PUBLICATION UPDATE

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
☐ _____ ☐ _____ ☐ _____ ☐ _____

No-Fault and Uninsured Motorist Automobile Insurance

Publication 469 Release 49 June 2011

HIGHLIGHTS

- Several new jurisdictional charts have been added in this release: Appendix N: No-Fault Statutes of Limitations; Appendix O: No-Fault Intentional Injury Exclusion; Appendix P: Subrogation and No-Fault Claims; Appendix Q: Owned Vehicle Exclusion; and Appendix R: Subrogation of Uninsured/Underinsured Motorist Claims.
- An out-of-state driver was subject to the limitation-on-lawsuit threshold in the New Jersey no-fault statute under the deemer statute, N.J. Stat. Ann. § 17:28-1.4, because his insurer controlled affiliate companies in New Jersey. The issue was not whether a plaintiff's policy actually included New Jersey no-fault PIP benefits coverage but rather, the issue was whether an out-of-state insurer was authorized to transact either private passenger automobile or motor vehicle insurance business. Cupido v. Perez, 415 N.J. Super. 587, 596, 2 A.3d 1159 (App. Div. 2010). (Chapters 1, 20).
- A provision of the California uninsured motorist (UM) statute that requires the insured to settle the claim, file suit or seek arbitration within two years of the accident did not violate the equal protection clause. In a 2010 case, the insured minor was struck and injured by an uninsured motorist. The insured sought arbitration of his UM claim more than three years after the date of the accident and then demanded arbitration. The application of the UM statute to a minor did not violate equal protection because the statute's requirements applied equally to people of all ages and the exceptions contained in the statute, such as impossibility, were supported by a rational purpose. Unlike in the underinsured motorist (UIM) context, a UM insurer's exposure to liability occurs upon what is, or should be, a prompt determination that the tortfeasor is uninsured and the injured party files a claim with his insurer. Therefore, the California Legislature necessarily and logically intended that UM insurers be placed on notice as quickly as possible of their potential exposure so as to encourage settlement of the claim.

The fact that the insured was a minor did not render compliance with the UM statute impossible or impractical. Furthermore, a rational basis existed for any difference in treatment between minors recovering under their UIM coverage and those recovering under their UM coverage. Blankenship v. Allstate Ins. Co., 186 Cal. App. 4th 87, 103, 111 Cal. Rptr. 3d 528 (2010). (Chapter 3).

- The New York statute permits an exclusion for a person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug within the meaning of N.Y. Veh. & Traf. Law § 1192. However, the exclusion does not apply to coverage for necessary emergency health services. N.Y. Ins. Law § 5103. (Chapter 10).
- In a Maine case, the claimant was using a customer's motorcycle with the owner's permission when the motorcycle was struck by another vehicle. The insurer argued that the claimant was engaged in a test drive of the motorcycle and thus coverage was excluded because the motorcycle was "used in the business of selling, repairing, servicing, storing or parking motor vehicles." Although the motorcycle was not regularly used as a part of the repair business, the test drive fit the policy exclusion because the motorcycle was being used as part of the repair process and medical payments benefits were excluded by the policy language. Tibbetts v. Dairyland Ins. Co., 2010 ME 61, 999 A.2d 930. (Chapters 10, 31).
- A Florida insurer's decision to reimburse the provider for an magnetic resonance imaging (MRI) in the amount of the Medicare Outpatient Prospective System (OPPS) cap was not proper under Fla. Stat. § 627.736, which did not permit the provider to rely on the OPPS cap. Therefore, the insurer was required to reimburse for MRI services according to the participating physicians' schedule and not according to any other schedule or calculation that may be required under the federal Medicare statute. All Family Clinic of Daytona Beach, Inc. v. State Farm Mut. Auto. Ins., Co., 685 F. Supp. 2d 1297, 1302 (S.D. Fla. 2010). (Chapter 11).
- The Michigan University health system that treated an uninsured man who was severely injured in an automobile accident sought payment of his medical treatment. Less than one year after the accident, the uninsured man sought personal injury protection (PIP) benefits. Because he was not covered under a no-fault policy, the state's assigned claims facility designated the insurer as the servicing insurer for his claims. Nearly five years after the accident, the university's health system sued the insurer and sought payment from it for his medical treatment. The trial court dismissed the lawsuit upon finding that the one-year back rule of Mich. Comp. Laws § 500.3145. Even though the one-year-back rule would otherwise bar the recovery of damages, it had to be considered alongside Mich. Comp. Laws § 600.5821(4) allowing claims by the certain state entities without regard to limitations period. The court overruled *Cameron v. Auto Club Ins. Ass'n*, 476 Mich. 55, 718 N.W.2d 784 (2006). Regents of the Univ. of Mich. v. Titan Ins. Co., 487 Mich. 289, 791 N.W.2d 897 (2010). (Chapter 14).
- In several Florida cases, the courts explored whether the insured's failure to appear at an independent medical examination (IME) was unreasonable. In *Custer Med. Ctr. v. United Auto. Ins. Co.*, 2010 Fla. LEXIS 1860 (Nov. 4, 2010), the insured submitted a claim for personal injury protection (PIP) benefits after seeking medical treatment for injuries incurred in an

accident. Long after the treatment ended the insurer schedule a medical examination for which the insured did not appear and the insurer denied PIP benefits. The insurer claimed that the insured's failure to appear at the scheduled medical examination was unreasonable as a matter of law under Fla. Stat. § 627.736. The insurer did not meet the burden of proof on the issue of whether the failure to appear at the IME was unreasonable. In *Comprehensive Health Ctr., Inc. v. United Auto. Ins. Co.*, 2010 Fla. App. LEXIS 19841 (Dec. 29, 2010), the insured did not appear for the medical examination appointments because she alleged that she never received notice of them, and/or her attorney did not tell her about them. The insured's reason for her non-appearance at the medical examination appointments constituted an unreasonable basis to excuse her non-appearance. Finally, in *United Auto. Ins. Co. v. Gaitan*, 41 So. 3d 268 (Fla. Dist. Ct. App. 2010), the insured's failure to attend a chiropractic examination on the ground that she was not treating with a chiropractor was not unreasonable as a matter of law. (Chapter 14).

- Florida and New Jersey courts addressed the issue of whether a condition precedent to no-fault coverage applies to an assignee. In the Florida case, although a provision in an insurance policy that required the insured to submit to an examination under oath (EUO) qualifies as a condition precedent to recovery of policy benefits, the obligation to submit to the EUO belonged to the insured, not an assignee. A Florida appellate court certified a question to the Florida Supreme Court as to whether a health care provider that accepts an assignment of no-fault insurance proceeds in payment of services provided to an insured can be required to submit to an EUO as a condition to the right to payments. Shaw v. State Farm Fire & Cas. Co., 37 So. 3d 329 (Fla. Dist. Ct. App. 2010). Likewise, in a New Jersey case, the cooperation clause of the insurance contract, although binding on the insured, did not extend to assignees. The insurer, in connection with its investigation of suspected insurance fraud, sought expansive discovery from assignees, the medical providers that submitted claims to the insurer for payment of personal injury protection benefits to its insureds. The cooperation clause of the insurer's contract, although binding on its insureds, was not enforceable against the assignees in the insurer's declaratory judgment action. Selective Ins. Co. of America v. Hudson East Pain Management Osteopathic Medicine and Physical Therapy, 416 N.J. Super. 418, 5 A.3d 166 (App. Div. 2010). (Chapter 14).
- The New York Court of Appeals ruled that a supplementary uninsured motorist (SUM) arbitrator did not exceed his power by disregarding the preclusive effect of the prior no-fault arbitration award, which involved the same parties, the same accident, the same injuries, and resolution of the same issue (causation) as the subsequent SUM arbitration award. The insurer, a party to the prior arbitration, lost on the causation issue. The prevailing party in the prior arbitration argued that collateral estoppel should apply to bar relitigation of the causation issue in the subsequent SUM arbitration. The SUM arbitrator rejected the collateral estoppel argument, had the parties re-litigate the causation issue and found in the insurer's favor on the causation issue. The court declined to decide whether the SUM arbitrator erred in not applying collateral estoppel because the SUM arbitration award was not patently irrational or so egregious as to violate public policy. The issue of whether the SUM arbitrator erred or exceeded his authority was beyond the court's review powers. Judge Pigott dissented on the grounds that

the SUM arbitrator exceeded his authority by not granting the no-fault arbitrator's causation finding preclusive effect. Matter of Falzone v. New York Cent. Mut. Fire Ins. Co., 15 N.Y.3d 530, 914 N.Y.S.2d 67, 939 N.E.2d 1197 (2010). (Chapters 15, 28, 30).

- The Michigan Supreme Court revisited the threshold requirement for establishing a serious impairment of a body function. In the 2010 case of *McCormick v. Carrier*, 487 Mich. 180, ___ N.W.2d ___ (2010), the plaintiff met the serious impairment threshold as a matter of law. There was no factual dispute that was material to determining whether the serious impairment threshold was met. The parties did not dispute that the plaintiff suffered a broken ankle, was completely restricted from bearing weight on his ankle for a month, and underwent two surgeries over a 10-month period and multiple months of physical therapy. The parties disputed the extent to which the plaintiff continues to suffer a residual impairment and the potential for increased susceptibility to degenerative arthritis. The plaintiff provided at least some evidence of a physical basis for his subjective complaints of pain and suffering. Therefore, the court held that the Kreiner v. Fischer, 471 Mich. 109, 683 N.W.2d 611 (2004), was wrongly decided to the extent that it could be read to *always* require medical documentation. (Chapters 17 and 20).

- In an Indiana case, the uninsured motorist (UM) policy did not provide coverage for the insureds alleged emotional distress suffered in connection with an automobile accident that killed the insureds' daughter because the insureds did not suffer any direct physical impact or injury in the accident. The insureds' thirteen-year-old daughter was a passenger in another vehicle traveling behind them when another vehicle crossed the median of the highway and struck the vehicle in which the daughter was traveling, killing her. The insured saw the accident in their rear-view mirror. Although a piece of debris from the accident may have struck the insureds' windshield, neither of them suffered any direct physical impact or injury in the accident. The husband has been diagnosed with and sought treatment for high blood pressure and depression. The fact that the husband was claiming physical manifestations of his emotional distress also was irrelevant because subsequent physical manifestations of emotional distress unrelated to a physical impact, force, or harm sustained in an accident are not a compensable "bodily injury". The policy defined "bodily injury" at the time of the accident was "bodily injury to a person and sickness, disease or death which results from it. According to the court, a person does not sustain bodily injury if that person suffers emotional distress in the absence of physical bodily injury." Taele v. State Farm Mut. Auto. Ins. Co., 936 N.E.2d 306 (Ind. Ct. App. 2010). (Chapter 23).

- A Kentucky worker could not recover under his personal policy of uninsured/underinsured motorist (UM/UIM) coverage for uncompensated injuries sustained in a work-related motor vehicle accident caused by the negligence of a co-worker. The estate of the worker who was killed in a work related automobile accident had already recovered workers compensation benefits and thus was not "legally entitled to collect" any further amounts from either the employer or the co-worker. The policy provided for payment of UM/ UIM benefits only for "bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured [underinsured] motor vehicle." The Kentucky Supreme Court distinguished the prior holdings because in those cases the tortfeasor was a

third party, not a co-worker protected from liability by the workers' compensation law. State Farm Mut. Auto. Ins. Co. v. Slusher, 325 S.W.3d 318 (Ky. 2010). (Chapter 23).

- An offer form, which was prefilled by an insurer's agents and signed, dated, and returned by the insured, failed to comply with the Delaware uninsured/underinsured (UM/UIM) motorist statute because the insured was denied the chance to make an informed decision regarding UM coverage. Thus, the insured's policy was reformed to increase the UM coverage to match the bodily injury liability limits. Banaszak v. Progressive Direct Ins. Co., 3 A.3d 1089 (Del. 2010). (Chapter 23).
- In two South Carolina cases, even though the rejection form did not comply with the uninsured/underinsured motorist (UM/UIM) statute, a meaningful offer of UM/UIM coverage was made and the insured was held to have rejected coverage. In *Ray v. Austin*, 388 S.C. 605, 698 S.E.2d 208 (2010), the rejection form failed to show the commonly sold limits of UIM coverage along with the corresponding increases in premiums. However, the court found that a meaningful offer of UIM coverage was made. The insured's risk manager made a business decision to reject UM/UIM coverage. Instead, it relied on workers compensation to cover employees injuries in automobile accidents. The clear purpose of the meaningful offer requirement is to protect insureds--to give them the opportunity "to know their options and to make an informed decision as to which amount of coverage will best suit their needs." The insured made a business decision to refuse UIM coverage with full awareness of the nature of the coverage it was rejecting and thus the insurer made a meaningful offer of UIM coverage. In *Grinnell Corp. v. Wood*, 389 S.C. 350, 698 S.E.2d 796 (2010), the insurer conceded that its form did not comply with the requirements of the South Carolina UM/UIM statute. However, the record established that the insured knew its options with respect to additional UM and UIM coverage in South Carolina and made an informed decision as to the amount of coverage that best suited its needs. The insured's vice president of risk management testified that he desired and intended to limit optional UM and UIM coverage within the policies across all states as part of his risk management strategy. Because the insured knew his options with respect to additional UM and UIM coverage in South Carolina and knowingly declined the offer, the lower court's decision that the insurer did not make a meaningful offer of coverage would create an absurd result. (Chapter 23).
- The Alabama Supreme Court rejected the insured's claim that the insurer's uninsured/underinsured motorist (UM/UIM) coverage for more than three vehicles on a policy was illusory because Ala. Code § 32-7-23 provided that no more than three coverages could be stacked under a single policy. The insurer moved to dismiss the action because the court lacked jurisdiction to decide on a matter within the exclusive jurisdiction of the Alabama Insurance Commissioner. The insured argued that rather than contesting rates, he was challenging the insurer's practice of requiring insureds with more than three vehicles to choose UM coverage for all or none of their vehicles. The claim was dismissed under the filed-rate doctrine and because the insured failed to exhaust administrative remedies. *In re* Peacock v. Cincinnati Ins. Co., 51 So. 3d 298 (Ala. 2010). (Chapters 23 and 33).
- In Georgia, an unpaid hospital lien does not reduce the available coverage of a tortfeasor's policy or increase the uninsured motorist

(UM) coverage. Hospital liens imposed do not qualify as "payment of other claims or otherwise" under Ga. Code Ann. § 33-7-11. N.69 In *Am. Int'l South Ins. Co. v. Floyd*, 288 Ga. 322, 704 S.E.2d 755 (2010), the insured had an uninsured motorist (UM) policy with $25,000 worth of coverage. The court rejected the insured's argument that, despite the $25,000 payment from the tortfeasor's insurer, her insurer was required to cover her remaining damages, including an outstanding hospital lien. In *State Farm Mut. Auto. Ins. Co. v. Adams*, 288 Ga. 315, 702 S.E.2d 898 (2010), the tortfeasor's insurer paid $15,782 to the insured and $9,217 to a hospital that treated the insured. Because his damages exceeded $25,000, the insured filed a claim with his UM insurer, with whom the insured carried $100,000 worth of coverage. The insurer paid $75,000, contending that it was entitled to a credit for all of the coverage paid out by the tortfeasor's insurer. The insured argued that the insurer was not entitled to a credit for payment of the hospital lien. The payment of the hospital lien was a payment of "other claims or otherwise" under Ga. Code Ann. § 33-7-11 for services rendered to the insured and for which the insured was personally responsible. The payment of a hospital lien should not be subtracted from a tortfeasor's total liability coverage to determine the underinsured motorist (UIM) coverage of an insured, who has been injured in an accident. (Chapter 23).

- The North Dakota Supreme Court further explained interplay between the uninsured motorist (UM) and no-fault statutes in a 2010 case. The insured sought to recover both no-fault and UM coverage. The parties did not dispute that the other driver was uninsured. The UM insurer was entitled to all of the uninsured motorist's defenses. UM benefits were not payable "[f]or damages for pain, suffering, mental anguish, inconvenience, or other noneconomic loss which could not have been recovered had the owner or operator of the motor vehicle responsible for such loss maintained the security required under any applicable state no-fault law." In his negligence claim against the other driver, the insured must prove that the other driver owed him a duty, that the other driver failed to discharge that duty, and that the other driver's negligence proximately caused him "serious injury." When a defendant's negligence aggravates a preexisting injury, the defendant must compensate the victim for the full extent of the aggravation but is not liable for the preexisting condition itself. The record included minimally sufficient facts from a medical provider to raise a genuine issue of fact about whether the insured's claimed injuries and damages were proximately caused by the accident. Therefore, judgment for the insured was reversed and the case was remanded. Perius v. Nodak Mut. Ins. Co., 2010 ND 80, 782 N.W.2d 355, 360. (Chapter 23).
- A New Hampshire student who was sexually assaulted by a teacher on a number of occasions in the teacher's vehicle, either while the teacher was driving or while the vehicle was parked with the engine running, could not recover uninsured motorist (UM) benefits. The vehicle acted as merely the situs of an injury, the causal connection between the injury and the use of the vehicle was too tenuous to support coverage. Although the teacher was driving the vehicle and thus using the vehicle during some of the assaults, the student's injuries did not originate from, grow out of, or flow from the teacher's use of his vehicle. The allegation that the teacher might not have had access to the student absent the use of his vehicle was insufficient to establish the necessary nexus between

the use of the vehicle and the student's injuries. Concord Gen. Mut. Ins. Co. v. Doe, 161 N.H. 73, 8 A.3d 154 (2010). (Chapter 24).

- In a South Carolina case, an employee of an insured was not entitled to underinsured motorist (UIM) coverage under a commercial insurance policy that defined "occupying" as having actual physical contact with the vehicle while in, upon, entering, or alighting from it. The employee was standing in the restaurant parking lot near the insured's vehicle when he was struck by a vehicle. The insurer denied coverage because the employee was not occupying the insured's truck at the time of the accident. The court employee was not touching the truck, nor had he just alighted from the truck. Rather, the employee had gone into the restaurant and returned to the parking lot, at the time of the accident. S.C. Farm Bureau, Mut. Ins. Co. v. Kennedy, 390 S.C. 125, 700 S.E.2d 258 (Ct. App. 2010). (Chapter 24).
- A New Hampshire minor was involved in an accident while operating an all-terrain vehicle (ATV) when it was by an uninsured motorist. The ATV was owned by the minor's father and was designed for use and operation principally off public roads. The minor sought coverage under his parents' policy. The policy did not provide a definition of the term "motor vehicle" in the exclusion section. By electing not to define the term "motor vehicle" in the exclusion, but including a definition elsewhere in the policy that is favorable to the insured, the insurer has created an exclusionary clause that is reasonably susceptible to different interpretations. Therefore, the court upheld the lower court's ruling that the insurer must provide the minor with uninsured motorist (UM) coverage under the policy. Brickley v. Progressive N. Ins. Co., 160 N.H. 625, 7 A.3d 1215 (2010). (Chapter 24).
- The Colorado Supreme Court declined to answer a federal court's certified question as to an insured's entitlement to uninsured motorist (UM) benefits for injuries caused by an intention act. The insured's son was driving an insured vehicle when the driver of another vehicle fired a shotgun, striking a passenger in the insured vehicle. The son pulled the vehicle to the side of the road and got out. He was then shot and killed by the driver. The insured filed an uninsured motorist (UM) claim with the insurer. Coverage was not required under Colo. Rev. Stat. § 10-4-609 because the driver's use of the uninsured vehicle was not sufficiently linked to the death of the insured's son. The son pulled over because of the driver's use of the shotgun, not his use of the vehicle, and the uninsured vehicle was not positioned in a manner that restricted the insured vehicle's movement. The driver's use of the vehicle to transport him to the scene of the assault was insufficient to establish a causal nexus. State Farm Mut. Auto. Ins. Co. v. Fisher, 618 F.3d 1103, 1108 (10th Cir. 2010), applying Colorado law. (Chapter 24).
- New § 24.40[3] has been added in chapter 24 to discuss the intentional injury exclusion. The exclusion arises in the uninsured/underinsured motorist (UM/UIM) context when the tortfeasor's liability insurer denies coverage.
- In a Wisconsin case, the uninsured motorist (UM) policy was not ambiguous and did not provide UM coverage if the owner of an uninsured motor vehicle was not negligent. The provisions on liability in the UM policy, read separately or as a whole, did not contemplate coverage when the owner of an uninsured vehicle was not negligent and had no other basis of liability for an accident. The UM statute did not mandate coverage in a situation where the sole al-

leged tortfeasor was insured and the tortfeasor's policy equaled the level of UM coverage in the injured insured's policy. Blum v. 1st Auto & Cas. Ins. Co., 2010 WI 78, 326 Wis. 2d 729, 786 N.W.2d 78. (Chapter 25).

- Absent express language defining the coverage endorsed or disclaiming particular terms or conditions, the excess insurer's follow-form endorsement tracks the underlying coverage in every respect and includes an arbitration clause in the underlying coverage. A court, not an arbitrator, decides a claim of litigation-based waiver. If the parties intend otherwise, they may exercise their right to contract freely and expressly include determinations of procedural defenses, such as litigation-based waiver, within the scope of their arbitration agreement. Absent such clear intent, the trial court is better-suited to decide whether a party's conduct before it constitutes waiver of that party's right to compel arbitration. Radil v. Nat'l Union Fire Ins. Co., 233 P.3d 688, 690 (Colo. 2010). (Chapter 28).
- In a New York case, an arbitrator's refusal to grant the Motor Vehicle Accident Indemnification Corporation (MVAIC)'s motion to adjourn an arbitration hearing was not misconduct. MVAIC sought a continuance to investigate whether pedestrian was insured, even though it had been on notice for three years of the insurance issue. MVAIC provided no explanation as to why it did not investigate the Department of Motor Vehicle (DMV) records sooner or why it could not discover that the claimant allegedly used the alias "Lillian Li," and that under this alias, she was insured by an insurer at the time she sustained her injuries. MVAIC failed to establish by clear and convincing proof that the arbitrator abused his discretion in such a manner to constitute misconduct sufficient to vacate or modify the arbitration awards in favor of the claimants. Motor Veh. Acc. Indem. Corp. v. NYC East-West Acupuncture, P.C., 77 A.D.3d 412, 910 N.Y.S.2d 38 (2010). (Chapters 28 and 35).
- In Oregon, a person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified mail, return receipt requested and obtained, or by service as authorized for summons. The notice must describe the nature of the controversy and the remedy sought. In an Oregon case, the insurer's letters to the insured's attorney did not formally institute arbitration proceedings because the consent to binding arbitration was contingent on a future event—a disagreement regarding the claim. The insurer did not expressly state that it was offering to arbitrate. The first letter indicated a willingness to arbitrate, depending on whether a future event—disagreement—occurred. The second letter did not definitively state that a disagreement existed, nor did it mention arbitration. Bonds v. Farmers Ins. Co., 349 Or. 152, 240 P.3d 1086 (2010). (Chapter 28).
- In an invasion of privacy action arising from an uninsured motorist (UM) claim, the insurer's lawyer met his burden of demonstrating that the acts underlying the complaint arose from protected activity. The insured placed her mental health in issue in the UM claim by alleging shock and nervous anxiety as the result of an accident and thus, the insurer's lawyer use of subpoenas to discover the insured's mental health records was proper. Mallard v. Progressive Choice Ins. Co., 188 Cal. App. 4th 531, 115 Cal. Rptr. 3d 487 (2010). (Chapter 29).
- Idaho's underinsured motorist (UIM) mandate was designed to protect the public from underinsured motorists, and not merely to

govern private relations between parties. Insurers are required to offer UIM coverage to all motorists, not UIM coverage conditioned on totally depleting the tortfeasor's policy. An exhaustion clause in the insured's policy violated public policy and was unenforceable. Exhaustion clauses have no purpose but to dilute the protection against underinsured motorists and to prevent insureds from collecting legitimate claims. Hill v. Am. Family Mut. Ins. Co., 2011 Ida. LEXIS 2 (Jan. 5, 2011). (Chapter 30).

- The collateral source rule applies in the underinsured motorist (UIM) context in Delaware. In a 2010 case, the trial court allowed the attorney for the UIM insurer to repeatedly mention the insured's settlement with a workers' compensation insurer. The jury awarded no damages to the insureds. Because the insurer contributed nothing to the workers' compensation fund that created the collateral source (the workers' compensation benefits) and had no interest in that fund, it should not have been allowed to benefit from it. The Delaware UIM statute had no legislative provision that eliminated or modified the collateral source rule. Therefore, the trial court's erroneous admission of the collateral source evidence materially prejudiced the insureds and was not harmless. Miller v. State Farm Mut. Auto. Ins. Co., 993 A.2d 1049, 1054 (Del. 2010). (Chapter 31).
- In South Carolina, a workers' compensation offset clause can be applied so as to reduce an employee's recovery under an employer's automobile policy's uninsured motorist (UM) coverage below the statutory mandatory minimum. Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010). (Chapter 31).
- Delaware follows the "most significant relationship" test in the Restatement (Second) of Conflict of Laws, which identifies seven factors that are relevant in conducting a choice of law inquiry. Even though the accident occurred in New Jersey due to the fault of a New Jersey resident, Delaware had a more significant relationship to the occurrence and the parties. The insured was a Delaware resident, her insurer issued a policy for bodily injury Delaware, and the parties' relationship and dispute were centered in Delaware. State Farm Mut. Auto. Ins. Co. v. Patterson, 7 A.3d 454 (Del. 2010). (Chapter 32).

Matthew Bender provides continuing customer support for all its products:

- **Editorial assistance—please consult the "Questions About This Publication" directory printed on the copyright page;**
- **Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).**
- **Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;**
- **Toll-free ordering (1-800-223-1940).**

www.lexis.com

Publication 469, Release 49, June 2011

FILING INSTRUCTIONS

No-Fault and Uninsured Motorist Automobile Insurance

Publication 469 Release 49 June 2011

Check As Done

☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 48. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 48, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.

☐ 2. Separate this Release Number 49 package into the following groups of material:

- White Tab Cards
- White Revision pages

☐ Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.

☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision		
☐	Title page.	Title page
☐	1-3 thru 1-23	1-3 thru 1-23
☐	1-35 thru 1-57	1-35 thru 1-43
☐	3-21 thru 3-45	3-21 thru 3-41
☐	6-1 thru 6-3.	6-1 thru 6-3
☐	7-27 thru 7-31	7-27 thru 7-31
☐	11-21 thru 11-27	11-21 thru 11-28.1
☐	11-47.	11-47
☐	11-65 thru 11-71	11-65 thru 11-71
☐	13-1 thru 13-5	13-1 thru 13-5
☐	14-5 thru 14-9	14-5 thru 14-7
☐	14-19 thru 14-33	14-19 thru 14-34.1
☐	14-42.1 thru 14-69	14-43 thru 14-69
☐	15-5 thru 15-17	15-5 thru 15-17
☐	15-27 thru 15-63	15-27 thru 15-49

VOLUME 2

Revision		
☐	Title page.	Title page
☐	17-1 thru 17-35	17-1 thru 17-27
☐	18-1 thru 18-27	18-1 thru 18-27
☐	20-7	20-7 thru 20-8.1
☐	20-15 thru 20-33	20-15 thru 20-27
☐	23-17 thru 23-27	23-17 thru 23-28.1
☐	23-41 thru 23-57	23-41 thru 23-57
☐	23-65 thru 23-85	23-65 thru 23-86.1
☐	23-97 thru 23-103.	23-97 thru 23-103
☐	23-117 thru 23-121	23-117 thru 23-122.1
☐	23-131 thru 23-133	23-131 thru 23-133
☐	23-143 thru 23-155	23-143 thru 23-156.5
☐	23-173 thru 23-193	23-173 thru 23-189
☐	24-3	24-3
☐	24-53 thru 24-62.17	24-53 thru 24-62.18(1)
☐	24-65 thru 24-69	24-65 thru 24-67
☐	24-79 thru 24-81	24-79 thru 24-81
☐	24-97.	24-97 thru 24-98.1
☐	24-117	24-117 thru 24-118.1
☐	24-149 thru 24-153	24-149 thru 24-153

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*
☐	24-207	24-207 thru 24-208.1
☐	24-229 thru 24-233	24-229 thru 24-233
☐	24-249	24-249
☐	25-5 thru 25-22.1	25-5 thru 25-22.2(1)
☐	25-33 thru 25-47	25-33 thru 25-48.1
☐	26-1 thru 26-6.1.	26-1 thru 26-6.1
☐	26-21 thru 26-23	26-21 thru 26-24.1

VOLUME 3

Revision

☐	Title page.	Title page
☐	28-5 thru 28-9	28-5 thru 28-10.1
☐	28-19.	28-19
☐	28-31 thru 28-33	28-31 thru 28-33
☐	28-45 thru 28-47	28-45 thru 28-48.1
☐	28-52.5 thru 28-53	28-53 thru 28-54.1
☐	28-60.1 thru 28-67	28-61 thru 28-69
☐	29-97 thru 29-101.	29-97 thru 29-101
☐	30-33 thru 30-35	30-33
☐	30-49 thru 30-53	30-49 thru 30-54.1
☐	30-69 thru 30-81	30-69 thru 30-82.1
☐	30-89 thru 30-103.	30-89 thru 30-97
☐	30-128.1 thru 30-131	30-129 thru 30-131
☐	30-143 thru 30-149	30-143 thru 30-145
☐	31-11 thru 31-47	31-11 thru 31-47
☐	31-52.3 thru 31-60.1.	31-53 thru 31-60.3
☐	31-71 thru 31-73	31-71 thru 31-73
☐	32-5 thru 32-7	32-5 thru 32-8.1
☐	32-29.	32-29
☐	33-13 thru 33-33	33-13 thru 33-31
☐	34-3 thru 34-7	34-3 thru 34-8.1
☐	34-55 thru 34-57	34-55 thru 34-57
☐	34-71 thru 34-75	34-71 thru 34-75
☐	35-1 thru 35-13	35-1 thru 35-13
☐	35-31 thru 35-35	35-31 thru 35-35

VOLUME 4

Revision

☐	Title page thru iii	Title page thru iii

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*
Tab Cards		
☐	No Material removed	White "Appendix M: Stacking by Occupancy Insured" Tab Card (file following page App-L-1)
☐	No Material removed	White "Appendix N: No-Fault Statutes of Limitations" Tab Card (file following page App-M-3)
Revision		
☐	No Material removed	App-N-1 thru App-N-7 (file following Tab Card "Appendix N: No-Fault Statutes of Limitations")
Tab Card		
☐	No Material removed	White "Appendix O: No-Fault Intentional Injury Exclusions" Tab Card (file following page App-N-7)
Revision		
☐	No Material removed	App-O-1 thru App-O-3 (file following Tab Card "Appendix O: No-Fault Intentional Injury Exclusions")
Tab Card		
☐	No Material removed	White "Appendix P: Subrogation and No-Fault Claims" Tab Card (file following page App-O-3)
Revision		
☐	No Material removed	App-P-1 thru App-P-3 (file following Tab Card "Appendix P: Subrogation and No-Fault Claims")
Tab Card		
☐	No Material removed	White "Appendix Q: Owned Vehicle Exclusion" Tab Card (file following page App-P-3)
Revision		
☐	No Material removed	App-Q-1 thru App-Q-9 (file following Tab Card "Appendix Q: Owned Vehicle Exclusion")
Tab Card		
☐	No Material removed	White "Appendix R: Subrogation of Uninsured/Underinsured Motorist Claims" Tab Card (file following page App-Q-9)

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*
Revision		
☐	No Material removed	App-R-1 thru App-R-5 (file following Tab Card "Appendix R: Subrogation of Uninsured/Underinsured Motorist Claims")
☐	TC-1 thru TC-163.	TC-1 thru TC-143
☐	TS-1 thru TS-29	TS-1 thru TS-25
☐	I-1 thru I-71	I-1 thru I-71

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!

www.lexis.com

Publication 469, Release 49, June 2011