fault summary

**CHAPTER 89. MISSISSIPPI UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 89:1 Mississippi uninsured/underinsured motorist summary *[Reserved]*
- § 89:2 No-fault

**CHAPTER 90. MISSOURI UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 90:1 Missouri uninsured/underinsured motorist summary *[Reserved]*
- § 90:2 No-fault

**CHAPTER 91. MONTANA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 91:1 Montana uninsured/underinsured motorist summary *[Reserved]*
- § 91:2 No-fault

Volume 5

CHAPTER 92. NEBRASKA UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 92:1 Nebraska uninsured/underinsured motorist summary *[Reserved]*
- § 92:2 No-fault

CHAPTER 93. NEVADA UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 93:1 Nevada uninsured/underinsured motorist summary *[Reserved]*
- § 93:2 No-fault

CHAPTER 94. NEW HAMPSHIRE UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 94:1 New Hampshire uninsured/underinsured motorist summary *[Reserved]*
- § 94:2 No-fault

CHAPTER 95. NEW JERSEY UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 95:1 New Jersey uninsured/underinsured motorist summary *[Reserved]*
- § 95:2 New Jersey no-fault summary

CHAPTER 96. NEW MEXICO UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 96:1 New Mexico uninsured/underinsured motorist summary *[Reserved]*
- § 96:2 No-fault

CHAPTER 97. NEW YORK UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 97:1 New York uninsured/underinsured motorist summary *[Reserved]*
- § 97:2 New York no-fault summary

TABLE OF CONTENTS

**CHAPTER 98. NORTH CAROLINA
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 98:1 North Carolina uninsured/underinsured motorist summary *[Reserved]*
- § 98:2 No-fault

**CHAPTER 99. NORTH DAKOTA
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 99:1 North Dakota uninsured/underinsured motorist summary *[Reserved]*
- § 99:2 North Dakota no-fault summary

**CHAPTER 100. OHIO UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 100:1 Ohio uninsured/underinsured motorist summary *[Reserved]*
- § 100:2 No-fault

**CHAPTER 101. OKLAHOMA UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 101:1 Oklahoma uninsured/underinsured motorist summary *[Reserved]*
- § 101:2 No-fault

**CHAPTER 102. OREGON UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 102:1 Oregon uninsured/underinsured motorist summary *[Reserved]*
- § 102:2 Oregon no-fault summary

**CHAPTER 103. PENNSYLVANIA
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 103:1 Pennsylvania uninsured/underinsured motorist summary *[Reserved]*
- § 103:2 Pennsylvania no-fault summary

**CHAPTER 104. RHODE ISLAND
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 104:1 Rhode Island uninsured/underinsured motorist summary *[Reserved]*
- § 104:2 No-fault

**CHAPTER 105. SOUTH CAROLINA
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 105:1 South Carolina uninsured/underinsured motorist summary *[Reserved]*
- § 105:2 No-fault

**CHAPTER 106. SOUTH DAKOTA
UNINSURED/UNDERINSURED MOTORIST
AND NO-FAULT SUMMARY**

- § 106:1 South Dakota uninsured/underinsured motorist summary *[Reserved]*
- § 106:2 South Dakota no-fault summary

**CHAPTER 107. TENNESSEE UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 107:1 Tennessee uninsured/underinsured motorist summary *[Reserved]*
- § 107:2 No-fault

**CHAPTER 108. TEXAS UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 108:1 Texas uninsured/underinsured motorist summary *[Reserved]*
- § 108:2 Texas no-fault summary

**CHAPTER 109. UTAH UNINSURED/
UNDERINSURED MOTORIST AND NO-
FAULT SUMMARY**

- § 109:1 Utah uninsured/underinsured motorist summary *[Reserved]*
- § 109:2 Utah no-fault summary

TABLE OF CONTENTS

CHAPTER 110. VERMONT UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 110:1 Vermont uninsured/underinsured motorist summary *[Reserved]*
- § 110:2 No-fault

CHAPTER 111. VIRGINIA UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 111:1 Virginia uninsured/underinsured motorist summary *[Reserved]*
- § 111:2 Virginia no-fault summary

CHAPTER 112. WASHINGTON UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 112:1 Washington uninsured/underinsured motorist summary *[Reserved]*
- § 112:2 Washington no-fault summary

CHAPTER 113. WEST VIRGINIA UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 113:1 West Virginia uninsured/underinsured motorist summary *[Reserved]*
- § 113:2 No-fault

CHAPTER 114. WISCONSIN UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 114:1 Wisconsin uninsured/underinsured motorist summary *[Reserved]*
- § 114:2 Wisconsin no-fault summary *[Reserved]*

CHAPTER 115. WYOMING UNINSURED/UNDERINSURED MOTORIST AND NO-FAULT SUMMARY

- § 115:1 Wyoming uninsured/underinsured motorist summary *[Reserved]*
- § 115:2 No-fault

STATE ENDORSEMENTS

Appendix 1. Arkansas PIP/No-Fault Endorsement

AUTOMOBILE LIABILITY INSURANCE

Appendix 1.1.	Arkansas UM/UIM Endorsement
Appendix 2.	Colorado PIP/No-Fault Endorsement
Appendix 2.1.	Colorado UM/UIM Endorsement
Appendix 3.	Connecticut PIP/No-Fault Endorsements
Appendix 3.1.	Connecticut UM/UIM Endorsement
Appendix 4.	Delaware PIP/No-Fault Endorsement
Appendix 4.1.	Delaware UM/UIM Endorsement
Appendix 5.	District of Columbia PIP/No-Fault Endorsement
Appendix 5.1.	District of Columbia UM/UIM Endorsement
Appendix 6.	Florida PIP/No-Fault Endorsement
Appendix 6.1.	Florida UM/UIM Endorsement
Appendix 7.	Hawaii PIP/No-Fault Endorsement
Appendix 7.1.	Hawaii UM/UIM Endorsement
Appendix 8.	Kansas PIP/No-Fault Endorsement
Appendix 8.1.	Kansas UM/UIM Endorsement
Appendix 9.	Kentucky PIP/No-Fault Endorsement
Appendix 9.1.	Kentucky UM/UIM Endorsement
Appendix 10.	Maryland PIP/No-Fault Endorsement
Appendix 10.1.	Maryland UM/UIM Endorsement
Appendix 11.	Massachusetts PIP/No-Fault Endorsement
Appendix 11.1.	Massachusetts UM/UIM Endorsement
Appendix 12.	Michigan PIP/No-Fault Endorsements
Appendix 12.1.	Michigan UM/UIM Endorsement
Appendix 13.	Minnesota PIP/No-Fault Endorsement
Appendix 13.1.	Minnesota UM/UIM Endorsement
Appendix 14.	New Jersey PIP/No-Fault Endorsement
Appendix 14.1.	New Jersey UM/UIM Endorsement
Appendix 15.	New York PIP/No-Fault Endorsement
Appendix 15.1.	New York UM/UIM Endorsement
Appendix 16.	North Dakota PIP/No-Fault Endorsement
Appendix 16.1.	North Dakota UM/UIM Endorsement
Appendix 17.	Oregon PIP/No-Fault Endorsement
Appendix 17.1.	Oregon UM/UIM Endorsement
Appendix 18.	Pennsylvania PIP/No-Fault Endorsement
Appendix 18.1.	Pennsylvania UM/UIM Endorsement
Appendix 19.	South Carolina Medical Payments Coverage

TABLE OF CONTENTS

- Appendix 19.1. South Carolina UM/UIM Endorsement
- Appendix 20. Texas PIP/No-Fault Endorsement
- Appendix 20.1. Texas UM/UIM Endorsement
- Appendix 21. Utah PIP/No-Fault Endorsement
- Appendix 21.1. Utah UM/UIM Endorsement
- Appendix 22. Virginia PIP/No-Fault Endorsement
- Appendix 22.1. Virginia UM/UIM Endorsement
- Appendix 23. Washington PIP/No-Fault Endorsements
- Appendix 23.1. Washington UM/UIM Endorsement
- Appendix 24. Multistate UM/UIM Endorsement
- Appendix 25. Multistate Personal Auto Policy
- Appendix 26. Motor Carrier Financial Responsibility — Example MCS-90 Endorsement
- Appendix 26.1. Motor Carrier Financial Responsibility — Example MCS-90B (Bus) Endorsement

Table of Laws and Rules

Table of Cases

Index