

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

P.O. BOX 110805
JUNEAU, ALASKA 99811-0805
PHONE: (907) 465-2515
FAX: (907) 465-3422
TDD: (907) 465-5437

BULLETIN B99-01

TO: All Insurance Companies Writing Motor Vehicle Insurance in Alaska

RE: Uninsured/Underinsured Motorists Coverage - Recovering Damages from a Third Party

The purpose of this bulletin is to provide guidance to insurers issuing automobile liability insurance policies in or for delivery in Alaska regarding the recovery of sums from third parties that an insurer has paid in connection with uninsured or underinsured motorist coverage. Based on reports from representatives of several insurers, the division believes there is confusion about an insurer's obligations under state law regarding uninsured and underinsured motorist coverage.

In passing Alaska's motor vehicle financial responsibility and mandatory insurance laws and recent amendments to them, the legislature intended that innocent victims of motor vehicle accidents would be compensated for the injury and financial loss inflicted upon them. The division believes that policy provisions or claims practices that cause or allow insurers to recover payments made under uninsured and underinsured motorist coverage before insured persons have been fully paid for their loss do not meet Alaska's statutory requirements or the intent of the legislature. Accordingly, policy provisions that purportedly entitle an insurer to retain amounts received from third parties before full recovery of damages by the insured persons are misleading. In accord with **AS 21.42.130**, the division will disapprove or withdraw previous approval of forms containing such provisions.

Moreover, an insurer may violate **AS 21.36.125** if it engages in claims practices through statement or omission that misrepresent or conceal the insured person's right to full compensation for the insured person's damages before the insurer recovers from third parties.

The division recognizes that insurers may be concerned that victims will recover more than 100 percent of their damages. The motor vehicle insurance laws, however, protect against duplicate payments for the same elements of a single loss:

AS 28.20.445(a) limits the payment obligation of an insurance carrier providing uninsured or underinsured motorist coverage to "the lesser of (1) the difference between the amount of the covered person's damages for bodily injury and property damage and the amount paid to the covered person by or for a person who is or may be held legally liable for the damages; and (2) the applicable limit of liability of the uninsured and underinsured motorist coverage."

AS 28.20.445(b) states that "an amount payable under the uninsured and underinsured motorist coverage shall be excess to an amount payable under automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits and may not duplicate amounts paid or payable under valid and collectible automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits."

Please remember that **AS 21.42.220** provides that "an insurance policy, rider or endorsement issued and otherwise valid that contains a condition or provision not in compliance with the requirements of this title, is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions as would have applied had the policy, rider, or endorsement been in full compliance with this title."

If you have any questions regarding the subject of this bulletin, please contact the Division of Insurance; P.O. Box 110805; Juneau, AK 99811-0805, (907) 465-2515; fax (907) 465-3422; or via electronic mail at: .

DATED: January 5, 1999



Marianne K. Burke
Director of Insurance