

Proof of Loss in UM & UIM Claims

— by Tim Heinson

The Oregon Supreme Court recently decided not to review a significant opinion by the Court of Appeals regarding UM and UIM claims. As most claims adjusters are aware, ORS 742.061(1) provides that in UM and UIM claims, “if settlement is not made within six months from the date proof of loss is filed with an insurer,” a lawsuit is then filed, and the insured’s recovery exceeds the amount of any tender made by the insurer, then attorney fees “shall be” awarded. Subsection (3) of ORS 742.061 provides a way for insurers to avoid potential attorney fee exposure by providing written notice “not later than six months from the date proof of loss is filed with the insurer” that “(a) The insurer has accepted coverage and the only issues are the liability of the uninsured or underinsured motorist and the damages due the insured; and (b) The insurer has consented to submit the case to binding arbitration.”

Since it can determine whether attorney fees will be awarded, the question of what constitutes “proof of loss” has generated a considerable amount of litigation over the years. Among the arguments has been that a PIP application should serve as the requisite “proof of loss.” In Weatherspoon v. Allstate Insurance Company, 193 Or App 330 (2004), the Court of Appeals rejected this argument and the Oregon Supreme Court recently refused to hear the plaintiff’s appeal from that decision. Weatherspoon v. Allstate Insurance Company, 337 Or 327 (2004).

The specific holding of Weatherspoon is that a PIP application by itself is not adequate proof of loss for UM and UIM claims. The opinion should also be useful in addressing other creative “proof of loss” argu-

ments. The plaintiff in that case argued that the insurer essentially had all of the written documentation necessary for proof of loss, including a recorded statement, the PIP application, a medical release, and a wage records release. The Court of Appeals held, however, that the insurer did not have an essential and, to insurers, obvious piece of information: the plaintiff did not inform the insurer that she intended to make a UIM claim. Since the issue in such claims will be whether adequate notice has been provided, claims adjusters should be alert for attempts to provide early notice. Adjusters should be particularly wary of the subtle mention of a potential UM or UIM claim in initial correspondence from the insured or the insured’s attorney.

This opinion also highlights the value of a formal “Proof of Loss” form. ORS 742.504 (5)(a) provides that UM and UIM “proof of claim shall be made upon forms furnished by the insurer unless the insurer shall have failed to furnish such forms within 15 days after receiving notice of claim.” Use of a formal “Proof of Loss” form, including its timely provision to the insured, should avoid any uncertainty as to the date the six months begin to run for an attorney fee claim. We have a form on our website, www.lerlaw.com, that you are welcome to use.

Another point always worth emphasizing is that a decision whether to accept coverage and agree to arbitration needs to be made as soon as possible. If the decision is made to do so, this agreement must be in writing and it does not hurt to provide the notice multiple times. ❖

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