



ORDER NUMBER R 08-09

August 15, 2008

**WITHDRAWAL OF APPROVAL OF HORACE MANN INSURANCE
COMPANY AND TEACHERS INSURANCE COMPANY PERSONAL
AUTOMOBILE UNINSURED MOTOR VEHICLE DEFINITION**

FINDINGS:

1. The Division of Insurance recently became aware that the definition of “uninsured motor vehicle” in the personal automobile insurance policies of Horace Mann Insurance Company and Teachers Insurance Company includes a requirement that a “hit-and-run motor vehicle whose owner or driver remains unknown” must strike “the vehicle the insured is occupying”.

2. Alaska Statute (AS) 28.20.445(f) states that

If both the owner and operator of the uninsured vehicle are unknown, payment under the uninsured and underinsured motorists coverage shall be made only where direct physical contact between the insured and uninsured or underinsured motor vehicles has occurred. . . .

3. AS 28.20.445(f) requires direct physical contact between the two vehicles, one insured vehicle and the other vehicle uninsured or underinsured, before the insured person can collect under his or her uninsured/underinsured motorists coverage. The statute places no requirement on where the insured person must be. The policy definition of uninsured motor vehicle would prohibit an insured who witnessed a hit-and-run accident from the insured’s living room window from collecting under his or her uninsured/underinsured motorists coverage simply because the insured was not in the vehicle. It would also prohibit the insured from collecting under his or her uninsured/underinsured motorists coverage when there is a third party who witnessed a hit-and-run accident when the insured was not in the vehicle. Further, AS 28.20.445(f) also states:

A vehicle that has left the scene of the accident with an insured vehicle is presumed to be uninsured if the person insured reports the accident to the appropriate authorities within 24 hours.

The presumption in AS 28.20.445(f) is inconsistent with Horace Mann’s requirement that the hit and run must strike “the vehicle the insured is occupying.”

The offending policy language is also inconsistent with a long standing division interpretation of the statute as described in the division's *Alaska Insurance Consumer Guide* and the division's *Automobile Insurance Guide*, which state, under the Uninsured Motorists Coverage description: "This coverage also applies to hit-and-run situations or when your vehicle is hit while parked and you are unable to determine the identity of the other party."

4. The policy language requiring that the insured be occupying the vehicle in addition to direct physical contact between the two vehicles does not comply with AS 21.89.020(d). Therefore, the form is subject to disapproval under AS 21.42.130(1).

5. The policy language requiring that the insured be occupying the vehicle does not comply with AS 21.36.125(3), (4), and (15) because, in reliance on the offending language, the insurer is not performing any investigation into claims nor acknowledging or determining compliance with AS 28.20.445(f). Therefore, the form is subject to disapproval under AS 21.42.130(1).

6. Additionally, the policy language requiring that the insured be occupying the vehicle in addition to direct physical contact between the two vehicles is more restrictive than required by AS 28.20.445(f) and therefore contains a condition that deceptively affects the risk purported to be assumed in the general coverage of the contract and renders the form subject to disapproval under AS 21.42.130(2).

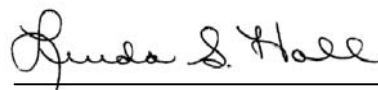
IT IS HEREBY ORDERED:

A. Under AS 21.42.120(c), effective September 15, 2008, the director withdraws the approval of the Horace Mann Insurance Company and Teachers Insurance Company *Readable Car Policy* approved in division filing number 27713.

B. A revised policy form bringing the definition of "uninsured motor vehicle" into compliance with AS 28.20.445 must be received by the division no later than August 28, 2008.

C. Any personal auto policies issued before September 15, 2008, with the *Readable Car Policy* may remain in effect; however, the "occupying the vehicle" language may not be enforced. Once the new language is approved, in-force policies must be endorsed with the revised language.

This order is effective August 15, 2008.



Linda S. Hall
Director