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UTAH AUTO INSURANCE LAW, PROCESS & PROCEDURE

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Note: This outline contains a summary overview of Utah automobile insurance law, and should be used only as a quick reference guide. Clarification should be obtained to ensure proper application to the facts of each individual claim.

1. File Documentation

Always consider issues involving coverage, policy limits, time limitations, liability and damages. A well constructed and organized file can help resolve claims prior to suit, improve efficiency in claims handling, and avoid or limit exposure in bad faith suits. Be prompt and proactive, as well as mindful of the Unfair Claim Settlement Practices Act, U.C.A. § 31A-26-303. Obtain photos of vehicles and/or accident scene where necessary. Document file with legible and chronological notes.

Duty to Defend -- The insurer's duty to defend is separate from and broader than the duty to indemnify. *Aspen Specialty Ins. Co. v. Utah Local Governmetns Trust*, 954 F.Supp.2d 1311 (D. Utah 2013); *Sharon Steel v. Aetna*, 931 P.2d 127 (Utah 1997). The duty to defend is triggered where the allegations in the complaint, if proved, could result in liability under the policy. A primary carrier may not simply tender its limits to avoid defense obligations. As a general rule, a liability insurer's duty to defend is determined by comparing the language of the insurance policy with the allegations in the complaint. *Cincinnati Inc. Co. v. AMSCO Windows*, 921 F.Supp.2d 1226 (D. Utah 2013); *J. R. Simplot Co. v. Chevron Pipe Line Co.*, 2006 WL 2796887 (D. Utah 2006) *Green v. State Farm Fire & Cas. Co.*, 2005 UT App 564, 127 P.3d 1279.

2. Fault

Comparative Fault -- Utah is a modified comparative fault state, such that Plaintiff may not recover if his or her fault is 50% or more. If Plaintiff's fault is less than 50%, any damage award will be reduced by the percentage of fault apportioned to Plaintiff. *U.C.A. § 78B-5-818.*

Multiple Defendants -- Joint and several liability has been abolished by statute. A defendant is responsible only for its pro rata share of fault, without contribution between co-defendants or even nonparties. *U.C.A. § 78B-5-820.* Fault may be assigned to an otherwise immune entity to establish proper allocation of fault among the remaining parties, or for reallocation if the immune entity's fault is under 40%.

Assumption of Risk & Last Clear Chance -- Both of these doctrines have been abolished as complete bars to recovery, as incompatible with the comparative negligence system. *Fordham v. Oldroyd*, 2006 UT App 50, 131 P.3d 280; *U.C.A. § 78B-5-818* (assumption of risk); *Hale v. Beckstead*, 2005 UT 24, 116 P.3d 263 (last clear chance).

Family Purpose Doctrine -- This doctrine is not recognized in Utah. *Reid v. Owens*, 93 P.2d 680 (Utah 1939). Liability for the negligence of a minor (under age 18 and not married) may be imputed, however, to a parent or guardian who signed for a license or permit, unless proof of financial responsibility is furnished. Liability in this instance is limited to minimum statutory limits. *U.C.A. § 53-3-211.* Also, any vehicle owner who furnishes or allows a minor to drive their car may be jointly and severally liable for that minor's negligence, even with proof of financial responsibility. *U.C.A. § 53-3-212.*

Guest Passenger Statute -- The Utah Guest Statute barred a nonpaying passenger injured in an automobile accident, or the passenger's heirs if the passenger was killed, from suing the owner or driver of the automobile for ordinary negligence if the injury occurs on a public highway. A passenger, or his heirs if he was killed, could recover damages only if injury was the result of intoxication or willful misconduct by the driver or owner or if the guest paid compensation for the ride. The statute, *U.C.A. § 41-9-1*, is no longer applicable, as it was deemed unconstitutional in 1984. *Malan v. Lewis*, 693 P.2d 661 (Utah 1984).

Negligent Entrustment -- A vehicle owner may be liable where he or she entrusts his or her vehicle to a driver that he or she knows or should have known was intoxicated, incompetent, careless, reckless, or inexperienced at the time the vehicle was loaned. *Utah Farm Bureau Mut. Ins. Co. v. Johnson*, 738 P.2d 652 (Utah App. 1987).

3. Personal Injury Damages

Economic Damages -- This includes monetary losses, such as reasonable medical expenses, lost earnings, and impairment of future earning capacity.

Non-economic Damages -- This includes non-monetary losses, such as pain and suffering, mental pain and anguish, embarrassment, discomfort, permanent disability, loss of bodily function, disfigurement, and diminished enjoyment of life.

Punitive Damages -- An insurer may **not** insure against punitive damages. *U.C.A. § 31A-20-101*. Such damages may be awarded only if clear and convincing evidence of willful or malicious conduct, or intentionally fraudulent or reckless conduct. *U.C.A. § 78B-8-201*.

4. Property Damage

The general rule in Utah is that where personal property has been damaged, the measure of damages is the lesser of the cost of repair or diminution in value, plus the reasonable loss of use of the property.

Diminished Value -- Diminished value may be recoverable where the value of the vehicle is lower after repairs than immediately prior to the accident. *Walker Drug Co., Inc. v. La Sal Oil Co.*, 972 P.2d 1238 (Utah 1998); *Ault v. Dubois*, 739 P.2d 1117 (Utah App. 1987).

Loss of Use -- Damages for loss of use will equal an amount sufficient to compensate for lost use for a reasonable period until the vehicle can be repaired or replaced, usually a reasonable rental value.

5. Issues Affecting Damages

Seat Belts -- The failure to utilize available safety belts or child restraint devices is **not** admissible to prove comparative fault, injuries, or mitigation of damages. *U.C.A. § 41-6A-1806*.

Threshold -- An individual required to be covered by PIP may not bring an action for general damages unless he or she has sustained one or more of the following: 1) death; 2) dismemberment; 3) objective permanent disability or impairment; 4) disfigurement; or 5) medical expenses in excess of \$3,000. *U.C.A. §31A-22-309(1)*. Claims for special damages may be asserted without regard to the threshold. Attorneys fees may be imposed as a sanction where an accident victim intentionally incurred unnecessary expenses to meet threshold. *Pennington v. Allstate Ins. Co.*, 973 P.2d 932 (Utah 1998).

Intra Family Suits -- Family member/Household exclusions from PIP coverage are prohibited. Otherwise, such exclusions are valid only to the extent that the policy amounts exceed the minimum coverage mandated by statute. *Speros v. Fricke*, 2004 UT 69, 98 P.3d 28; *Desario v. State Farm Mut. Auto. Ins. Co.*, 127 F.3d 1109 (10th Cir. 1997); *Cullum v. Farmers Ins. Exch.*, 857 P.2d 922 (Utah 1993); *State Farm Mut. Auto Ins. Co. v. Mastbaum*, 748 P.2d 1042 (Utah 1987); U.C.A. §§ 31A-22-303 & -309.

Named Driver Exclusion -- Named driver exclusions are valid only if signed by the named insured and the excluded driver residing in the same household that is independently insured. Otherwise, they are valid only for coverage exceeding the minimum amounts mandated by law. *Krehbiel v. Travelers Ins. Co.*, 387 Fed.Appx. 827 (10th Cir. 2010); *Afridi v. State Farm Mut. Auto. Ins. Co.*, 2005 UT 53, 122 P.3d 596; *Calhoun v. State Farm Mut. Auto. Ins. Co.*, 2004 UT 56, 96 P.3d 916; *Allstate Ins. Co. v. U.S. Fidelity & Guarantee Co.*, 619 P.2d 329 (Utah 1980).

Loss of Consortium -- A claim for loss of consortium can be asserted by a spouse where significant permanent injury substantially changes that person's lifestyle. Because this is a derivative claim, it is subject to all defenses applicable to the underlying injury (e.g., comparative negligence, statute of limitations, etc.), and is within the single per person limit. U.C.A. § 30-2-11.

6. Who Owes Coverage

Rental Coverage -- Car Rental Companies must provide primary coverage to their renters in the minimum amounts, unless there is any other valid and collectible insurance. Rental coverage shall include primary defense costs, and may not be waived. *Li v. Zhang*, 2005 UT App 246, 120 P.3d 30; *Arredondo v. Avis Rent A Car System, Inc.*, 2001 UT 29, 24 P.3d 928; U.C.A. § 31A-22-314.

Newly Acquired Vehicle -- Automatic coverage is generally provided for newly acquired vehicles purchased within the policy period, and where insured seeks to have that vehicle added to policy within 30 days of purchase. *Travelers Ins. Co. v. Kearl*, 896 P.2d 644 (Utah App. 1995); *Clark v. State Farm Mut. Ins. Co.*, 743 P.2d 1227 (Utah 1987); *Matlock v. Government Ins. Co.*, 546 P.2d 903 (Utah 1976); *Johnson v. Richard*, 445 F.2d 1025 (10th Cir. 1971).

Primary/Excess Liability -- Carriers generally share pro rata or honor on a first-come, first-serve basis where policies contain mutually repugnant clauses. Otherwise, policy language controls primacy where clauses do not conflict.

7. No Fault Personal Injury Protection (PIP) Benefits

Persons Eligible for PIP Benefits -- Persons eligible to receive PIP benefits include: 1) the named insured, when injured in an accident involving any motor vehicle, except if the

accident involves a vehicle owned by the insured that is not covered under the policy; 2) persons related to the insured by blood, marriage, adoption or guardianship who are residents of the insured's household; and 3) any other person whose injuries arise out of an automobile accident while the person occupies a vehicle covered in the policy with the express or implied consent of the insured, or while a pedestrian, if injured in an accident occurring in the state of Utah involving a vehicle covered in the policy. *U.C.A. § 31A-22-308.*

PIP Benefits Allowed by Statute -- The following minimum PIP coverages are to be provided in all auto insurance policies, without deductibles, although higher limits can be purchased:

- Reasonable and necessary medical expenses of up to \$3,000 per person (this includes medical services, surgical services, x-ray services, dental services, rehabilitation services including prosthetic devices, ambulance services, hospital services, and nursing services).

- Wage losses paid at the lesser of \$250 per week, or 85% of loss in gross income and loss of earning capacity, for a maximum of 52 consecutive weeks after the loss. The person claiming PIP benefits must be off work for 14 consecutive days to be entitled to the first three days of wage loss.

- Special damage allowances not exceeding \$20 per day for household services, for a maximum of 365 days. Household services must continue for more than two consecutive weeks for the person claiming PIP benefits to be entitled to the first three days of household services.

- Funeral, burial, or cremation expenses not to exceed \$1,500 per person.

- Compensation on account of death payable to heirs of the decedent in the total of \$3,000.

Prince v. Bear River Mut. Ins. Co., 2002 UT 68, 56 P.3d 524; *U.C.A. § 31A-22-307.*

PIP Benefit Exclusions -- PIP benefits may be excluded for the following:

- Any injury sustained by the insured while occupying another vehicle owned by or furnished for the use of the insured or a resident family member of the insured and not insured under the policy.

- Any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured vehicle.

-- Any injury sustained by any person, if the person's conduct contributed to his or her injury, by intentionally causing injury to himself, or while committing a felony.

-- Any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises.

-- Any injury due to war, whether declared or undeclared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

-- Any injury to any person resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear materials.

U.C.A. § 31A-22-309(2).

PIP Benefit Reductions -- PIP benefits may be reduced by any benefits the insured is entitled to receive from workers compensation or military benefits. *U.C.A. § 31A-22-309(3).*

Tortfeasor Liability and PIP Benefits -- The PIP carrier may be reimbursed by the tortfeasor's liability carrier for any PIP benefits paid. Fault determination s and amount owed are subject to mandatory binding arbitration between the insurers. *U.C.A. § 31A-22-309(6).*

8. Uninsured Motorist/Under Insured Motorist (UM/UIM)

Definition -- An UM/UIM vehicle is one that is: 1) not insured; (2) insufficiently insured; (3) unidentified; (4) insured, but carrier disputes coverage for over 60 days; or (4) where the carrier is deemed insolvent. *U.C.A. §§ 31A-22-305(2), 31A-22-305.3(1).*

UM/UIM Coverage -- UM/UIM coverage must be offered to the insured, and may only be rejected in writing by the named insured. *U.C.A. § 31A-22-305(4)(a).*

Applicability of UM/UIM Coverage -- Physical contact with unidentified vehicle is **not** required. However, the insured must prove the existence of the phantom vehicle by clear and convincing evidence consisting of more than testimony of the covered person. *U.C.A. § 31A-22-305(5).*

PIP Coverage -- There is no PIP threshold requirement in UM claims. *U.C.A. § 31A-22-309(1)(b).*

Remedies -- When an UM/UIM claim is asserted against the covered person's UM/UIM carrier, the claimant may elect to resolve the claim by: (1) binding arbitration; or (2) litigation. U.C.A. §§ 31A-22-305(8), 31A-22-305.3(7).

Stacking of Coverage -- Stacking of UM/UIM coverage is prohibited, **unless** the covered person is injured while occupying a car that is not owned by, furnished or available for the regular use of the covered person, his/her spouse or resident relative. U.C.A. §§ 31A-22-305(6)(a-b), 31A-22-305(7)(b)(ii).

UIM Subrogation -- Within 5 business days of notification that all liability carriers have tendered their limits, the UIM carrier must either: (1) waive any subrogation claim it may have; or (2) pay the insured an amount equal to the tortfeasor's limits. If neither option is exercised, subrogation is deemed waived. U.C.A. § 31A-22-305.3(5).

Recovery -- A covered person's recovery on an UM/UIM claim may not exceed the total amount of damages. U.C.A. §§ 31A-22-305(6)(b); 31A-22-305.3(3)(b)(iii).

9. Pleadings and Proceedings

Complaint & Summons -- Filing a Complaint and Summons with the district Court commences legal action against the insured and identifies the claims. *Utah R. Civ. P. 3*. For each claim for relief, the Plaintiff must state the following: (1) a short and plain statement of the claim showing that the Plaintiff is entitled to relief; and (2) a demand for judgment for the relief to which the Plaintiff deems himself or herself entitled. *Utah R. Civ. P. 8(a)*. Once served, the Defendant has 20 days to file and Answer if the defendant is a resident of the state of Utah. Out of state Defendants have 30 days to answer, and service on an insurance company through the insurance commissioner results in 40 days to answer. *Utah R. Civ. P. 12(a)*.

Special Coverage -- All insurance policies must cover damages caused by a covered driver who is unforeseeably stricken by paralysis, seizure, or other unconscious condition. U.C.A. § 31A-22-303(1)(a)(v).

Service -- Personal service must be made on the individual personally or by leaving a copy at his or her usual place of abode "with some person of suitable age and discretion there residing. *Utah R. Civ. P. 4(d)(1)(A)*. Service may also be accomplished by mail or commercial courier service, provided the defendant signs a document indicating receipt. *Utah R. Civ. P. 4(d)(2)(A)*. Service must take place within 120 days of filing of Complaint, or dismissal without prejudice may occur. *Utah R. Civ. P. 4(b)(i)*.

Default -- Time is critical where a default may have occurred. Defendants should immediately forward copies of all Complaints and Summons to legal counsel.

Statute of Limitation Periods

6 years for written contracts. *U.C.A. § 78B-2-309(2)*.

4 years for Personal Injury claims. *U.C.A. § 78B-2-307(3)*.

4 years for oral and implied contracts. *U.C.A. § 78B-2-307(1)(a)*.

3 years for property damage claims. *U.C.A. § 78B-2-305*.

3 years from inception of the loss for insurance policy claims, including UM claims. *U.C.A. § 31A-21-313(1)*.

2 years for Wrongful Death claims. *U.C.A. § 78B-2-304(2)*.

NOTE: The UM limitation may be tolled while the parties engage in appraisal or arbitration procedures. *U.C.A. § 31A-21-313(5)*. Wrongful death claims may be tolled where fact of death is not known despite due diligence, or during the minority of heirs. Dismissals not on the merits of timely commenced actions may be refilled within one year. *U.C.A. § 78B-2-111(1)*.

10. Discovery

Information Subject to Discovery -- Insurance claims files may be discoverable, subject to possible attorney work product protection. Work product protection may not apply in the bad faith insurance claim context. The Plaintiff is entitled to a copy of the insurance policy and declaration.

11. Arbitration/Mediation/Alternative Dispute Resolution (ADR)

Availability of ADR -- ADR is always a settlement option, although it is usually not mandatory. Arbitration results may be appealed, unless the parties agreed in writing that arbitration is binding.

U.C.A. § 31A-22-321 Arbitrations -- A plaintiff may elect to submit all third party bodily injury claims to arbitration. These arbitrations are limited to claims for bodily injury only, unless the parties agree in writing otherwise. Recovery is limited to \$50,000.00.

12. Settlements

Special Considerations -- Oral settlements may be enforceable. In order to be effective, a release must either: (1) specifically name the defendant; or (2) sufficiently identify the defendant. Boilerplate "catchall" language may not be sufficient in a release. The release of a tortfeasor employee does not release a vicariously liable employer. Also, consider placing a time limit when a settlement offer shall expire. Be aware of any statutory limitation periods.

Minor Settlements -- Probate approval should be obtained for settlement of any claim involving a minor, as a minor may disaffirm a contract, unless the minor's own misrepresentation led another to believe that the minor was capable of contracting. *U.C.A. § 15-2-3*. Majority is attained at 18 years of age or upon marriage. *U.C.A. § 15-2-1*.

Liens -- Hospital and Medicaid lines **must** be honored where proper advance written notice has been provided. Hospital liens must be filed in the District Court, and written notice must be sent via certified mail to any affected party. *U.C.A. § 38-7-1, et seq.* Medical line notices must be mailed or delivered to third parties at their principal place of business or last known address. *U.C.A. § 26-19-5*. A settlement with a tortfeasor does not affect subrogation rights where the tortfeasor or its insurer were on notice of another insurer's subrogation rights.