

CHAPTER 63. UNINSURED MOTORISTS COVERAGE

Subch. A. GENERAL PROVISIONS 63.1
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Subchapter A. GENERAL PROVISIONS

- Sec. 63.1. Policies to which coverage shall be attached.
63.2. Extent of coverage to be offered.
63.3. Minimum coverage.

Authority

The provisions of this Chapter 63 issued under act of August 14, 1963 (P. L. 909, No. 433) (40 P. S. § 2000), unless otherwise noted.

Source

The provisions of this Chapter 63 adopted December 4, 1963, unless otherwise noted.

Notes of Decisions

Scope of Regulation

Uninsured motorist policies must conform to the regulations promulgated by the Insurance Commissioner in Chapter 63 (relating to uninsured motorists coverage), and any language differing from the arbitration provision will not be construed to limit the scope of arbitration approved by the Commissioner. Erie Insurance Exchange v. Ryan, 66 Pa. D. & C.2d 28 (Pa. Com. Pl. 1974).

§ 63.1. Policies to which coverage shall be attached.

(a) Liability insurance policies which insure against loss for bodily injury or death suffered by a person arising out of the ownership, maintenance or use of a motor vehicle, shall include uninsured motorists coverage when delivered or issued for delivery in this Commonwealth, unless the coverage is rejected in writing by the insured.

(b) Uninsured motorists coverage applies to motor vehicles registered or principally garaged in this Commonwealth.

§ 63.2. Extent of coverage to be offered.

(a) The extent of the coverage which shall be offered as "Uninsured Motorists Coverage" shall be at least that coverage contained in the sample form in Exhibit C, which is the National standard form for this insurance.

(b) An endorsement shall be issued by insurers to effect removal of an exclusion not listed in Exhibit C: Exclusions. A notice shall accompany each endorsement at the initial policy writing or at renewal which notice fully informs the

insured of his right to reopen claims where a previous claim was denied under the exclusion on or after April 13, 1978.

(1) The endorsement and notice shall be submitted to the Bureau of Regulation of Rates and Policies for prior approval. Insurers or rating organizations on behalf of their members and subscribers shall make the filings not later than August 15, 1979.

(2) The following notice will be deemed to meet the requirements of this subsection:

On April 13, 1978, the Superior Court of Pennsylvania declared void an exclusion which denies Uninsured Motorists coverage when an insured is injured while occupying an uninsured motor vehicle owned by that insured. Accordingly, insurers cannot deny coverage solely by reason of that exclusion for claims made or pending on or after April 13, 1978. Contact your agent if you think you are entitled to payment as a result of this change to your policy as of April 13, 1978.

#### Notes of Decisions

##### *Regulations Valid*

The territorial limitation clause in an insurance contract was not void as against public policy, and was upheld. *Hall v. America Mutual Insurance Co.*, 625 A.2d 1232 (Pa. Super. 1993); appeal granted 634 A.2d 222 (Pa. 1993); reversed 648 A.2d 755 (Pa. 1994).

**EXHIBIT C****Insuring Agreements****I. Damages for Bodily Injury Caused by Uninsured Automobiles**

The company will pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this endorsement, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive, as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

**II. Definitions****(a) "insured"** means:

(1) the named insured as stated in the policy (herein also referred to as the "principal named insured") and any person designated as named insured in the schedule and, while residents of the same household, the spouse of any such named insured and relatives of either;

(2) any other person while occupying an insured automobile; and

(3) any person, with respect to damages he is entitled to recover because of bodily injury to which this endorsement applies sustained by an insured under (1) or (2) above.

The insurance applies separately with respect to each insured, but the application of the insurance to more than one insured shall not operate to increase the limits of the company's liability.

**(b) "insured automobile"** means an automobile:

(1) described in the schedule as an insured automobile to which the bodily injury liability coverage of the policy applies;

(2) while temporarily used as a substitute for an insured automobile as described in subparagraph (1) above, when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(3) while being operated by a named insured or by his spouse if a resident of the same household;

but the term "insured automobile" shall not include:

(i) an automobile while used as a public or livery conveyance;

(ii) an automobile while being used without the permission of the owner;

(iii) under subparagraphs (2) and (3) above, an automobile owned by the principal named insured or by any named insured designated in the schedule or by any resident of the same household as such insured; or

(iv) under subparagraphs (2) and (3) above, an automobile furnished for the regular use of the principal named insured or any resident of the same household.

(c) **“uninsured automobile”** means:

(1) an automobile with respect to the ownership, maintenance or use of which there is, in at least the amounts specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder; or

(2) a hit-and-run automobile as defined;

but the term “uninsured automobile” shall not include:

(i) an insured automobile,

(ii) an automobile which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law,

(iii) an automobile which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing,

(iv) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle, or

(v) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(d) **“hit-and-run automobile”** means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided: (1) there cannot be ascertained the identity of either the operator or owner of such “hit-and-run automobile”; (2) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (3) at the company’s request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

(e) **Occupying.** The word “occupying” means in or upon or entering into or alighting from.

(f) **State.** The word “state” includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

### III. Policy Period, Territory

This endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada.

#### Exclusions

This endorsement does not apply:

(a) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this endorsement shall, without written con-

sent of the company, make any settlement with any person or organization who may be legally liable therefor;

(b) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

#### Conditions

1. **Policy Provisions.** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice" or "Notice of Accident," "Changes," "Assignment," "Cancellation" and "Declarations."
2. **Premium.** If during the policy period the number of insured automobiles owned by the principal named insured or spouse or the number of dealer's license plates issued to the principal named insured changes, such named insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, such named insured shall pay the excess to the company; if less, the company shall return to such named insured the unearned portion paid by such insured.
3. **Proof of Claim; Medical Reports.** As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the company and subscribed the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefore, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.
4. **Assistance and Cooperation of the Insured.** After notice of claim under this endorsement, the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury; and in any action against the company, the company may require the insured to join such person or organization as a party defendant.
5. **Notice of Legal Action.** If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.
6. **Limits of Liability.**

- (a) The limit of liability stated in the schedule as applicable to “each person” is the limit of the company’s liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the schedule as applicable to “each accident” is the total limit of the company’s liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.
- (b) any amount payable under the terms of this endorsement because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by
- (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury including all sums paid under the Bodily Injury Liability Coverage of the policy, and
  - (2) the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen’s compensation law, disability benefits law or any similar law.
- (c) any payment made under this endorsement to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under the Bodily Injury Liability Coverage of the policy.
- (d) the company shall not be obligated to pay under this Coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable under the Medical Payments Coverage of the policy.
- 7. Other Insurance.** With respect to bodily injury to an insured while occupying an automobile not owned by the principal named insured, the insurance under this endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit or liability for this coverage exceeds the applicable limit of liability of such other insurance.
- Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this Coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.
- 8. Arbitration.** If any person making claim hereunder and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this endorsement, then, upon written demand of either, the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and the company each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this endorsement.

- 9. Trust Agreement.** In the event of payment to any person under this endorsement:
- (a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
  - (b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this endorsement;
  - (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
  - (d) if requested in writing by the company, such person shall take, through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;
  - (e) such person shall execute and deliver to the company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the company established by this provision.
- 10. Payment of Loss by the Company.** Any amount due hereunder is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due hereunder in accordance with division (d) hereof.
- 11. Action Against Company.** No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

#### Source

The provisions of this § 63.2 amended through June 15, 1979, effective June 16, 1979, 9 Pa.B. 1876. Immediately preceding text appears at serial page (37810).

#### Notes of Decisions

##### *Arbitration*

In the absence of a statutory requirement, arbitration may not be required by regulation. To require by regulation what the legislature omitted from statute was an unlawful delegation of powers to the Insurance Commissioner. *McFarley v. American Indep. Ins. Co.*, 663 A.2d 738 (Pa. Super. 1995).

The regulatory requirement of an arbitration provision was not grounds to require a third party to participate in arbitration under an uninsurance claim; and in the absence of a statutory requirement that the appellee submit the uninsured motorist claim to an arbitration procedure, the appellee's right to a jury trial could not be abridged where no actual contract existed between the parties. *Johnson v. Pennsylvania National Insurance Companies*, 557 A.2d 789 (Pa. Super. 1989).

Insurance Department had authority under 40 P. S. § 2000 to adopt this regulation which requires inclusion of an arbitration clause in Uninsured Motorist Coverage; the arbitration requirement did not violate the rights to jury trial under the United States or Pennsylvania Constitutions. *Prudential Property and Casualty Insurance Co. v. Muir*, 513 A.2d 1129 (Pa. Cmwlth. 1986); appeal denied 522 A.2d 1106 (Pa. 1987).

Although insurers assigned under the Pennsylvania Assigned Claims Plan were obligated to pay Uninsured Motorist Benefits as if a basic loss policy had been issued, in such cases arbitration could not be required by this regulation, since the regulation would be an unlawful exercise of power not delegated under the statute and since even legislative requirement of arbitration in such circumstances would be an unconstitutional infringement of the right to trial by jury. *Johnson v. The Travelers*, 502 A.2d 206 (Pa. Super. 1985).

In denying recovery against uninsured motorist benefits where the motorist carried the legal minimum of insurance, the Court noted that it could review the arbitrator's award under the standards of the act of April 25, 1927 (P. L. 381, No. 248) (5 P. S. §§ 161—181) (Repealed), permitting reversal for errors of law, rather than under the narrower standards for reviewing common-law arbitration, which is prescribed by subsection (a), because the appellant failed to raise the issue below and because the appellant's petition specifically stated that the arbitration was under the act of April 25, 1927 (P. L. 381, No. 248) (5 P. S. §§ 161—181) (Repealed). *McDonald v. Keystone Insurance Co.*, 459 A.2d 1292 (Pa. Super. 1983).

#### *Coverage Unavailable*

A school district bus driver's exclusive remedy for injuries sustained in the course and scope of employment was under the Pennsylvania Workmen's Compensation Act (77 P. S. § 1 et seq.) and therefore the bus driver could not make a claim under the act of August 14, 1963. *Lewis v. School District of Philadelphia*, 538 A.2d 862 (Pa. 1988).

#### *Double Coverage*

An exclusion in a policy substantially similar, but not identical to the one in the sample form and which reached the same result of denying double recovery for the same injury under an uninsured motorist provision, did not violate Insurance Department regulations. *Adelman v. State Farm Mutual Automobile Insurance Co.*, 386 A.2d 535 (Pa. Super. 1978).

#### *Excess Coverage*

A statement providing that, "If the injured person was occupying a vehicle you do not own which is insured for this coverage under another policy, this coverage will be excess. This means that when you are legally entitled to recover damages in excess of the other policy limit, we will pay the amount by which the limit of liability of this policy exceeds the limit of liability of that policy," was the precise type of "excess coverage clause" authorized by 31 Pa. Code. *Brissett v. Southeastern Pennsylvania Transportation Authority*, 513 A.2d 1037 (Pa. Cmwlth. 1986); appeal denied 522 A.2d 49 (Pa. 1987).

#### *Exemptions*

Since the Commissioner may not grant an exemption contrary to the legislative intent expressed in the statutory provision to which the regulation relates, the approval of an insurance policy by the Commissioner cannot amount to an exemption from the requirements of the Uninsured Motorist Act. *Wilbert v. Harleysville Mutual Insurance Co.*, 385 A.2d 987 (Pa. Super. 1978).

#### *Interpretation of Policies*

Policy language which purports to entitle an insurer to a trial de novo if an arbitration award exceeds the limits required under the Financial Responsibility Law improperly modifies the minimum



coverage requirements under this section, and is therefore void. *Hoerst v. Prudential Property and Casualty Insurance Co.*, 624 A.2d 187 (Pa. Super. 1993).

#### *Judicial Review*

A judicial determination of the legality of a policy limitation clause challenged on the contention that it did not contain an exemption to the exclusion as set forth in Exhibit C, III(b) of this regulation cannot be made on the basis of a board of arbitrator's order to vacate an award which order was entered without an opinion or explanation. *Gallagher v. Educator and Executive Insurers, Inc.*, 381 A.2d 986 (Pa. Super. 1977).

#### *Jurisdiction*

If an insured claims that a vehicle was insured according to the Insurance Commissioner's regulations but was nonetheless uninsured according to 40 P. S. § 2000(a), jurisdiction is properly in the court rather than in the arbitrators. *Balboa Insurance Co. v. Amity*, 446 A.2d 1343 (Pa. Super. 1982).

#### *Regulations Invalid*

Regulations promulgated by the Insurance Commissioner which authorized insurance companies to use territorial limitations were invalid as contrary to the legislative intent of the statutory provisions. *Hall v. America Mutual Insurance Co.*, 625 A.2d 1232 (Pa. Super. 1993); appeal granted 634 A.2d 222 (Pa. 1993); reversed 648 A.2d 755 (Pa. 1994).

#### *Set-off Provisions*

Insurance company was not obligated by the policy of insurance issued to the injured parties to provide uninsured motorist benefits to appellees where the policy clearly provided that all sums paid under the liability coverage of the policy would be deducted from any sums payable under the uninsured motorist coverages. *Pempkowski v. State Farm Mutual Automobile Insurance Co.*, 678 A.2d 398 (Pa. 1996).

#### *Territorial Exclusions*

A territorial exclusion, such as that provided for in this regulation, was neither invalid under the Uninsured Motorist Coverage Act (40 P. S. § 2000) nor void as against public policy. *Fulton v. Allstate Insurance Co.*, 17 Pa. D. & C.3d 316 (1980).

The territorial exclusion violates the legislative intent to provide wide protection in uninsured motorist cases and was invalid. *Schmitt v. Hertz Autovermietung GMBH No. 2*, 6 Pa. D. & C.3d 410 (1978).

#### *Uninsured Motorist Coverage*

It is not against public policy for an insurer to reduce uninsured motorist coverage payments made to a guest passenger with liability coverage payments made under the same policy to the same guest passenger if both host driver and another uninsured driver are jointly liable for the injuries suffered by the passenger. *Jeffery v. Erie Insurance Exchange*, 621 A.2d 635 (Pa. Super. 1993); appeal denied 644 A.2d 736 (Pa. 1994).

If plaintiffs suffer injuries as a result of a collision with an underinsured motorist, they may not recover under the uninsured motorist provision of their insurance policy. *Balboa Insurance Co. v. Amity*, 446 A.2d 1343 (Pa. Super. 1982).

"Uninsured automobile" in Exhibit C, II(c) of of this regulation was defined to apply to an automobile with no insurance coverage whatsoever. It did not include an automobile which was insured but, due to a catastrophic accident, rendered the liability coverage required by state law inadequate to compensate all victims for all losses. *White v. Concord Mut. Ins. Co.*, 442 A.2d 713 (Pa. Super. 1982), affirmed 454 A.2d 982 (Pa. 1982); affirmed 454 A.2d 982 (Pa. 1982).

An insurance company may contractually divide the uninsured motorist coverage in two or more automobile insurance policies issued to members of the same household in order to prevent cumulation of coverage without contravening the uninsured motorist law. *Adelman v. State Farm Mutual Automobile Insurance Co.*, 386 A.2d 535 (Pa. Super. 1978).

An insurance company was required by the Uninsured Motorist Act to furnish uninsured motorist coverage to individuals occupying an uninsured automobile owned by the insured party or the insured's family and the contract cannot be abrogated by lack of premium where the insurer did not offer the insured the opportunity to pay a premium. *Wilbert v. Harleysville Mutual Insurance Co.*, 385 A.2d 987 (Pa. Super. 1978).

### § 63.3. Minimum coverage.

(a) The Insurance Department will require the coverage set forth in the form in Exhibit C as the minimum coverage which will be approved by the Department as satisfactorily complying with the requirements of act of August 14, 1963 (P. L. 909, No. 433) (40 P. S. § 2000).

(b) A company or bureau which has already received approval of a form providing this coverage may certify in writing, signed by an officer of the company or bureau, that the approved form meets the minimum requirements of this chapter, if such is the case.

(c) The limits of liability for bodily injury or death shall be at least the limits required from time to time by the General Assembly in section 1421 of the Vehicle Code (75 P. S. § 1421) (Repealed).

## Subchapter B. [Reserved]

### Source

The provisions of these §§ 63.101—63.104 adopted April 15, 1994, effective April 16, 1994, 24 Pa.B. 1971; reserved December 23, 1994, effective December 24, 1994, 24 Pa.B. 6451. Immediately preceding text appears at serial pages (188550) to (188551).

## §§ 63.101—63.104. [Reserved].

[Next page is 64-1.]