

**A HISTORY AND OVERVIEW OF COLORADO LAW FOR
AUTOMOBILE INSURANCE COVERAGE**

Paul D. Godec, Esq.

RUEGSEGGER SIMONS SMITH & STERN, L.L.C.
1625 Broadway, Suite 2300
Denver, CO 80202
303.623.1131

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Paul D. Godec provides a broad range of legal services necessary for the successful resolution of disputes through both litigation and alternative dispute resolution. Mr. Godec counsels clients on general business and corporate law, insurance, employment law, employment contracting, professional licensure and credentialing, and professional review. Mr. Godec also represents clients in complex civil litigation including contract, health care, insurance defense, bad faith insurance defense, employment, and construction issues.

These materials are intended to provide general information on selected legal topics and are not intended to provide legal advice on any specific transaction or situation, or to serve as a substitute for consulting with legal counsel.

1. History of Auto Accident Liability.

For as long as the automobile has existed, so too has the inevitable automobile accident.¹ During the first half of the 20th century, the law handled automobile accidents the same as other non-contractual disputes between parties: Lawsuits simply determined which driver caused the accident and imposed liability and damages against the “at fault” driver. *See Kent v. Treworgy*, 125 P. 128, 22 Colo. App. 441 (1912); *see also Kracaw v. Micheletti*, 276 P. 333, 85 Colo. 384 (1929). The parties either settled lawsuits out of court or battled through these matters at trials. Each trial had to determine both which driver caused the accident and the amounts of various categories of damages. Historically, however, the prevailing driver’s actual recovery of damages for property damage or personal injuries depended entirely upon the wealth and resources of the at-fault driver. If the at-fault driver lacked resources or assets, the prevailing party probably recovered little or nothing for his injuries or damages. In addition, injured drivers who lacked personal financial resources probably could not obtain medical treatment for accident-related injuries until *after* recovering damages from the at-fault driver.

2. Birth and Development of Automobile Insurance.

Insurance companies quickly identified the need for automobile insurance and auto insurance developed shortly after the birth of the automobile. In fact, Colorado case law indicates that, as early as 1922, both motorists involved in an accident had elected to carry auto insurance. *See Union Automobile Insurance Company v. Samelson*, 207 P. 1113, 71 Colo. 479 (1922). Over time, the insurance industry began offering insurance coverage for six different types of damages that could arise from the use of an automobile.² Most auto insurance policies involve a combination of types of coverage or “endorsements” that insure against various types of potential damages or liabilities.

a. Bodily injury coverage. Insurance companies for “at-fault” drivers provide coverage to compensate accident victims for bodily injuries under “liability” coverage. A liability endorsement usually triggers an obligation for the insurance company to pay for the legal fees and costs associated with the defense of lawsuits brought against an insured. Of course, liability coverage still may delay compensation for medical treatment for accident victims until *after* trial or settlement of litigation. Thus, under liability endorsements, months or years may elapse between when victims suffer injuries in auto accidents and when the victims receive medical treatment for those injuries.

b. Property damage coverage. Insurance companies for “at-fault” drivers provide coverage to compensate accident victims for property damage. Yet, again, insurance payments for the property damage of accident victims might not occur until *after* trial or settlement of litigation. Consequently, months or years could elapse between when victims suffer property damage in auto accidents and when victims receive compensation for the property damage.

c. PIP or MPC. At-fault drivers generally cannot obtain compensation for the medical treatment for their own injuries arising from accidents. Liability coverage for bodily injuries and property damage suffered by others does not provide benefits for the bodily injuries

of “at fault” drivers. For at-fault drivers to receive auto insurance benefits for their own injuries, drivers must purchase additional “personal injury protection” (“PIP”) or “Medical Payment Coverage” (“MPC”) from their own auto insurer. Otherwise, at-fault drivers must rely on their own financial resources or their health insurance coverage to obtain medical treatment for their accident-related injuries.

d. Collision coverage. At-fault drivers do not receive insurance benefits for their own property damage from their own auto insurance company under liability or PIP endorsements. For at-fault drivers to receive auto insurance benefits for their own property damage, drivers must purchase additional “collision” endorsements from their auto insurer. Without collision insurance, at fault drivers must repair or replace their own property damage from their own financial resources.

e. Comprehensive coverage. Many other perils may cause property damage to an automobile other than collisions with other vehicles. For example, automobiles may suffer damage in windstorms, hail storms, floods, or fires. Similarly, falling objects or rocks thrown by other vehicles can cause property damage to automobiles. Comprehensive auto coverage insures against property damage from perils and mechanisms other than collisions, and insures against car theft.

f. UM and UIM coverage. In many accidents, the at-fault driver may not have adequate insurance coverage to compensate victims fully for their bodily injuries and property damages. On the one hand, an at-fault driver may simply have failed to purchase *any* auto insurance, and have driven as an uninsured motorist. On the other hand, an at-fault driver may have purchased *minimal* insurance, and have driven as an under-insured motorist. Consequently, insurance companies offer endorsements for drivers to insure against the possibility that another at-fault driver has failed to purchase any insurance, or has failed to purchase adequate insurance, for the damages caused in a collision. These insurance products have become known as “uninsured motorist” or “UM” coverage, and “under insured motorist” or “UIM” coverage.

g. Compulsory Insurance. Although insurance companies offer the six types of auto insurance endorsements outlined above, drivers historically purchased auto insurance completely at their option. Auto insurance coverage first became mandatory in 1927 when Massachusetts enacted the nation’s first compulsory auto insurance law.³ Colorado did not enact a compulsory insurance law until 1973 when it enacted the Colorado Auto Accident Reparations Act. *See* Colo. Rev. Stat. §§ 10-4-701 to –726 (2002). Colorado’s Auto Accident Reparations Act expired on June 30, 2003, but Colorado’s successor statutes still require certain compulsory insurance coverage for motor vehicles. *See* HB 03-1188 (effective July 1, 2003).

3. Colorado’s No-Fault System (1973-2003).

The first compulsory insurance law in Massachusetts required motorists to carry “at-fault” liability insurance coverage. In contrast, Colorado’s first compulsory insurance system required every owner who operated a motor vehicle or knowingly permitted the operation of the vehicle to have complying “no-fault” insurance coverage. Colo. Rev. Stat. § 10-4-705(1). “No-

fault” insurance coverage provides benefits to motorists without requiring a determination of fault for the accident. Under a “no-fault” system, insurance companies provide compensation for bodily injury and property damage for their own insureds regardless of which driver was at-fault for collisions. Therefore, under a No-Fault system, payments for medical treatment of injured accident victims may begin immediately following an accident and continue up to policy limits without litigation.

Colorado’s No-Fault system began to phase-out on July 1, 2003. The No-Fault system expired because the Colorado Legislature failed to reach a compromise to reform the perceived problems with the No-Fault system. Colorado’s No-Fault system continues, however, for accidents that occurred before July 1, 2003. In addition, the No-Fault system continues to apply to injured parties who are receiving ongoing treatments for injuries suffered in accidents before July 1, 2003. Finally, the Post No-Fault system will inevitably rely on thirty years of insurance law created under the No-Fault system.

In practice, Colorado’s No-Fault system actually functioned as a hybrid “no-fault” and “at-fault” system. Under the No-Fault system, even if an at-fault driver purchased “no-fault” insurance coverage, the accident victim could still sue the at-fault driver to establish fault and to collect certain damages. Recoverable damages included pain and suffering and other non-economic damages from the at-fault driver if the accident victim is dismembered, permanently disabled, permanently disfigured, or required medical care in excess of \$2,500. Colo. Rev. Stat. § 10-4-714 (2002). The Colorado Legislature established the \$2,500 threshold for at-fault litigation in 1984, and never adjusted the threshold upward for inflation. *Id.* § 10-4-714(1)(e); *see also* 1984 Colo. Sess. Laws. 1073, § 8.⁴

The Colorado Legislature adopted this hybrid system both to require all owners of registered motor vehicles to purchase no-fault insurance and to avoid inadequate compensation for injured accident victims. Colo. Rev. Stat. § 10-4-702 (2002). The courts construed the legislative intent of the No-Fault system as maximizing coverage for injured victims. *See Leland v. Travelers Indem. Co.*, 712 P.2d 1060 (Colo. App. 1985). Insurers had to incorporate the provisions of the No-Fault statutes into every auto insurance policy in Colorado. *See Thompson v. Budget Rent-A-Car Sys.*, 940 P.2d 987 (Colo. App. 1996). When a conflict arose between an insurance policy and the No-Fault statutes, the statutes governed over the policy. *See Marquez v. Prudential Prop. & Cas. Ins. Co.*, 620 P.2d 29 (Colo. 1980). Likewise, exclusions in insurance endorsements in derogation of the No-Fault statutes were invalid. *See Truck Ins. Exch. v. Home Ins. Co.*, 841 P.2d 354 (Colo. App. 1992).

Under the No-Fault system, vehicle owners that failed to obtain and to maintain mandatory coverage became “constructive self-insurers.” As constructive self-insurers, owners became *personally* liable from their own financial resources for all benefits which would have existed if the owners had obtained complying No-Fault insurance. Colo. Rev. Stat. § 10-4-705(2). In other words, those vehicle owners could become personally liable with their own assets and resources for all damages if accident victims sue under the “fault” system. *Id.* § 10-4-715.

4. Compulsory Auto Insurance After July 1, 2003.⁵

For auto insurance policies issued and accidents occurring before July 1, 2003, Colorado's No-Fault system applies. For auto insurance policies issued or renewed after July 1, 2003, and for accidents occurring under those policies, another system of compulsory auto insurance applies. *See* HB 03-1188. Most significantly, the post-July 1, 2003 system no longer retains the compulsory coverage requirements for PIP benefits in the No-Fault system. *Compare* Colo. Rev. Stat. §§ 10-4-705 & -706 (2002) (repealed effective June 30, 2003). Likewise, the post-July 1, 2003 system no longer retains any threshold requirements to restrict lawsuits against at-fault drivers. *Compare id.* § 10-4-714.

a. Required coverages.

The post-July 1, 2003 system requires compulsory minimum coverage for each driver's potential liability for collision consisting of two basic components: (1) Liability for bodily injuries; and (2) Liability for property damage. *See* Colo. Rev. Stat. §§ 10-4-616 & -617 (2005). A complying policy must include legal liability coverages for bodily injury or death in the amount of \$25,000 per person and \$50,000 total per accident, and for property damage in the amount of \$15,000. *See id.* § 10-4-617. The post-July 1, 2003 system maintains these minimum compulsory limits from the No-Fault system, and continues to permit insurance companies to offer coverage at levels above the minimum requirements. *Compare* Colo. Rev. Stat. § 10-4-706 (2002) (repealed effective June 30, 2003); *see also* Colo. Rev. Stat. § 10-4-618 (Required coverages are minimum). In general, the post-July 1, 2003 system provides less auto insurance coverage overall, and no PIP coverage for a driver's own medical expenses, rehabilitation expenses, lost wages, or essential services. Consequently, drivers who purchased minimum compulsory coverage under the No-Fault system and continue to purchase minimum compulsory coverage under the post-July 1, 2003 system should save money on auto insurance premiums.

b. Optional coverages.

In addition to minimum liability coverage for bodily injury and property damage liability, the post-July 1, 2003 system requires insurers to *offer* certain additional coverages. More particularly, for auto policies issued or renewed after July 1, 2003, insurers must *offer* insureds "collision" insurance for vehicle damage when insureds are the at-fault drivers. Colo. Rev. Stat. § 10-4-618(2). For auto policies issued or renewed after July 1, 2003, insurers must also *offer* insureds "uninsured motorist" and "under-insured motorist" coverage. *See* Colo. Rev. Stat. § 10-4-609 (2002) (unchanged). In the post-July 1, 2003 system, UM and UIM coverage may become much more important in the absence of compulsory PIP coverage under the No-Fault system for "lost wages" and "essential services." For example, drivers whose bodily injuries in accidents involving significant lost wages may have to pursue reimbursement from their own UIM coverage because those damages exceed at-fault drivers' compulsory minimum coverages of \$25,000 per person and \$50,000 per accident. *See* HB 03-1188, § 3 (codified at § 10-4-617).

No statutory requirement exists under the post-July 1, 2003 system for insurers to offer “Medical Payments Coverage” or “MPC.” Nonetheless, many auto insurance companies have chosen to offer MPC for new and renewing policies after July 1, 2003. For auto insurance companies that have chosen to offer MPC or “med-pay” benefits, the insurance companies must provide benefits of \$5,000 or higher. Colo. Rev. Stat. § 10-4-635(1). Insurance companies must also *offer* MPC coverage and make statutorily required disclosures to consumers when selling automobile insurance. *Id.* § 10-4-635(2)(a). MPC will provide primary benefits before an injured driver receives benefits under health insurance coverage. *Id.* § 10-4-635(2)(b)(II).

In some instances, MPC might permit greater payments for accident-related services than would health insurance coverage. Some health insurance plans place strict coverage limitations on chiropractic, physical therapy, or message therapy services. In contrast, MPC under auto insurance policies might more generously permit chiropractic, physical therapy, and message therapy services for accident related injuries. Of course, drivers typically do not know what types of medical services they might want to receive after a future accident at the time that they purchase MPC with auto insurance. Moreover, drivers typically cannot know whether their health insurance will provide adequate benefits for treating injuries in future accidents at the time that they decide whether to purchase auto MPC.

c. Priority for Payment.

The post-July 1, 2003 system did not impose specific criteria for payment priorities that existed under the No-Fault system. Accordingly, insureds may have to compete with hospitals, health care providers, health insurers, and workers’ compensation insurers over the liability insurance benefits of at-fault drivers after accidents. Moreover, current laws may give hospitals, workers’ compensation insurers, Medicare, and Medicaid, priority ahead of injured parties for the proceeds from at-fault drivers’ liability insurance benefits. *See* Colo. Rev. Stat. § 38-27-101 (hospital subrogation); *id.* § 8-41-203 (workers’ compensation subrogation); *see also* 42 U.S.C. § 1395y(b) (Medicare subrogation); 42 U.S.C. §§ 1396a(a)(25) & 1396p (Medicaid subrogation); 42 C.F.R. §§ 411.53 & 433.36.

d. Impacts of post-July 1, 2003 system.

Because the post-July 1, 2003 system decreases the availability of overall auto insurance benefits, health insurance benefits will probably begin to cover more of the medical expenses following accidents. Consequently, health insurance companies will undoubtedly continue to raise their premiums at even faster rates than before the expiration of the No-Fault system. Likewise, many providers which routinely received reimbursement under PIP coverage in the No-Fault system – such as chiropractors, physical therapists, and message therapists – will likely have to seek private payment from their clients.

Emergency medical facilities such as emergency departments in hospitals must deliver care to emergency patients irrespective of insurance coverage. Therefore, hospitals will likely assert their liens more aggressively and pursue reimbursement for their services through tort litigation more actively than under the No-Fault system. For drivers that purchase

MPC or “med-pay coverage,” hospital emergency rooms may experience better success at reimbursements. Nonetheless, emergency facilities that had already experienced financial difficulties have faced even greater difficulties under the post-July 1, 2003 system.

Parties who suffer injuries in accidents when another driver is at-fault will probably notice several impacts from the expiration of the No-Fault system. Initially, injured parties may have to turn to their health insurance with less generous coverage for certain medical and rehabilitative expenses following accidents. In some cases, health insurance policies may actually exclude coverage for injuries received in auto accidents. In many cases, injured parties may have to pay for certain medical or rehabilitative expenses from personal resources in the hopes of recovering those expenses in later litigation against the at-fault drivers. Injured parties without financial resources may have to forgo certain medical and rehabilitative services, and endure prolonged pain and suffering, until resolutions of their tort litigation against at-fault drivers. If the tort litigation fails to generate adequate recoveries, injured parties may need to pursue additional reimbursement for medical and rehabilitative expenses from their own UM or UIM coverage.

At-fault drivers who suffer injuries in accidents will notice the greatest impacts from the expiration of the No-Fault system. These at-fault drivers cannot rely on “no-fault” PIP coverage to provide payment for their medical expenses following accidents. At-fault drivers who purchase MPC or “med-pay coverage” may find that this coverage pays less generously for medical expenses following an accident. Similarly, at-fault drivers will likely find that their health insurance plans pay less generously, or not at all, for certain medical and rehabilitative expenses following accidents. Moreover, at-fault drivers cannot bring meritorious lawsuits against other drivers who did not cause the accident as a means to recover for their injuries. Finally, at-fault drivers face much greater likelihood of becoming defendants in tort litigation brought by injured parties. In many instances, this tort litigation could expose the personal assets of at-fault drivers to pay judgments for damages to injured parties.

e. Demise of PPO Option?

Nothing in the post-July 1, 2003 system impacted the statutory framework regarding the optional use of a PPO and utilization review. *Compare* HB 03-1188, *with* Colo. Rev. Stat. §§ 10-4-115(2) & 10-16-122(2) (2002). Moreover, nothing has changed the stated legislative benefits inherent in the use of PPOs and utilization review to manage providers’ abuses of insurance coverages. At present, however, auto insurance companies have not offered a PPO option for MPC or “med-pay coverage” benefits in the post-July 1, 2003 system.

f. Return of No Fault?

In 2005, the Colorado Legislature adopted a joint resolution to organize a special committee to study the impact of the change from No-Fault to tort systems. *See* HJR 05-1026. The Joint Resolution expressly acknowledged that (1) “The tort-based auto insurance system has radically changed . . . medical expense payments; (2) “The tort-based system has affected auto insurance premium rates and coverages . . . ; and (3) “The elimination of no-fault auto insurance has created gaps in coverage and problems in delivery and availability of

healthcare for injuries received in auto accidents [.]” *Id.* The Joint Committee must meet in 2005 and recommend legislation for consideration in the 2006 Legislative session. *Id.*

5. Conclusion.

The legal and insurance mechanisms for addressing the medical needs of drivers who have suffered injuries and other damages in auto accidents have evolved tremendously in the past century. In contrast, the basic obligations of health care providers to patients, and the basic legal tenants of at-fault liability, have changed little. Yet, the public policy debate continues to rage regarding the most efficient mechanism for providing effective health care services for injuries, affordable premiums for auto insurance coverage, and uncomplicated forums for dispute resolution in a compulsory insurance system.

¹ The first known automobile accident occurred in New York City in 1896. See *Auto Insurance Nears 100th Anniversary*, Underwriters’ Rep., Sept. 19, 1996 at 19.

² Some of the following sections rely on materials originally prepared by Rocky Mountain Insurance Information Association.

³ See U.S. Gen. Accounting Office, No. 98-2, *Auto Insurance: State Regulation Affects Cost and Availability*, 67 (1986).

⁴ Many of the proposals to reform the No-Fault system before it expired on June 30, 2003, sought to raise the dollar threshold for lawsuits, or to limit lawsuits to instances of permanent disability, dismemberment, or death.

⁵ Some of the following sections rely on Richard W. Laugesen, “After the Sunset – Colorado Motor Vehicle Insurance Post-July 1, 2003,” 32 *The Colorado Lawyer* 111-16 (No. 7, July 2003).

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