

LIST OF CHAPTERS

Chapter 1	OVERVIEW OF THE COLORADO MOTOR VEHICLE INSURANCE LAW	1
Chapter 2	UNINSURED AND UNDERINSURED MOTORIST CLAIMS AND COVERAGE	7
Chapter 3	AUTOMOBILE LIABILITY CLAIMS AND LIABILITY INSURANCE	315
Chapter 4	LITIGATION OF MOTOR VEHICLE LIABILITY CLAIMS UNDER COLORADO’S TORT SYSTEM	577
	APPENDIX A	609
	APPENDIX B	631
	TABLE OF AUTHORITIES	817
	SUBJECT INDEX	839

TABLE OF CONTENTS

Chapter 1	OVERVIEW OF THE COLORADO MOTOR VEHICLE INSURANCE LAW	1
------------------	---	---

§ 1.1	INTRODUCTION	1
§ 1.2	OVERVIEW OF THE FORMER NO-FAULT ACT	2
§ 1.3	THE CURRENT SYSTEM	5

Chapter 2	UNINSURED AND UNDERINSURED MOTORIST CLAIMS AND COVERAGE	7
------------------	--	---

§ 2.1	INTRODUCTION	19
§ 2.2	STATUTORY REQUIREMENT FOR INSURERS TO OFFER UM AND UIM COVERAGE	30
§ 2.3	STACKING OF COVERAGES	32
§ 2.3.1	—General Rule Under the Former Statute — Anti-Stacking Clauses Included in a Single Policy Covering More Than One Vehicle or in Several Policies Issued by the Same Insurer Do Not Violate Public Policy	33
	a—UM coverage	33
	b—UIM coverage	34
	c—Unambiguous anti-stacking provision in UM/UIM coverage is not contrary to doctrine of reasonable expectations	37
§ 2.3.2	—Under the Former Statute, Unambiguous Anti-Stacking Clause Is Enforced as Written	38
	a—To determine whether ambiguity exists, policy must be examined as a whole	38

b—Anti-stacking clauses were conspicuous and enforceable even though they were in General Provisions section of the policy; however, policy language did not preclude stacking of coverage by two affiliated companies	41
§ 2.3.3—Under the Former Statute, Ambiguous Anti-Stacking Clause Is Construed Against Insurer	44
§ 2.3.4—Rules Under the Former Statute Regarding Stacking of Limits to Determine Whether a Tortfeasor’s Vehicle Is Underinsured	47
a—Plaintiff was not entitled to stack policies issued to her and a relative to determine whether tortfeasor’s vehicle was underinsured	47
b—In determining whether tortfeasor’s vehicle is “underinsured,” separate policies issued to different, unrelated insureds, including claimant, both of which cover claimant, should be stacked, and the aggregated limits should be compared to the limits of the tortfeasor’s policies; tortfeasor’s vehicle is underinsured if stacked UIM limits exceed tortfeasor’s limits	48
§ 2.3.5—Under the Former Statute, “Other Insurance” and “Two or More Cars Insured” Provisions Contained in UM/UIM Coverage Did Not Entirely Prohibit Stacking in Absence of Explicit Anti-Stacking Endorsement in Policy	54
§ 2.3.6—Anti-Stacking Under the Current Statute	56
§ 2.4 CAUSATION ISSUES	58
§ 2.4.1—The Fact That Injuries Were Directly Caused by the Use of a Firearm Does Not Necessarily Negate the Existence of a Causal Connection Between the Insured’s Injuries and the Use of an Uninsured Motor Vehicle	59
a—Assault with firearm made from moving vehicle	59

Table of Contents

b—Assault with firearm occurring after
assailant exits his vehicle 61

§ 2.4.2—Whether Injuries Are “Caused By Accident”
Must Be Viewed from Standpoint of Insured 63

§ 2.4.3—Dog Attack, Which Occurred Away From
Vehicle, Was Causally Unrelated to Use or
Operation of Uninsured Vehicle 66

§ 2.4.4—Injuries of Plaintiff, Who Was Assaulted When
Uninsured Vehicle Stopped in Front of His Car
and Passenger in Uninsured Vehicle Got Out and
Assaulted Plaintiff with a Wine Bottle, Arose out
of Use of Uninsured Vehicle, and Plaintiff Was
Entitled to Uninsured Motorist Benefits 67

§ 2.4.5—Injuries Sustained by Insured During Sexual
Assault Which Occurred in Her Car Did Not
Arise Out of the Use of Her Car, and Insurer
Was Not Obligated to Provide UM Coverage 69

§ 2.4.6—Insureds Were Not Entitled to UM Coverage
Because Their Injuries Did Not Arise out of the
Assailant’s Use of His Motor Vehicle 72

**§ 2.5 WHO IS AN “INSURED” FOR PURPOSES OF
UM/UIM COVERAGE? — WHAT IS AN
“UNINSURED MOTOR VEHICLE”? 74**

§ 2.5.1—Minor Child, Who Was Not a Resident of Her
Father’s Household, Was Not an Insured
Entitled to UM Coverage Under Father’s
Automobile Insurance 74

§ 2.5.2—Wife of Owner of Closely Held Corporation,
Who Was Designated Driver Under Commercial
Auto Policy, Was an “Insured” Entitled to UM
Coverage, Even Though Policy Defined the
Corporation as the Only Insured 75

§ 2.5.3—Owner and Officer of Corporation, Who Was
Injured While Riding a Bicycle for Personal
Reasons, Was Not an “Insured” Entitled to
UIM Coverage Under Automobile Policy
Issued to Corporation 77

§ 2.5.4—Passenger, Including Resident Relative of Named Insured, Who Is Injured While Riding in Vehicle Operated by an Excluded Driver, Is Not an “Insured” Entitled to UM Coverage	78
a—Passenger not “insured” entitled to UM benefits where vehicle operated by excluded driver	78
b—Denial of UM/UIM coverage proper where driver was excluded driver under policy	80
§ 2.5.5—Because Policy Provision Purporting to Limit UIM Coverage Was Ambiguous, Party Injured While Riding on a Motorcycle Was an “Insured” for Purposes of UIM Coverage	82
§ 2.5.6—Adult Woman Who Witnessed Mother’s Death in Bus Crash Was Not an “Insured” for Purposes of UIM Coverage Under Parents’ Auto Insurance Policy and Could Not Recover for Her Emotional Distress in Witnessing Death	83
§ 2.5.7—UM Statute Does Not Require Coverage for Injuries or Death Sustained by Person Not Insured Under the Terms of the Policy	84
§ 2.5.8—The Words “Lives with” Applicable to Policy Exclusion Negating UM Coverage for an Insured While Occupying a Non-Covered Vehicle Operated by a “Relative” Are Ambiguous	86
§ 2.5.9—UIM Statute Does Not Require UIM Coverage for Wrongful Death of a Person Who Is Not an “Insured” Under the Claimant’s Policy	88
§ 2.5.10—Under a Commercial Motor Vehicle Policy, Insurer Cannot Limit UM/UIM Coverage to Persons Occupying a Certain Class of Vehicles	88
§ 2.5.11—Employee Was Not an Insured Entitled to Recover UIM Benefits Under Commercial Auto Policy Where Only Persons Occupying “Covered Autos” Were Insured; Employer Had Failed to Add Newly Acquired Truck to Policy, and, Therefore, Truck Was Not a Covered Vehicle	90

Table of Contents

§ 2.5.12—UM/UIM Coverage Must Apply to Class of
Persons at Least as Extensive as Class of
Persons Covered for Liability 94

§ 2.5.13—Passenger Injured in a Single-Vehicle Accident
Is Not Entitled to Recover UIM Benefits
Under the Driver’s UM/UIM Coverage
After Having Recovered the Driver’s
Liability Insurance Limits 97

§ 2.5.14—Under Colorado Law, a Person Can Have More
Than One Residence. Thus, a Provision in a
UM/UIM Policy That Limits the Definition of a
Resident Relative to a Person Who Maintains His
or Her Primary Residence with the Named Insured
Is Contrary to Public Policy and Unenforceable . . . 101

§ 2.5.15—An Automobile Insurance Contract Including
UM/UIM Coverage Is Ambiguous if It Is
“Susceptible on Its Face to More Than One
Reasonable Interpretation.” Extrinsic Evidence
May Not Be Considered to Determine Whether
an Ambiguity Exists 103

§ 2.5.16—A Farm Tractor May Fall Within the Definition
of the Term “Motor Vehicle” for Purposes of
UM/UIM Coverage if the Policy Does Not
Define the Term “Motor Vehicle” to
Correspond with the Definition Contained
in C.R.S. § 10-4-601(6) 107

§ 2.5.17—Under *Boatright* Factors, Husband, Who Was
Divorcing Wife and Was Not Living in Her
House at Time of Accident, Was Not a Resident
of Her Household and Was Not Entitled to
Recover UM/UIM Benefits Under Her Policy 109

**§ 2.6 WHO IS AN “UNINSURED MOTORIST”
FOR PURPOSES OF UM COVERAGE —
HIT-AND-RUN ACCIDENTS 111**

§ 2.6.1—Requirement of Physical Contact Between
Hit-And-Run Vehicle and Insured Vehicle
Is An Impermissible Restriction of Statutorily
Required Coverage 111

§ 2.6.2—Driver Who Withholds or Falsifies Information May Be Considered Hit-And-Run Motorist	113
§ 2.6.3—Motorist Who Has Liability Coverage, but Who Cannot Be Located for Service of Process, Is Not an Uninsured Motorist	114
§ 2.6.4—Where Tortfeasor’s Insurer Becomes Insolvent After Accident, Such Vehicle Is Considered an “Uninsured Motor Vehicle”	115
§ 2.6.5—Vehicle Covered Under Liability Provisions of a Policy Is Not Uninsured Motor Vehicle for Purposes of UM Coverage	117
§ 2.6.6—Liability Insurer’s Denial of Coverage Based Upon Policy Exclusion Makes Vehicle “Uninsured” for Purposes of UM Coverage	118
§ 2.6.7—An Uninsured Snowmobile, While Being Operated Off of Public Roads, Is Not Considered an “Uninsured Motor Vehicle” for Purposes of UM Coverage	120
§ 2.6.8—Exclusion May Preclude Recovery of UIM Benefits Where Insured Receives Compensation up to UM/UIM Policy Limit from Other UM/UIM Carrier	122
§ 2.6.9—Exclusions for Motorcyclists and “Owned but Uninsured” Vehicles in UM/UIM Coverage Are Unenforceable, Since Such Exclusions Conflict with the Requirement of the UM/UIM Statute for Insurers to Provide Coverage for Insured Persons Who Are Legally Entitled to Recover Damages from Owners or Operators of Uninsured Motor Vehicles	124
§ 2.6.10—Is an Insured Entitled to Recover UM Benefits Where the Tortfeasor Is Immune from Liability?	126
a—Insured is entitled to recover UM benefits where the tortfeasor is immune from liability under the Colorado Governmental Immunity Act	126

Table of Contents

- b—Where insured was injured by co-worker who was immune from liability under the Workers’ Compensation Act, insured was not entitled to recover UM benefits from the insurer of the tortfeasor’s employer 129
- c—The fact that the at-fault party is immune from suit under the Workers’ Compensation Act does not preclude the insured from recovering benefits under his own UM/UIM coverage 131
- § 2.6.11—Tortfeasor’s Failure to Cooperate with Liability Insurer, Which Resulted in a Denial of Coverage, Made Tortfeasor’s Vehicle Uninsured, Permitting Victim of Accident to Recover Uninsured Motorist Benefits 134
- § 2.7 UM COVERAGE FOR DERIVATIVE CLAIMS 136**
 - § 2.7.1—Loss of Consortium Is Not “Bodily Injury” 136
 - § 2.7.2—Parent’s UM Claim for Medical Expenses Incurred by Minor Child Is a Derivative Claim Subject to the Per Person Policy Limit for Bodily Injury 137
 - § 2.7.3—Policy Provision Aggregating Loss of Consortium Claim with Bodily Injury Claim and Subjecting Both to a Single Policy Limit Does Not Violate Public Policy 139
 - § 2.7.4—Claims for Damages for Emotional Distress Caused by Witnessing Injury to Another Person Are Not Derivative Claims. However, Under the UM/UIM Statute, C.R.S. § 10-4-609, Emotional Distress Alone, Without Manifestation of Physical Injury, Is Not a Bodily Injury, Sickness, or Disease, and Is Not Covered 140

§ 2.8	RESOLUTION OF UM/UIM CLAIMS — ISSUES INVOLVING ARBITRATION AND LITIGATION	142
§ 2.8.1	—Arbitration Clause in UM/UIM Coverage Is Not Invalid as Contrary to Public Policy	143
§ 2.8.2	—Costs of Arbitration to Be Borne by Insurer	144
§ 2.8.3	—Default Judgment Obtained by Insured Against Tortfeasor May Be Binding Upon Insurer	146
	a—“Consent to sue” clause in uninsured motorist coverage is void — Insurer has right to intervene in action brought by insured against uninsured motorist	146
	b—Arbitration clause in uninsured motorist coverage is valid and enforceable, but “consent to sue” clause is void as against public policy — Insurer may waive right to arbitration	148
§ 2.8.4	—By Failing to Object to Arbitration Award Within 30 Days, Insurer May Waive Defense That Arbitration Award Exceeded the Policy Limit	151
§ 2.8.5	—Vacating Arbitration Award Due to Misconduct of Arbitrator — Duty of Arbitrator to Disclose Existence of Substantial Business Relationship With Party Selecting Her	153
§ 2.8.6	—Duty of Insurer to Maintain Confidentiality of Medical and Psychiatric Information Disclosed By Insured During Arbitration Proceeding	155
§ 2.8.7	—Award or Judgment in Excess of Policy Limit — Liability of Insurer for Prejudgment Interest in Excess of Policy Limit	157
	a—Trial court may vacate arbitration award in excess of policy limits — Insurer generally not liable for prejudgment interest in excess of policy limits	157
	b—UM carrier is not liable to pay prejudgment interest in excess of the policy limits	159

Table of Contents

- c—Where arbitration provision authorized arbitrator to determine “amount of payment” under the policy, and insurer did not raise policy limits or setoffs as affirmative defenses, arbitrator did not exceed authority by awarding insured more than the policy limit 161
- d—Where UIM arbitration agreement provided that only issue arbitrator was to decide was the amount of damages to which claimant was entitled, arbitrator had no authority to reduce arbitration award by applying policy limit and giving insurer offset for amount paid by tortfeasor 163
- e—Trial court had no authority to modify arbitration award to add prejudgment and post-judgment interest and to award costs to insured where the parties had not reserved these issues for review by the court 166

§ 2.8.8—Application of Collateral Estoppel to Arbitration Proceeding — Trial Court’s Ruling That Underinsured Motorist Was Not Liable for Causing Injuries Precludes Insured From Re-Litigating the Issue in Arbitration 168

§ 2.8.9—Right to Jury Trial 169

- a—Where insurer intervenes, or is joined as a defendant, in action brought by insured against uninsured motorist and the uninsured motorist defaults, insurer has no right to a jury trial with respect to issues of liability and damages raised in the tort litigation between the insured and the uninsured motorist 169

	b—Subrogation action brought by insurer against underinsured motorist to recover benefits paid to insured for damages caused by the underinsured motorist was based upon legal, not equitable, claims. Therefore, in defending against such claims, underinsured motorist was entitled to a jury trial	176
§ 2.8.10	Absent Express Disclaimer of Particular Terms and Conditions, Excess Insurer’s Follow-Form Endorsement Tracks Underlying Coverage in Every Respect, Including Arbitration Clause in Underlying Coverage	178
§ 2.9	EFFECT OF RELEASE OF UNINSURED MOTORIST ON INSURER’S LIABILITY — RELEASE EXECUTED BY INSURED IN FAVOR OF UNINSURED MOTORIST BARRED UM CLAIM BY INSURED AGAINST INSURER	181
§ 2.10	LIABILITY OF INSURER FOR ATTORNEY FEES AND PREJUDGMENT INTEREST ON DAMAGES	183
§ 2.10.1	UM Statute Does Not Provide for Insured’s Recovery of Attorney Fees from UM/UIM Carrier	183
§ 2.10.2	Prejudgment Interest on Award of Damages in UIM Case Is Limited to Interest on Difference Between Damages Awarded and Amount Insured Recovers from Tortfeasor	185
§ 2.10.3	Liability of Insurer for Prejudgment Interest in Excess of Policy Limits	186
§ 2.10.4	Filing an Action and Obtaining a Judgment Against the Uninsured or Underinsured Motorist Is a Prerequisite for an Insured to Recover Prejudgment Interest as Part of a UM/UIM Claim Against an Insurer	188

Table of Contents

§ 2.11	UIM COVERAGE — PURSUIT AND EXHAUSTION OF CLAIMS AGAINST UNDERINSURED DRIVER AS PREREQUISITE TO COVERAGE	190
§ 2.11.1	—Exhaustion Clauses in UIM Policies Are Void and Unenforceable, Since Such Clauses Violate C.R.S. § 10-4-609(1)(c) and Dilute, Condition, and Limit Statutorily Mandated Coverage	190
§ 2.11.2	—Under 2008 Amendments to C.R.S. § 10-4-609, Insurers Are Not Obligated to Pay UIM Benefits for the “Gap” Between the Amount of Settlement and the Amount of the Tortfeasor’s Liability Insurance Limit	192
§ 2.11.3	—Exhaustion of Tortfeasor’s Liability Limits Not a Prerequisite to UIM Claim (Interpreting the Former Version of the Statute)	194
§ 2.11.4	—Pursuit of Claim Against Tortfeasor Is Prerequisite to Recovery of UIM Benefits (Interpreting the Former Version of the Statute) . . .	196
§ 2.12	INSURED’S RIGHT OF ACTION AGAINST INSURER FOR BREACH OF DUTY TO OFFER UM/UIM COVERAGE AND/OR COVERAGE WITH HIGHER LIMITS THAN LIMITS OF LIABILITY COVERAGE — REFORMATION OF POLICY	197
§ 2.12.1	—Insurer Has Duty to Advise Insureds of Nature and Purpose of UM/UIM Coverage and to Offer Insureds the Opportunity to Purchase UM/UIM Coverage in an Amount Equal to Bodily Injury Liability Limits, and Insured Has Right of Action Against Insurer for Breach of This Duty	197
§ 2.12.2	—For Accidents Occurring Before 1995, Rental Car Company Had Statutory Duty Under C.R.S. § 10-4-609(1) to Offer Lessees of Its Vehicles the Opportunity to Purchase UM/UIM Coverage	202

§ 2.12.3—RTD, as Holder of Certificate of Self-Insurance, Is Not Required by C.R.S. § 10-4-609(1) to Provide UM/UIM Coverage to Passengers in Its Vehicles	205
§ 2.12.4—“Step-Down” Endorsement in UM/UIM Coverage Was Unenforceable Because in Including It in the Policy, Insurer Violated C.R.S. § 10-4-609(2)	206
§ 2.12.5—Insurer and Agent Satisfied Statutory and Common Law Obligations by Offering Insured Opportunity to Purchase UM/UIM Coverage with Limits of \$100,000/\$300,000	208
§ 2.12.6—Even Where Insured Purchases Liability Coverage with Minimum Limits, Insurer Has One-Time Duty to Offer Insurer Opportunity to Purchase UM/UIM Coverage with Higher Limits	210
§ 2.12.7—An Umbrella Policy Is Not an Automobile Liability Policy or a Motor Vehicle Liability Policy. Therefore, an Insurer Has No Duty to Offer an Insured the Opportunity to Purchase UM/UIM Coverage When It Issues an Umbrella Policy	212
§ 2.12.8—UM/UIM Litigation Based Upon Insurers’ Alleged Failure to Advise Insureds of the Effect of <i>DeHerrera v. Sentry Insurance Co.</i> , 30 P.3d 167 (Colo. 2001)	214
§ 2.12.9—The UM/UIM Statute, C.R.S. § 10-4-609, Does Not Abrogate Common Law Agency Principles. Thus, a Waiver of UM/UIM Coverage Is Enforceable as to a Particular Named Insured, If Such Named Insured, Acting Through an Agent with Implied or Apparent Authority, Waives Coverage on the Named Insured’s Behalf	220

Table of Contents

§ 2.13	COMPLIANCE WITH POLICY NOTICE REQUIREMENTS	225
§ 2.13.1	—Policy Provision Requiring Insured to Give Notice of Hit-And-Run Accident Is Enforceable as Condition Precedent to Coverage	225
§ 2.13.2	—Insured’s Duty to Give Insurer Notice of Possible UIM Claim Arises When Insured, with Reasonable Diligence, Can Ascertain That Alleged Tortfeasor Is Underinsured	226
	a—Alleged delay of 15 months did not bar claim	226
	b—In UIM cases, insurer bears burden of proving prejudice to deny claim based upon insured’s failure to give timely notice	227
§ 2.13.3	—The “Notice-Prejudice Rule” Applies to a Consent-To-Settle Clause in UIM Coverage. However, There Is a Rebuttable Presumption of Prejudice If an Insured Breaches a Consent-To-Settle Clause	231
§ 2.14	PUBLIC POLICY ISSUES	232
§ 2.14.1	—Policy Provision Allowing Insurer to Reduce UM Benefits by Amount Paid to Insured as Workers’ Compensation Benefits Is Contrary to Public Policy	232
§ 2.14.2	—“Other Insurance” Clause, Under Which Excess Insurer Is Obligated to Pay UM Benefits Only to the Extent That the Limits of Liability Exceed Those of Primary Insurer, Is Not Contrary to Public Policy	233
§ 2.14.3	—Policy Provision in Uninsured Motorist Policy Allowing Insurer to Reduce UM Benefits on a Dollar-For-Dollar Basis by Amount of PIP Benefits Paid Is Contrary to Public Policy — Proper Procedure to Avoid Double Recovery of PIP Benefits	235

§ 2.14.4—Subrogation Clause and Release-Trust Agreement Are Contrary to Public Policy and Cannot Be Enforced, to the Extent That Enforcement of Such Agreements Impairs Insured’s Right to Full Compensation for Loss Caused by Uninsured Motorist	237
§ 2.14.5—“Owned but Uninsured” Exclusion Applicable to Resident Relative of Named Insured Does Not Violate Public Policy	240
§ 2.14.6—Insurer’s Application of Household Exclusion to Deny Uninsured Motorist Coverage Does Not Contravene Public Policy	242
§ 2.14.7—Policy Provision Allowing Insurer to Offset Social Security Disability Benefits Received by Insured from Insured’s UM/UIM Coverage Is Void as Contrary to Public Policy	244
§ 2.14.8—Under C.R.S. § 10-4-609, Insurers Must Offer UM/UIM Coverage to Class of Persons at Least as Extensive as Class Covered Under Liability Provisions of Policy	246
§ 2.14.9—Policy Provision Allowing Insurer to Aggregate Policy Limits of All Available Liability Insurance Policies for Purposes of Determining Whether Insurer Is Liable for Payment of UIM Benefits Is Not Contrary to Public Policy	250
§ 2.14.10—Policy Provision Allowing Insurer to Seek a Trial De Novo After an Unfavorable Arbitration Award Is Void and Unenforceable as Contrary to Public Policy	252
§ 2.14.11—“Consent-To-Settle” Clause in UIM Coverage Does Not Violate Public Policy	254
§ 2.14.12—Exclusion of UM/UIM Coverage for Injury Arising out of Use of Owned but Uninsured or Non-Owned Vehicle Furnished or Available for Regular Use of Insured or Family Member Does Not Violate Public Policy	255
§ 2.14.13—In a UM/UIM Policy, an “Owned But Uninsured” Exclusion Is Void as Contrary to Public Policy	257

Table of Contents

§ 2.14.14—Neither Express Terms of Automobile Insurance Contract nor Public Policy Considerations Imposed a Duty upon Insurer to Pay Insured’s Attorney Fees in Dispute over Uninsured Motorist Benefits	259
§ 2.14.15—Auto Insurer Was Not Required to Provide PIP or UM Coverage to Insured Motorists Injured in an Accident in Mexico	262
§ 2.14.16—Provision in Uninsured Motorist Policy Requiring Independent Corroborating Witness to Support Claim in Case of Hit-and-Run Phantom Vehicle Is Void as Contrary to Public Policy	264
§ 2.14.17—Insurer Was Entitled to Reduction in Arbitration Award for UIM Benefits for Amount It Previously Paid for Medical Expenses. Setoff Was Allowed Because Insured’s UIM Benefits Were Not Impaired and to Prevent Insured from Obtaining Double Recovery	265
§ 2.15 DETERMINATION OF AMOUNT OF UIM COVERAGE	267
§ 2.15.1—Where More Than One Person Is Injured, Per Accident Limit of Tortfeasor’s Policy Is Used to Determine Whether UIM Coverage Is Available (Interpreting the Former Version of the Statute)	267
§ 2.15.2—Conflict Between “Limit of Liability” Language and “Other Insurance” Language in UM/UIM Coverage Creates an Ambiguity That Will Be Construed in Favor of Insured (Interpreting the Former Version of the Statute)	269
§ 2.15.3—Insurer May Aggregate Liability Payments to Multiple Insureds Injured in a Single Accident in Determining Amount of Available UIM Benefits Under per Accident Limit of Policy	271

§ 2.15.4—Vehicle Is “Underinsured” if Payments “to Persons Other Than an Insured” Reduce Liability Coverage Below Limits of UIM Coverage — “Other Insurance” Clause May Render Policy Ambiguous, Increasing Insurer’s Potential Liability for Payment of UIM Benefits (Interpreting the Former Version of the Statute) . . .	274
§ 2.15.5—Under C.R.S. § 10-4-609(5), to Determine Liability for UIM Benefits, Insurer May Offset Only Amounts Actually Paid by Tortfeasor’s Liability Carrier, Not Amounts Payable Under the Policy (Interpreting the Former Version of the Statute)	276
§ 2.15.6—Amount of Available UM/UIM Benefits Is Not Multiplied by Number of Motorists Who Cause or Contribute to a Single Accident . . .	278
§ 2.15.7—Insurer May Not Reduce Available UIM Coverage by Amount of Liability Payments to Persons Other Than an Insured (Interpreting the Former Version of the Statute)	281
§ 2.15.8—Where Multiple UM/UIM Policies Exist, Insurer May Be Entitled to Entire Offset for Liability Payment to Insured, if Other Policies Make No Claim to the Offset (Interpreting the Former Version of the Statute)	284
§ 2.15.9—Where Multiple UM/UIM Policies Exist, Primary Insurer May Be Entitled to Claim Entire Offset (Interpreting the Former Version of the Statute)	286
§ 2.15.10—Workers’ Compensation Carrier Does Not Have a Right of Subrogation Against a UM/UIM Insurer	288
§ 2.15.11—An Insurer May Not Reduce the Amount of an Insured’s UM/UIM Benefits by the Amount Paid to the Insured Under Medpay Coverage	289

Table of Contents

§ 2.16	CONFLICT OF LAWS	292
§ 2.16.1	In the Absence of an Effective Choice of Law Provision in the Insurance Contract, the Most Significant Relationship Test Applies to Determine Which State’s Law Governs	292
§ 2.17	STATUTE OF LIMITATIONS APPLICABLE TO UM/UIM CLAIMS	294
§ 2.17.1	Two-Year and Three-Year Limitations Periods in Statute of Limitations for Uninsured Motorist Claims, C.R.S. § 13-80-107.5(1)(a), Run Concurrently, Not Consecutively	295
§ 2.17.2	Insured Has Minimum of Three Years in Which to Commence an Action to Recover UM Benefits	299
§ 2.17.3	Running of Statute of Limitations on Insured’s Claim for UM Benefits Was Not Tolled Until Insured Consulted Attorney. Insurer Owed No Duty to Inform Insured Regarding Statute of Limitations	300
§ 2.17.4	Where a Policy Includes a Consensual Arbitration Clause, a Demand for Arbitration Made Within the Time Period Prescribed by the Statute of Limitations, C.R.S. § 13-80-107.5, Does Not Satisfy the Statute	302
§ 2.17.5	Running of Statute of Limitations on Action to Recover UIM Benefits Is Not Dependent upon When the Insured Becomes Aware That the At-Fault Motorist Is, in Fact, Underinsured, But is Governed by C.R.S. § 13-80-107.5(1)(b) ...	304
§ 2.17.6	Under C.R.S. § 13-80-107.5(1)(b), the Phrase “Received Payment of the Settlement or Judgment” Does Not Necessarily Equate with Receipt of the Settlement Check, but Means That the Settlement Agreement Must Be Final, so That the Insured Is Legally Entitled to Receive the Payment and Negotiate the Check	308

§ 2.18 AN INSURER MAY HAVE A DUTY TO BIFURCATE UNDISPUTED DAMAGES AND ISSUE PIECEMEAL PAYMENTS PRIOR TO THE RESOLUTION OF THE CLAIM 310

§ 2.18.1—Under C.R.S. §§ 10-3-1115 and -1116, an Insurer May Have an Obligation to Pay UM/UIM Benefits on a “Piecemeal” Basis 310

Chapter 3 AUTOMOBILE LIABILITY CLAIMS AND LIABILITY INSURANCE 315

§ 3.1 INTRODUCTION 326

§ 3.2 NO-FAULT THRESHOLD REQUIREMENT (REPEALED) 327

§ 3.2.1—Commencement of Action Where Threshold Requirement Not Yet Satisfied 328

§ 3.2.2—Proof Required to Establish Threshold Requirement 329

 a—Testimony of plaintiff may be sufficient . . . 329

 b—Burden of proof regarding threshold rests with plaintiff — Testimony of plaintiff as to amount of bills incurred may not be sufficient, if plaintiff presents no evidence that medical services were reasonably needed 329

 c—Fact that PIP carrier pays expenses does not establish that they were related to accident — Whether threshold requirement has been met is usually fact question for jury 331

§ 3.2.3—Proof of Threshold Does Not Necessarily Entitle Plaintiff to Recover Damages 333

§ 3.2.4—Exemption from Threshold Requirement for Intentional Torts Under C.R.S. § 10-4-715 335

§ 3.2.5—Threshold Requirement Is Applicable to a Claim for Loss of Consortium 336

Table of Contents

§ 3.3 NO RIGHT TO RECOVERY OF AMOUNTS PAID OR PAYABLE AS PIP BENEFITS (REPEALED) 338

§ 3.3.1—General Rule Precludes Recovery of PIP Benefits . . . 338

§ 3.3.2—PIP Benefits Improperly Awarded as Damages by Jury Are Subject to Reduction by Court 340

§ 3.3.3—Adoption of C.R.S. § 13-21-111.6 Did Not Overturn No-Fault Act’s Prohibition of Recovery of PIP Benefits in Tort Action 340

§ 3.4 ISSUES RELATING TO LIABILITY AND DAMAGES IN LITIGATION OF MOTOR VEHICLE ACCIDENT CLAIMS 341

§ 3.4.1—The “Seat Belt Defense” 341

a—Defendant entitled to jury instruction on seat belt defense even if no evidence of relationship between failure to use and injuries 341

b—If vehicle is equipped with separate lap and shoulder seat belts, plaintiff must use both to avoid application of the “seat belt defense” — Evidence of failure to wear seat belt may be used to mitigate plaintiff’s non-economic damages, but not as a basis for comparative negligence 343

c—Mitigation of damages provision in seatbelt defense statute, C.R.S. § 42-4-237(7), encompasses all categories of non-economic damages, not just damages for pain and suffering, but does not include damages for physical impairment and disfigurement 346

§ 3.4.2—Parental Immunity Doctrine Not Abrogated by No-Fault Act 349

§ 3.4.3—Negligence and Comparative Negligence 352

a—Plaintiff allowed to recover where plaintiff’s negligence is less than combined negligence of defendants or combined negligence of defendants and designated non-parties 352

b—Presumption of negligence in rear-end collision — When directed verdict is appropriate	353
c—Pro rata liability statute, C.R.S. § 13-21-111.5, requires apportionment of fault between negligent and intentional conduct that combine to cause the same injury	355
d—Comparative negligence statute does not preclude state from recovering payments made under Colorado Medical Assistance Act	357
e—Repair shop has no duty to warn customer about danger of broken seat belt, where customer knows belt is broken and should know of potential hazard	359
f—Ordinance requiring animal owners to keep them on premises did not impose strict liability upon owner when horse escaped from property and caused collision with plaintiff’s vehicle	361
g—In a wrongful death action arising from a motor vehicle accident, plaintiff may recover as long as decedent’s negligence is less than the combined negligence of all tortfeasors, including named defendant’s and designated non-parties’, but if defendant is liable for wrongful death, solatium award is not subject to reduction by percentage of decedent’s negligence	362
h—While violation of a traffic ordinance constitutes negligence per se, a conviction for a traffic violation is not admissible in a civil action to prove that the defendant was negligent per se	366
i—A driver is under a duty to drive with reasonable care, which may, in some circumstances, be violated by failing to pull over to the shoulder of the road	368

Table of Contents

j—Giving of sudden emergency instruction to jury was proper based upon the defendant’s testimony alone, without corroborating testimony from other witnesses. The fact that a stationary vehicle is struck by another vehicle does not give rise to a presumption of negligence 370

k—Where plaintiff was injured when her vehicle collided with a horse, plaintiff was not entitled to a negligence per se instruction based upon defendant’s alleged violation of a municipal ordinance precluding the owner of an animal from permitting it to run at large 372

l—Negligence per se jury instruction based upon a careless driving ordinance was unnecessarily cumulative, but the trial court did not err in giving the instruction . . . 373

§ 3.4.4—Workers’ Compensation Insurer’s Subrogation Rights Do Not Extend to Injured Worker’s Recovery of Non-Economic Damages or Spouse’s Recovery for Loss of Consortium 375

§ 3.4.5—Negligent Entrustment of Vehicles 379

a—Supplying funds to a minor child who has a history of drug and alcohol abuse, so child can purchase a vehicle, may give rise to a claim of negligent entrustment 379

b—Person who entrusts vehicle to another, who injures himself when driving while intoxicated, may be liable to injured driver under doctrine of negligent entrustment — Statutes that limit liability of commercial vendors of alcohol and social hosts, C.R.S. §§ 12-46-112.5 and 12-47-128.5 (1991), do not apply to entrusting a vehicle to an intoxicated person 380

c—Parents who co-sign loan to facilitate child’s purchase of vehicle are not liable for negligent entrustment because supplying credit is not furnishing a chattel 383

d—Seller of vehicle has no duty to determine whether potential buyer has liability insurance	385
e—Under the McHaffie rule, where an employer admits potential liability for an employee driver’s negligent conduct under the doctrine of <i>respondeat superior</i> , a plaintiff may not maintain direct claims against the employer for negligent entrustment or negligent hiring, training, and supervision of the driver	387
§ 3.4.6—The Family Car Doctrine	390
a—Elements of a claim under the family car doctrine	390
b—Family car doctrine does not apply where adult child is living outside parent’s household and is self-supporting	392
§ 3.4.7—Adequacy of Damages	393
a—Trial court did not abuse its discretion in refusing to grant new trial to plaintiff in low-impact rear-end collision case, where jury awarded damages for physical impairment, but no damages for non-economic loss or economic loss	393
§ 3.4.8—Evidence of a Plaintiff’s Status as an Unauthorized Immigrant to the United States May Be Relevant and Admissible to Limit a Claim for Damages for Lost Wages	395
§ 3.4.9—A Spouse’s Loss of Consortium Claim Is a Derivative but Separate Claim, and an Agreement to Settle the Injured Spouse’s Claim Does Not Necessarily Bar the Other Spouse’s Loss of Consortium Claim. A Negligent Infliction of Emotional Distress Claim Is an Independent, Not a Derivative, Claim, and an Agreement Settling the Injured Spouse’s Bodily Injury Claim Does Not Necessarily Bar the Other Spouse’s Claim for Negligent Infliction of Emotional Distress	397

Table of Contents

§ 3.4.10—Absent an Agreement to Do so or a Special Relationship with the Driver, Passengers in a Vehicle Have No Duty to Keep a Look out and Give Warning or Intervene to Prevent an Accident	400
§ 3.4.11—Under the Joint Venture Doctrine, a Car Dealer May Be Vicariously Liable for Negligence of a Driver Who Causes an Accident and Damage to Another Motorist	402
§ 3.4.12—A Car Dealer Has No Duty to Inquire into a Customer’s Driving History or Record Before Selling a Car	404
§ 3.5 DISCOVERY AND EVIDENTIARY ISSUES IN MOTOR VEHICLE ACCIDENT CASES	406
§ 3.5.1—Admissibility of Expert Witness Testimony	406
a—Properly qualified neuropsychologist may offer opinion testimony regarding the presence or absence of organic brain injury	406
b—Admissibility of expert testimony regarding low-speed impact testing on human volunteers	408
c—Evidence of QEEG not admissible to show minor brain injury, but evidence of video fluoroscopy may be admitted to show torn ligament	410
§ 3.5.2—Evidence of Liability Insurance Generally Inadmissible, but May Be Admitted to Show Bias of a Defense Expert If There Is a “Substantial Connection” Between Defense Expert and Defendant’s Insurer	412
§ 3.5.3—Evidence of Party’s Receipt of Traffic Citation or Conviction of Traffic Offense Is Generally Inadmissible Under C.R.S. § 42-4-1713	414
§ 3.5.4—Evidence of a Motorcyclist’s Failure to Wear Helmet Is Inadmissible to Show Negligence — Lack of Driver’s License Generally Inadmissible to Show Operator’s Negligence	417

§ 3.5.5—Expert Witness Who Switches Sides During Litigation May Be Disqualified	418
§ 3.5.6—Discovery of a Plaintiff’s Medical, Psychological, or Tax Records	420
a—Discovery of a plaintiff’s psychiatric or psychological records	420
b—Discovery of plaintiff’s medical records . . .	422
c—Discovery of plaintiff’s medical records — Privileged documents log required; discovery of tax returns	424
§ 3.5.7—Defendant’s Medical Records Are Generally Not Discoverable	428
§ 3.5.8—Specific Evidence of Future Economic Loss Is Not Necessary to Support a Substantial Award of Damages for a Minor Child	429
§ 3.5.9—Evidence of Defendant’s Conduct After an Accident May Be Admissible to Support Claim for Punitive Damages	431
§ 3.5.10—Liability Insurer’s Reserves and Settlement Authority Are Not Subject to Discovery	432
§ 3.5.11—In Automobile Negligence Action, Trial Court Improperly Admitted into Evidence a Decision of an Administrative Law Judge in a Social Security Administration Hearing and a Depression Inventory Prepared by a Doctor Who Did Not Testify at Trial — Erroneous Admission of Hearsay Evidence Was Not Harmless Error and Warranted New Trial	435

**§ 3.6 STATUTE OF LIMITATIONS GOVERNING
MOTOR VEHICLE LIABILITY CLAIMS 437**

§ 3.6.1—Three-Year Statute of Limitations for Bodily Injury Claims Arising out of the Use or Operation of a Motor Vehicle Begins to Run When Both Injury and Its Cause Are Known or Should Have Been Known	438
§ 3.6.2—Statute of Limitations Applicable to Claim Against Law Enforcement Officers	441

Table of Contents

§ 3.6.3—Subrogation Claims Are Subject to Three-Year,
Not Two-Year, Statute of Limitations 443

§ 3.6.4—Where Plaintiff Is Injured While Using or
Operating a Motor Vehicle, Three-Year
Statute of Limitations Applies, Even If
Tortfeasor’s Conduct Does Not Involve the
Use or Operation of a Motor Vehicle 444

**§ 3.7 PUBLIC POLICY CONSIDERATIONS —
PERMISSIBLE AND IMPERMISSIBLE
POLICY EXCLUSIONS IN MOTOR VEHICLE
LIABILITY POLICIES 446**

§ 3.7.1—The “Household Exclusion” 446

 a—Household exclusions declared to
 be invalid in 1984 446

 b—Enactment of C.R.S. § 10-4-418(2)(b)
 in 1986 created new public policy that
 household exclusions are not contrary
 to public policy 449

§ 3.7.2—Provision in Rental Car Contract, Negating
Collision Damage Waiver Where Renter Is
DUI, Is Unconscionable 451

§ 3.7.3—The “Named Driver” Exclusion Is Valid
and Enforceable 454

§ 3.7.4—Exclusion for Persons Moving Property
to and from Covered Vehicle Is Void as
Contrary to Public Policy 455

§ 3.7.5—Permissive User Exclusion Is Valid 458

§ 3.7.6—Named Insured Exclusion Is Void as
Contrary to Public Policy 459

 a—Exclusion of liability coverage for
 bodily injury to insureds who are not
 members of same household is invalid
 as contrary to the No-Fault Act 459

 b—Enactment of C.R.S. § 10-4-418(2)(b)
 did not legitimize named insured
 exclusions 461

§ 3.7.7—Exclusion That Limits Liability Coverage for Permissive Drivers to Those Who Have No Insurance of Their Own Is Void as Contrary to Public Policy 464

§ 3.7.8—Exclusion of Coverage for Operation of Non-Owned Vehicle Without the Consent of the Owner Does Not Violate the No-Fault Act 466

§ 3.7.9—Business Use Delivery Exclusion in Personal Auto Liability Policy Is Void as Against Public Policy 467

§ 3.7.10—Criminal Acts Exclusion in Excess Liability Insurance Policy Was Not Contrary to Public Policy, nor Did the Exclusion Violate the Reasonable Expectations of the Insured 468

§ 3.7.11—“Regular Use” Exclusion in Auto Liability Policy Is Consistent with Public Policy and Operated to Exclude Coverage Where the Tortfeasor Was Driving His Father’s Vehicle and His Father Was a Named Insured Under the Policy. Moreover, a Vehicle Merely Used as a Temporary, Gratuitous Substitute for an Insured Vehicle Does Not Constitute a “Replacement” Vehicle 474

§ 3.8 LIABILITY COVERAGE FOR PERMISSIVE USERS 476

§ 3.8.1—Purchaser of Vehicle, Who Has Taken Possession from Named Insured, Is Not a Permissive User Entitled to Liability Coverage Under Named Insured’s Policy 477

§ 3.8.2—Adoption of the “Initial Permission Rule” 478

§ 3.8.3—Implied Permission to Use a Vehicle Exists as Long as the Permittee Does Not Know of the Denial of Actual Permission from the Owner 481

Table of Contents

§ 3.8.4—Conditional Vendee of Vehicle Was Operating Vehicle as a Permissive User, Not as an Owner, at the Time of Fatal Accident, Since Oral Sale Agreement Provided That Titleholder Would Continue to Insure Vehicle Until It Was Paid For, Thereby Evidencing an Intent That Immediate Right of Possession of Vehicle Had Not Been Transferred to Conditional Vendee 483

§ 3.9 OBLIGATION OF INSURER TO PAY PREJUDGMENT INTEREST 485

§ 3.9.1—Under “Additional Payments Clause,” Insurer Is Not Obligated to Pay Prejudgment Interest in Excess of Policy Limit 485

§ 3.9.2—The No-Fault Act, C.R.S. § 10-4-706(1), Does Not Impose an Obligation upon Insurers to Pay Prejudgment Interest in Excess of the Liability Policy Limit 488

§ 3.10 STACKING OF LIABILITY COVERAGE 490

§ 3.10.1—Unambiguous Anti-Stacking Provisions Will Be Enforced 490

§ 3.11 WHEN DOES AN ACCIDENT OR INJURY ARISE OUT OF THE OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE? 492

§ 3.11.1—Injury or Death Does Not Arise out of the Use of a Motor Vehicle Where the Vehicle Is Merely the Situs of a Shooting 492

§ 3.11.2—Accidental Shooting, Which Occurs While Vehicle Is Being Used as a Platform for Hunting, Does Not Arise out of the Use of a Vehicle 493

§ 3.11.3—Loading and Unloading of a Vehicle — “Complete Operation” Doctrine Applies in Colorado — “but for” Test of Causation Applies 494

§ 3.11.4—Injury Does Not Arise out of Use of Vehicle
When Victim Is Struck by Falling Object
While Victim Is Sitting in Vehicle 496

§ 3.11.5—Gunshot Injury That Occurred During
Loading of Vehicle Is Covered by Liability
Policy If Injury Would Not Have Occurred
“but for” the Loading 497

§ 3.11.6—Where One Vehicle Is Towing Another,
Driver of Towing Vehicle Is “Using” Both
Vehicles for Purposes of Liability Coverage 499

§ 3.11.7—Accidental Discharge of Firearm by Hunter
in a Vehicle May Arise from “Use” of Vehicle
If Use of Vehicle Is Related to the Discharge
of the Firearm and It Is More Than Merely
Fortuitous That the Accident Occurred
in the Vehicle 501

**§ 3.12 PRIMACY OF LIABILITY COVERAGES —
APPORTIONMENT OF COVERAGE WHERE
EXCESS CLAUSES CONFLICT 503**

§ 3.12.1—Conflicting Excess Clauses in Liability
Policies Are Void as Mutually Repugnant —
Owner’s Policy Not Required by the No-Fault
Act to Provide Primary Coverage 503

§ 3.12.2—The No-Fault Act Imposes No Rules
Regarding Primacy of Liability Coverage —
Where Policies Contain Mutually Repugnant
Excess Clauses, Liability Is Apportioned on
an Equal Basis up to the Limits of Each Policy . . . 506

§ 3.12.3—Although General Rule Is That Two
Conflicting Excess Clauses Cancel Each
Other Out, Rule Is Not Applied When One
Excess Clause Appears in a Primary Policy
and the Other Appears in a Policy Designed
as an Excess or Umbrella Policy 508

§ 3.12.4—Unambiguous Excess Clause Will Be
Given Effect 511

Table of Contents

§ 3.12.5—Excess Liability Insurer That Pays More Than Its Share of Defense Costs for Its Insured May Obtain Contribution of Defense Costs and Settlement Payment from Primary Insurer 513

§ 3.12.6—Provision in Rental Contract Making Rental Company’s Liability Insurance Excess over Other Collectible Insurance Is Not Contrary to Public Policy Under the No-Fault Act 515

§ 3.13 INSURED’S DUTIES — COMPLIANCE WITH POLICY NOTICE REQUIREMENTS 517

§ 3.13.1—Traditional Rule — Insurer Did Not Have to Show Prejudice to Deny Coverage Based upon Insured’s Unexcused Failure to Provide Notice . . . 517

 a—Insured’s unexcused delay in giving notice of accident or in forwarding suit papers relieves liability insurer of its duties under policy, regardless of whether insurer suffers prejudice 517

 b—Seven-month delay in forwarding suit papers to liability insurer relieved insurer of duty to defend and indemnify 520

§ 3.13.2—Notice-Prejudice Rule Applies to Liability Insurance Coverage 520

§ 3.13.3—Notice Provisions in a Liability Policy May Be Set Aside Where Substantial Justification Exists 522

§ 3.13.4—Where Duty to Provide Notice of Accident Falls Only on Named Insured, Named Insured’s Failure to Provide Timely Notice Does Not Relieve Insurer of Obligation to Defend and Indemnify Additional Insured 524

§ 3.14	INSURANCE COVERAGE FOR NEGLIGENT ENTRUSTMENT CLAIMS	525
§ 3.14.1—	Under Policy Provision Excluding Coverage for Bodily Injury Arising out of Use, Ownership, Maintenance, or Operation of a Motor Vehicle, No Coverage Exists for a Claim of Negligent Entrustment of the Vehicle	525
§ 3.14.2—	Coverage May Not Exist for Negligent Entrustment Claim Under an Automobile Liability Unless Persons Entrusting the Vehicle Are Named Insureds Under the Policy	528
§ 3.14.3—	Damages for Wrongful Death Resulting from Accident That Occurred When Teenage Boy Who Was Riding a Go-Cart Was Struck by a Pickup Were Excluded from Coverage Under a Homeowner’s Policy	529
§ 3.15	DUTY OF SELF-INSURERS	531
§ 3.15.1—	C.R.S. § 10-4-716(1) Does Not Limit Obligation of Self-Insurers to Provide Liability Coverage for Permissive Users of Vehicles	531
§ 3.16	WHO IS AN “INSURED” FOR PURPOSES OF LIABILITY COVERAGE — COVERAGE FOR NON-OWNED VEHICLES AND RESIDENTS OF INSURED’S HOUSEHOLD AND EXCLUSIONS FROM COVERAGE	533
§ 3.16.1—	Employee Exclusions Generally	533
§ 3.16.2—	Employee Exclusions Are Enforceable and Are Not Contrary to the Public Policy of the No-Fault Act	533
§ 3.16.3—	Named Driver Exclusion	535
a—	Named driver exclusion operates to negate coverage for claim of negligent entrustment	535

Table of Contents

§ 3.16.4—Coverage for Newly Acquired Automobiles	537
a—Coverage for newly acquired automobiles extends only to vehicle acquired by the “named insured”	537
b—Where insured fails to give notice to insurer of purchase of newly acquired auto within time prescribed by policy, insurer may properly deny liability coverage	538
§ 3.16.5—Liability Coverage for Resident Relatives of the Named Insured	540
§ 3.16.6—Coverage for “Non-Owned” Automobiles	541
a—Vehicle titled in business name of insured’s sole proprietorship was not a “non-owned auto” for purposes of insured’s personal automobile policy	541
b—Where policy contains no definition of term “non-owned automobile,” term is construed according to its plain, ordinary, and customary meaning	542
c—For purposes of a “non-owned automobile” exclusion, the term “resident of same household” includes girlfriend who lives with boyfriend at time of accident	543
§ 3.16.7—Exclusion of Coverage for Non-Owned Vehicle Furnished or Available for Regular Use	545
a—Unambiguous exclusion will be enforced	545
b—Purpose of “regular use” exclusion	546
§ 3.16.8—Coverage for a Temporary, Substitute Vehicle Does Not Extend to a Vehicle Owned by the Insured	548
§ 3.17 DECLARATORY JUDGMENT ACTIONS	549
§ 3.17.1—Where Insurer Unsuccessfully Brings Declaratory Judgment Action Against Insured, Language of Liability Policy May Require Insurer to Pay Insured’s Attorney Fees in Defense of Such Action	549

§ 3.17.2—Anticipatory Declaratory Judgment	
Actions in Colorado	550
a—Declaratory judgment actions in Colorado	550
b—Basic requirements for a declaratory judgment action — Standing and a justiciable controversy	551
c—What is an anticipatory declaratory judgment action?	553
d—How confusion entered the law	553
e—What the court held in <i>Hecla</i>	555
f—Clarification in <i>Constitution Associates</i>	559
g—Further clarification in <i>Herring</i>	564
h—Conclusion	565
§ 3.18 COVERAGE LIMITS	565
§ 3.18.1—In Wrongful Death Claim, Per-Person Liability Limit Applies to Decedent, and Parents Asserting Claim Are Not Entitled to Recover Separate, Per-Person Limit	565
§ 3.19 MISREPRESENTATION BY INSURED — EFFECT ON COVERAGE	568
§ 3.19.1—Determining Materiality of Misrepresentation	570
a—Insured’s misrepresentation regarding ownership of one of 12 vehicles covered under a commercial auto policy was not material as to liability coverage because the insured was covered for purposes of liability coverage regardless of ownership	570

Table of Contents

§ 3.20	MISCELLANEOUS	572
§ 3.20.1	—Since Loss of Consortium Is a Personal Injury, Not a Bodily Injury, Coverage for Loss of Consortium Is Combined Within the Single “Each Person” Limit for Bodily Injury	572
§ 3.20.2	—Garage Liability Coverage	573
a	—Repair of insured’s rental truck at garage location is incidental to garage business and falls within garage operations liability coverage	573
<hr/>		
Chapter 4	LITIGATION OF MOTOR VEHICLE LIABILITY CLAIMS UNDER COLORADO’S TORT SYSTEM	577
<hr/>		
§ 4.1	INTRODUCTION	577
§ 4.2	THE ELIMINATION OF THE THRESHOLD REQUIREMENT	582
§ 4.3	DAMAGES RECOVERABLE UNDER THE TORT SYSTEM	586
§ 4.4	SUBROGATION CLAIMS AND LIENS	589
§ 4.4.1	—Subrogation Under The Former No-Fault Act	589
§ 4.4.2	—Subrogation Under Current Law	590
§ 4.4.3	—Hospital Liens	593
§ 4.4.4	—Medicaid Liens	595
§ 4.4.5	—Medicare Claims	597
§ 4.4.6	—Workers’ Compensation Subrogation Claims	599
§ 4.5	APPLICATION OF THE COLLATERAL SOURCE RULE	602

APPENDIX A	609
-------------------------	-----

APPENDIX B	631
-------------------------	-----

TABLE OF AUTHORITIES	817
-----------------------------------	-----

SUBJECT INDEX	839
----------------------------	-----
