

Perfecting and Maintaining a First-Party Claim

by Steven Baker

The personal injury practitioner is often lured into a false sense of security when handling first-party claims. There is frequently an erroneous belief that UM/UIM carriers are hesitant to deny coverage because of the duty of good faith and fair dealing and the associated risk of bad faith. Do not, however, be fooled. UM/UIM policies typically contain one or more exclusions/conditions/provisions which, if not complied with, can act to void coverage. Some of these are as follows: 1) a post-collision time provision for notice to the UM/UIM carrier, 2) a consent to settle (with the third-party) provision, 3) a permission to sue (the third-party) provision, 4) a requirement to file suit against the third-party in UM claims, 5) a notice to the carrier requirement of filing of such suit, and 6) a contractual time limit for making a UIM claim. Blowing one of said exclusions/conditions/provisions (or any of the many

similar ones) can make for a really bad day.

While not foolproof, the following is suggested as methodology for perfecting and maintaining first-party claims and for negotiating the UM/UIM minefield.

1. Send a letter of representation when you open the file at the same time you send out the third-party representation letter. Arguably, this letter will trigger an immediate duty in the carrier to begin investigating the claim. *See, Allstate Ins. Co. v. Pietrosh*, 85 Nev. 310, 454 P.2d 106 (Nev. 1969) (“we do not hesitate to place the burden of affirmative action upon the insurance company. When notified of a claim it should investigate with reasonable dispatch”). In the letter of representation ask for the carrier to identify and/or provide “any and all exclusions/provisions which purport to void and/or limit coverage, any and all time limits

set forth in the policy, any and all requirements on the part of the insured under the policy, and any and all required proofs of loss and/or other contractual requirements to perfect the UM/UIM claim.” Compliance with this request on the part of the carrier is mandated pursuant to N.A.C 686A.660: “Each insurer shall fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance contract or policy under which a claim is presented.” N.A.C. 686A.665(4) provides further authority:

Each insurer, upon receiving notification of a claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first-party claimants can comply with the policy conditions and the insurer’s reasonable requirements.

Placing the UM/UIM carrier on notice early in the game allows for
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review of the above materials, preparation of any required proof of loss, and lessens the likelihood that coverage will later be denied.

2. Request a certified copy of the policy including any amendments and/or endorsements. It is understood that it is time consuming and not (perhaps) standard practice to request and review each and every UM/UIM policy that comes into the office. Many cases simply will not involve a first-party claim. However, possession of the policy at the case's inception will allow for a quick review if the issue arises and will provide direction in obvious UM/UIM claims. Failure to provide a certified copy on the part of the carrier could also serve as a defense to a reservation or denial of coverage at a later time.

3. Return any required proofs of loss to the carrier with a cover letter stating: "Please see the enclosed proof of loss as required under the subject policy. Please inform this office immediately of any other/further requirements on claimant's part which are necessary to perfect his/her claim." This correspondence will serve to reinforce the protection afforded by the initial letter of representation and could initiate a waiver of any coverage denials and/or reservations by the carrier:

NAC 686A.675: Stands applicable to all insurers.

Within 30 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant must be advised of the acceptance or denial of the claim by the insurer. No insurer may deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to the provision, condition or exclusion is included in the denial.

4. Put language in both the initial representation letter and the cover letter for the proof of loss pertaining to "Permission to Sue" as follows: "It is presumed that your company has extended consent to my client to bring

an action at law against the third party in this matter. If such permission is being denied, please immediately direct this office to any and all provisions of the policy serving as a basis for such denial. If this office does not receive such information as required under Nevada law, any 'Permission to Sue' provision within the subject policy will be considered to be waived." Again, this language adds an extra layer of protection for the practitioner and creates an additional argument against any future coverage denial: "In short, the insurance company may not ignore its insured and then seek refuge in the fine print of its policy." *Allstate Ins. Co. v. Pietrosh*, 85 Nev. 310, 454 P.2d 106 (Nev. 1969).

5. Notice the first-party carrier of your intent to settle with the third party with a time limit within which to object to the settlement.

6. With any third-party settlement, obtain a declarations sheet showing the tortfeasor's policy limits and confirmation (an affidavit of either the insured or the adjuster) that no umbrella

and/or additional coverage is in effect. This prevents the practitioner from failing to identify all third-party coverages (potential malpractice) and satisfies the burden of demonstrating that UIM coverage has been triggered.

7. Send a file stamped copy of the Complaint to the carrier and, thereafter, proof of service of process.

8. Continue to provide the UIM carrier with damages information (medical records, wage loss) during the third-party action.

The above has been proven to be a sound and reliable method for preventing the denial and/or reservation of coverage in first-party claims. I hope this helps.

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