PENNSYLVANIA MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW

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I. GENERAL PROVISIONS

A. Title (§ 1701)

Motor Vehicle Financial Responsibility Law, 75 Pa. C.S. 1701, *et seq*.

B. Effective Date

The MVFRL as originally enacted applies to all policies issued or renewed on or after October 1, 1984. Effective July 1, 1986, § 1724 "Certain Nonexcludable Conditions" was added. Effective December 12, 1988, §§ 1761 to 1769 "Catastrophic Loss Trust Fund" were repealed. Effective June 1, 1989, § 1715 "Availability of Adequate Limits" was amended to provide for extraordinary medical benefit coverage.

1. Act 6 Amendments:

The most recent Amendments to the MVFRL, though all signed into law on February 7, 1990, have varying effective dates as follows:

(a) § 1702 "Definitions" amended effective February 7, 1990.

(b) § 1705 "Election of Tort Options" amended effective February 7, 1990, but only applies to policies issued or renewed on and after July 1, 1990.

(c) § 1791.1 "Disclosure of Premium Charges and Tort Options" amended effective February 7, 1990 but only applies to policies issued or renewed on and after July 1, 1990.

(d) § 1799.7 "Rates" amended effective February 7, 1990 but freezes private passenger motor vehicle rates at December 1, 1989 levels. Requests for new rates applicable to policies issued on or after July 1, 1990 must be filed on or before May 1, 1990.

NOTE: Note the savings provision which extended the otherwise repealed CAT Fund benefits *after* June 1, 1989 for accidents occurring *before* June 1, 1989 applies only to the owner of the insured vehicle, not to a spouse or relatives in the household. *Bumberger v. Ins. Dept.*, Pa., 638 A.2d 948 (1994).

(e) § 1799.4 "Examination of Vehicle Repairs" amended effective in 60 days. (i.e., April 8, 1990)

(f) § 1799.5 "Conduct of Market Study" amended effective in 60 days. (i.e., April 8, 1990)

(g) § 1799.6 "Conduct of Random Field Surveys" amended effective in 60 days. (i.e., April 8, 1990)

(h) § 1797 "Customary Charges for Treatment" amended effective April 15, 1990.

(i) All remaining Amendments to MVFRL are effective July 1, 1990 for policies issued or renewed on or after that date.

2. Workers' Compensation Amendments:

A workers' compensation reform statute was signed into law on July 2, 1993. Although dealing primarily with changes to the Pennsylvania Workers' Compensation statute, the reform bill also affected four sections of the MVFRL as follows:

(a) §§ 1735 and 1737 of the MVFRL dealing with workers' compensation immunity issues in UM/UIM claims, are repealed in their entirety as of July 2, 1993.

(b) §§ 1720 and 1722 of the MVFRL, dealing with subrogation and admissibility of evidence, respectively, are modified effective August 31, 1993. The references to workers' compensation benefits in the sections are deleted, presumably restoring a workers' compensation right of subrogation in automobile accident cases and also permitting evidence of medical and wage damages already covered by workers' compensation.

NOTE: The amendments are substantive, not procedural, and will not be given retroactive effect. *Brogan v. WCAB*, Pa. Cmwlth., 637 A.2d 689 (1994), *Carrick v. Zurich American Ins. Co.*, 14 F.3d 907 (3d Cir., 1994). The compensation carrier's right to subrogation is governed by the date of accident, not by the date of the compensation payments. *Schraeder v. Schroeder*, Pa. Super., 682 A.2d 1305 (1996).

C. Definitions (§ 1702)

Among the definitions provided in the revised statute are:

1. Financial Responsibility:

The ability to respond in damages for liability on account of accidents arising out of the maintenance or use of a motor vehicle in the following amounts:

(a) $15,000 for bodily injury to one person in any one accident;

(b) $30,000 for bodily injury to two or more persons in any one accident;

(c) $5,000 for property damage for any one accident.

NOTE: Guiding or directing a vehicle that is being operated by another is **not** "maintenance or use of a motor vehicle." *Belser v. Rockwood Ins. Co.*, Pa. Super., 791 A.2d 1216 (2002).

2. Injury:

Accidentally sustained bodily harm to an individual and that individual's illness, disease or death resulting therefrom.

NOTE: "Injury" as defined in the statute does *not* include mental injury which is **not** the result of bodily injury. *Zerr v. Erie*, Pa. Super., 667 A.2d 237 (1995). As a result, mental or emotional distress from witnessing injury to a family member does not itself qualify as "injury." *Jackson v. Travelers Ins. Co.*, Pa. Super., 606 A.2d 1384 (1992). A carrier may, however, provide broader coverage than the MVFRL requires. If a policy defines injury to include disease or illness without a prerequisite "accidentally sustained bodily harm," then treatment for such mental or emotional distress is covered. *Glikman v. Progressive*, Pa. Super., – A.2d – (2007).

3. Insured:

(a) An individual identified by name as an insured in a policy of motor vehicle liability insurance;

NOTE: An individual listed only in the "named drivers" section of the policy does not qualify as a "named insured." *Stump v. State Farm*, Pa. Super., 564 A.2d 194 (1989), *Caron v. Reliance Ins. Co.*, Pa. Super., 703 A.2d 63 (1997).

NOTE: "First named insured" literally means the first name listed on the policy even if the insurer by error failed to list the applicant (i.e. the person who requested coverage and filled out the application) first. *Jones v. Prudential*, Pa. Super., 856 A.2d 838 (2004).

NOTE: If the Named Insured is a partnership, then the individuals comprising the partnership are also Named Insureds when acting in their capacities as partners. *Continental Casualty v. PRO Machine*, Pa. Super., – A.2d – (2007).

(b) A spouse or other relative if resident in the household with the named insured;

NOTE: Absent policy definition of "resident in the household," that phrase may include part time residents. *Toplin v. Pennland Ins. Co.*, Phila. CCP (1997). In a homeowner's coverage context, a relative who from time to time visits or stays at the residence does not through such temporary arrangements qualify as a "resident in the household." *McNally v. Republic Ins. Co.*, Pa. Super., 718 A.2d 301 (1998).

NOTE: Policy language may not restrict "resident of the household" insured status to those occupying an insured auto. *Prudential v. Colbert*, Pa., 813 A.2d 747 (2002).

NOTE: In *PNC Bank v. WCAB*, Pa. Cmwlth., 831 A.2d 1269 (2003), the court announced prospectively as of 9/17/03 that Pennsylvania no longer recognizes common law marriages and that marriages must be entered into pursuant to the Marriage Law. In *Costello v. WCAB*, Pa. Cmwlth., – A.2d – (2007), however, the court announced that the effective prospective date for abolishing common law marriages is 1/1/05, the effective date of an amendment to the Marriage Law on this point.

NOTE: A spouse does not qualify as an "insured" under her husband's employer's commercial auto policy where the husband is not identified as a named insured under the policy. *Hunyady v. Aetna*, Pa. Super., 578 A.2d 1312 (1990), *Northern Ins. Co. v. Resinski*, Pa. Super., 827 A.2d 1240 (2003).

NOTE: The statutory definition of "insured" applies to individuals, not corporations (which do not have spouses or relatives). That the same policy language is used for individuals and corporations does not render the policy ambiguous and does not create coverage that would otherwise not exist. *Insurance Company of Evanston v. Bowers*, Pa. Super., 758 A.2d 213 (2000).

(c) A minor in the custody of the named insured or a relative of the named insured if the minor is a resident in the household of the named insured.

NOTE: A court order or government placement in foster care may not be necessary to satisfy the "in the custody" requirement, particularly where a minor had been officially placed in the foster home on prior occasions. *Donegal Mutual v. Raymond*, Pa. Super., 899 A.2d 357 (2006).

3. Necessary Medical Treatment and Rehabilitative Services: Treatment, accommodations, products, or services which are determined to be necessary by a licensed health care provider unless they shall have been found or determined to be unnecessary by a State-approved Peer Review Organization (PRO).

NOTE: Thermograms can qualify as "medical treatment" under this definition. *Tagliati v. Nationwide*, Pa. Super., 720 A.2d 1051 (1998).

NOTE: "Monitoring" of a patient is not "necessary... rehabilitative services" since it does not assist or increase the patient's ability to care for himself. "Monitoring" is also not "necessary medical treatment" because treatment requires overt action which simple monitoring is not. *Bickerton v. Insurance Commissioner*, Pa. Cmwlth., 808 A.2d 971 (2002).

4. Noneconomic Loss: Pain and suffering and other nonmonetary detriment.

5. Private Passenger Motor Vehicle: A four-wheel motor vehicle, except recreational motor vehicles not intended for highway use, which is insured by a natural person and:

(a) Is a passenger car neither used as a public or livery conveyance nor rented to others; or

(b) Has a gross weight not exceeding 9000 pounds and is not principally used for commercial purposes other than farming.

CAVEAT: In this Definition and in later sections of the MVFRL, the Statute does not distinguish between a "Personal Automobile Liability Policy" and a "Commercial Automobile Liability Policy". The determining factor is whether the vehicle "is insured by a natural person" (as opposed to a corporation or partnership). Thus, a passenger car used principally or even solely for personal purposes does not qualify as a "Private Passenger Motor Vehicle" if insurance is obtained by a corporation, partnership, or other "unnatural" person.

6. Serious Injury: A personal injury resulting in death, serious impairment of a body function or permanent serious disfigurement.

NOTE: In *Washington v. Baxter*, Pa., 719 A.2d 733 (1998), the Supreme Court rejected the *Dodson* Superior Court decision which had governed determination of "serious injury" exceptions to the limited tort option under the MVFRL. Under the new test, whether a "serious injury" exists should be determined in all but the clearest cases by a jury. The fact finder is to evaluate two issues:

1. What body function, if any, was impaired; and
2. Was the impairment of the body function serious?

The focus of the inquiry is not on the injuries but rather on how the injuries affected a particular body function, a topic generally requiring medical evidence. In determining whether any impairment is serious, the fact finder should consider the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and "any other relevant factors." The court specifically holds that an impairment need not be permanent in order to be serious.

7. Underinsured Motor Vehicle: A motor vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages.

NOTE: Under *Paylor v. Hartford Ins. Co.*, Pa., 640 A.2d 1234 (1994), policy language excluding family cars from the definition of "underinsured motor vehicle" is enforceable to prevent the insured from converting UIM coverage into additional liability coverage. But see *Marroquin v. Mutual Benefit Ins. Co.*, Pa. Super., 591 A.2d 290 (1991), refusing to apply the same exclusionary language when the named insured on the second policy differed from the named insured on the primary BI policy.

NOTE: The MVFRL excludes federal government vehicles from the definition of "underinsured motor vehicle." Policy language seeking to exclude *all* government vehicles, rather than just federal government vehicles, is void. *Kmonk-Sullivan v. State Farm*, Pa., 788 A.2d 955 (2001).

8. Uninsured Motor Vehicle:

(a) A motor vehicle without liability insurance or self-insurance at the time of the accident;

NOTE: Policy language defining UM vehicle to not include any vehicle owned by the insured is valid. *Progressive Northern v. Gondi*, 165 Fed. App. 217 (3rd Cir., 2006) (where the insured, seeking to prevent theft of his insured car, was run over by his own car).

NOTE: In *Federal Kemper Ins. Co. v. Wales*, Pa. Super., 633 A.2d 1212 (1993), the tortfeasor, though insured, was a co-employee of the claimant and was accordingly immune from suit. Although claimant was left without a tort remedy, that did not create a UM claim since the statutory definition of "uninsured motor vehicle" had not been met.

(b) A motor vehicle for which the liability insurance company has denied coverage;

NOTE: Where a wrongful denial of coverage by the tortfeasor's liability carrier causes UM payments, the UM carrier may pursue recovery against the liability carrier for the wrongful denial. *General Accident v. Federal Kemper*, Pa. Super., 682 A.2d 819 (1996).

(c) An unidentified motor vehicle provided the accident is reported to the police or proper governmental authority and the claimant notifies the insurance carrier within thirty days of the accident or as soon as practicable thereafter.

NOTE: The reporting requirements under this section apply even to *passengers* bringing UM claims. *Jackson v. Assigned Claims Plan*, Pa. Super., 575 A.2d 626 (1990). The claimant, having reported the accident to the police, has no obligation to produce an actual written police report as a prerequisite to recovery of UM benefits. *Hatcher v. Travelers Ins. Co.*, Pa. Super., 617 A.2d 808 (1992). Claimant can justifiably rely on comments by an Emergency Medical Technician employed by the city that the EMT would notify the police. *Gunter v. Constitution State Service Co.*, Pa. Super., 638 A.2d 233 (1994). A report of a work related injury to the Department of Labor and Industry does *not* qualify as a report to "proper governmental authority." *Owens v. Travelers Ins. Co.*, Pa. Super., 675 A.2d 751 (1996). A direct report by the claimant to the Department of Transportation (but not to the police) is *not* a report to a "proper governmental authority." *Blazquez v. Pennsylvania Assigned Claims Plan*, Pa Super., 757 A.2d 384 (2000).

II. FIRST PARTY BENEFITS

A. Required Benefits. (§ 1711)

1. The coverage requirements of the Statute apply to liability insurance policies covering motor vehicles (except certain recreational vehicles and motorcycle type vehicles) registered *and* operated in the Commonwealth.

   NOTE: Unlike the old No-Fault Statute, the MVFRL does not seek to impose its coverage requirements on vehicles operated in PA but *not* registered in PA. *Pugh v. GEICO*, Pa. Super., 552 A.2d 708 (1989); *Boone v. Stonewall Ins. Co.*, Pa. Super. 554 A.2d 968 (1989). *Jarrett v. Pennsylvania National*, Pa. Super., 584 A.2d 327 (1990).

   NOTE: New Jersey requires that insurers conducting business in that state agree to broaden their coverages to New Jersey PIP limits whenever the out of state insured is injured in a New Jersey accident. An MVFRL minimum benefits policy, for instance, can be required to provide unlimited medical benefits if the insurer does business in New Jersey and if the accident occurs in New Jersey. *Smith v. Fireman's Ins. Co. of Newark*, Pa. Super., 590 A.2d 24 (1991). The MVFRL procedural remedies of a carrier (e.g. a medical examination) are still available even after the original MVFRL coverage has exhausted and payments are being made under the extended New Jersey coverage. *Allstate Insurance Company v. McNichol*, Pa. Super., 617 A.2d 333 (1992).

   CAVEAT: Despite the apparent statutory intent to eliminate first party coverage on motorcycle policies, the Superior Court in *Green v. K&K Ins. Agency*, Pa. Super., 566 A.2d 622 (1989) ruled that motorcycle policies must still provide first party coverage (presumably minimum limits) to otherwise uninsured pedestrians involved in accidents with motorcycles.

2. Minimum Benefits: $5,000 in medical benefits for payment of reasonable and necessary medical treatment without limitation as to time, provided that within eighteen (18) months from the accident it is ascertainable with reasonable medical probability that further expenses might be incurred. (§§ 1711, 1712(1))

3. Optional Benefits: The carrier must offer at least the following optional coverages for purchase:

(a) Income loss benefits up to $50,000 ($2,500 per month maximum); (§§ 1715(a)(2), 1712(2)).
Income loss benefits cover:

(i) 80% of actual loss of gross income.

(ii) reasonable expenses incurred to hire replacements to perform self-employment services.

(iii) reasonable expenses incurred for "special help" enabling the claimant to work.

Income loss benefit does *not* cover post mortem work loss. A five (5) day deductible applies to any work loss claim.

CAVEAT: Lack of employment at the time of the accident does not bar recovery. "Actual loss of gross income" can be established by showing that the victim would have worked and earned income but for the accident. *Persik v. Nationwide Ins. Co.*, Pa. Super., 554 A.2d 930 (1989).

NOTE: Where claimant has received workers' compensation benefits, the MVFRL wage benefit is 80% of the wage loss *after* it has been reduced by the workers' compensation payment. *Danko v. Erie Ins. Exchange*, Pa. Super., 630 A.2d 1219 (1993)

NOTE: "Actual loss of gross income" is *not* reduced by sick pay or social security benefits received by an insured. *Panichelli v. Liberty Mutual Ins. Co.*, Pa., 669 A.2d 930 (1996); *Brown v. Nationwide*, Pa. Super., 674 A.2d 1127 (1996).

NOTE: "Month" when calculating the maximum benefit for wage loss means the period of time beginning with a date in one calendar month and ending with the corresponding date in the next calendar month (e.g. April 15 to May 15). *Tyler v. Motorists Mutual*, Pa. Super., 779 A.2d 528 (2001).

(b) Funeral benefits up to $2,500 provided that death due to the accident occurs within twenty-four (24) months of the accident. (§ 1715 (a)(4), § 1712(4)).

(c) Accidental death benefits up to $25,000 (§§ 1712(3), 1715(a)(3)). Benefit is payable to personal representative of estate. Death must occur within 24 months of accident. No dependency required.

NOTE: Policy language may restrict this coverage to named insureds and relatives resident in the household. *Duffy v. Nationwide Ins. Co.*, Pa. Super., 542 144 (1988)

NOTE: Policy language may restrict stacking of this coverage based on number of vehicles on a policy or number of policies. Despite the "appearance of unfairness" of collecting premiums for duplicative benefits that cannot be collected under the policies, the anti-stacking language is enforceable. *Fay v. Erie Insurance Group*, Pa. Super., 723 A.2d 712 (1999).

(d) Additional medical benefits up to at least $100,000 (§ 1715(a)(1)).

NOTE: Unlike requests for lower limits under UM/UIM, the MVFRL provides no special procedure or forms for selecting first party benefit coverage levels. Where the carrier reduced medical limits from $100,000 to $5,000 in response to an ambiguous request from the insured, the policy would not be reformed to provide the higher coverage, especially where the insured paid premiums only for the lower coverage. *Bubis v. Prudential*, Pa. Super., 718 A.2d 1270 (1998).

(e) Extraordinary medical benefits from $100,000 to $1,100,000 which may be offered in increments of $100,000. Except for the first 18 months after an accident (when no annual limit applies), this coverage is subject to a $50,000 per year cap. (§§ 1712(6), 1715(a) (1.1), 1715(d)).

(f) A combination benefit package with a $177,500 limit (with individual limits of $25,000 on any accidental death benefit and $2,500 in funeral benefits) subject to a three (3) year limitation period. (§ 1715(a)(5)).

NOTE: The three year limitation is enforceable and is not against public policy. *Toner v. Nationwide*, Pa. Super., 610 A.2d 53 (1992).

(g) The carrier may offer higher limits than the "optional benefits" listed above. (§ 1715 (b)).

B. Source of Benefits. (§ 1713)

The sources of benefits in order of priority are as follows:

1. The policy under which the claimant is a named insured (§ 1713(a)(1)).

2. The policy under which the claimant is an insured (§ 1713(a)(2)).

3. The policy covering the motor vehicle where the claimant is an occupant of that motor vehicle (§ 1713(a)(3)).

   NOTE: In *Frain v. Keystone Ins. Co.*, Pa. Super., 640 A.2d 1352 (1994), the court in a first party benefit case used the test for "occupant of a motor vehicle" that had been announced by the Pennsylvania Supreme Court in the 1984 *Contrisciane* UM decision. A claimant not physically in or upon the motor vehicle may still qualify as an "occupant of the motor vehicle" by showing:

   (a) A causal relation between the injury and the use of the insured vehicle;

   (b) The close proximity of claimant to the vehicle;

   (c) Claimant as vehicle, not highway, oriented and;

   (d) Claimant engaged in a transaction essential to the use of the vehicle.

   NOTE: See *Curry v. Huron Ins. Co.*, Pa. Super., 781 A.2d 1255 (2001) for analysis of the "essential to the use of the vehicle" prong of the *Frain* test and for an example of activity which does *not* meet the standard. See *Petika v. Transcontinental*, Pa. Super., 855 A.2d 85 (2004) for discussion of "oriented."

4. For claimants other than occupants of motor vehicles, the policy covering any vehicle involved in the accident (§ 1713(a)(4)). A parked, unoccupied motor vehicle is not a "motor vehicle involved in the accident" unless it was parked so as to cause unreasonable risk of injury.

NOTE: As was the case under the old Pennsylvania No-Fault Motor Vehicle Insurance Act, occupants of trolley cars on tracks are *not* considered occupants of a motor vehicle under the MVFRL. In short, they are treated the same as pedestrians for first party benefit purposes. *Ellis v. SEPTA*, Pa., 573 A.2d 216 (1990).

5. The Assigned Claims Plan (§§ 1751-1757).

6. First party benefit coverages cannot be stacked between priority levels. Once coverage under the first applicable priority has been exhausted, claimant may not seek additional first party benefits from other policies at lower levels (§1717).

C. Ineligible/Excluded Claimants. The following individuals are ineligible to receive first party benefits:

1. The owner of a currently registered motor vehicle which does not have "financial responsibility" as required by the Statute (§ 1714)

NOTE: Such an owner is ineligible for first party benefits from **any** MVFRL policy. *Swords v. Harleysville*, Pa., 883 A.2d 562 (2005).

NOTE: This exclusion applies even if the uninsured vehicle is registered outside Pennsylvania. *Santorella v. Donegal*, Pa. Super., 905 A.2d 534 (2006).

NOTE: The spouse of the uninsured owner may, under certain circumstances, also be considered an ineligible claimant. *Ibarra v. Prudential Ins. Co.*, Pa. Super. 585 A.2d 1119 (1991) (spouse eligible for benefits since she was separated from the titled owner spouse and since there was no evidence of ownership or control or use of the vehicle on any regular basis), accord, *Ickes v. Burkes*, Pa. Super., 713 A.2d 653 (1998); *Bethea v. Assigned Claims Plan*, Pa. Super. 595 A.2d 122 (1991) (marital property rights under the Divorce Code, together with evidence of regular use of the vehicle, may be sufficient to exclude benefits for spouse of uninsured owner). Accord, *Allen v. Merriweather*, Pa. Super., 605 A.2d 424 (1992).

2. The operator or occupant of certain recreational vehicles or motorcycle type vehicles (Section 1714)

   NOTE: An occupant of a snowmobile struck by a car is not entitled to first party benefits. *Gallo v. Nationwide*, Pa. Super., 791 A.2d 1193 (2002).

3. A claimant who intentionally injures himself (Section 1718(a)(l))

4. A claimant who is injured while committing a felony, provided that the felonious activity contributes to the cause of the injury (Section 1718(a)(2))

5. A claimant injured while seeking to elude lawful apprehension or arrest (Section 1718(a)(3))

6. A claimant who knowingly converts a motor vehicle (this exclusion does not apply to claimants who are named insureds or insureds under a policy) (Section 1718(b))

7. Claimants who are specifically excluded from coverage by endorsement as permitted by law (Section 1718(c))

NOTE: A "named driver exclusion" based on a DUI conviction is valid for all subsequent policy renewals and excludes all policy coverages, not just first party benefit coverage. *Donegal Mutual v. Fackler*, Pa. Super., 835 A.2d 712 (2003).

CAVEAT: Benefits may not be denied solely because the driver is under the influence of drugs or alcohol at the time of the accident. Any such contractual exclusion is void. (Section 1724) *Atlantic States v. Northeast Networking*, Pa. Super., 893 A.2d 741 (2006).

CAVEAT: Exclusions seeking to avoid coverage for claims arising out of "loading and unloading" vehicles are void. *Omodio v. Aetna*, Pa. Super, 559 A.2d 570 (1989), *Callahan v. Federal Kemper Ins. Co.*, Pa. Super., 568 A.2d 264 (1989). Policy language which limits the application of the exclusion only to individuals not occupying a vehicle is valid and enforceable. *Huber v. Erie Ins. Exchange*, Pa. Super., 587 A.2d 333 (1991). The real issue is whether there is a causal relationship between the injuries and the maintenance or use of a motor vehicle.

CAVEAT: A "garageman exclusion" which seeks to exclude coverage for "any person engaged in the business of repairing, servicing, or otherwise maintaining a motor vehicle" is void. *Rimpa v. Erie Ins. Exchange*, Pa. Super. 590 A.2d 784 (1991).

NOTE: A policy exclusion denying first party benefits when the insured vehicle is used to carry persons or properties for a fee is valid. *Brosovic v. Nationwide*, Pa. Super., 841 A.2d 1071 (2004). For a similar result with regard to UM/UIM benefits, see *Marino v. General Accident*, Pa. Super., 610 A.2d 477 (1990). For a discussion involving liability coverage, see *Prudential v. Sartno*, Pa., 903 A.2d 1170 (2006) (the "for a fee" language is ambiguous where neither the driver nor the employer charged a fee for pizza delivery).

D. Payment of Benefits.

1. Payments of first party benefits are due within thirty (30) days of receipt of the proof of loss. Overdue payments bear twelve percent (l2%) interest. (Section l7l6)

   NOTE: The MVFRL does not create a private cause of action for interest on bills paid late. *Schappell v. Motorists Mutual*, Pa. Super., 868 A.2d 1 (2004).

2. Medical benefit payments cover only "customary charges" as calculated under the MVFRL. The medical service supplier may not request or accept payment other than the lesser of:

   (a) 110% of the Medicare prevailing charge at the 75th percentile,

   (b) 110% of the applicable fee schedule, recommended fee, or the inflation index charge,

   (c) 110% of the diagnostic related groups (DRG) payment, or,

   (d) The provider's usual and customary charge.

If Medicare has not calculated a charge under (a), (b) and (c) as above, for the specific treatment involved, then the medical service supplier can charge no more than 80% of its usual and customary charge (§ 1797(a)).

NOTE: Cost containment applies to payment from liability, UM/UIM, or first party benefit coverages of an auto policy. As a result, insured tort defendants owe cost containment amounts, rather than the face amount of bills. *Pittsburgh Neurosurgery v. Danner*, Pa. Super., 733 A.2d 1279 (1999).

NOTE: Medical cost containment under § 1797(a) is constitutional. *Pa. Medical Society v. Foster*, Pa. Cmwlth., 624 A.2d 274 (1993). In addition, the medical cost containment regulations at 31 Pa. Code § 69.1 *et seq.* (See Appendix C) are constitutional. *Pa. Assoc. of Rehabilitation Facilities v. Foster*, Pa. Cmwlth., 633 A.2d 1248 (1993).

NOTE: The medical cost containment provisions of § 1797(a) apply to claims under a MVFRL policy for treatment rendered on and after 4/15/90, regardless of the date of accident or inception date of the MVFRL policy. *Lynn v. Prudential*, Pa. Super., 619 A.2d 779 (1993); *Frey v. State Farm Ins. Co.*, Pa. Super., 632 A.2d 930 (1993); *Schmidt v. State Farm Ins. Co.*, Pa. Super., 635 A.2d 638 (1993).

3. A medical service supplier may not charge the patient for any excess amounts not covered under the MVFRL/Medicare formula.

4. A carrier may challenge the necessity of medical treatment by submitting bills within ninety days of receipt to a Peer Review Organization. Within thirty days of any decision by the PRO, the insurer, the insured, or the medical service supplier may seek reconsideration. On reconsideration, the PRO must include as a member an individual in the same specialty as the medical service supplier. If a carrier seeks to avoid the MVFRL requirement that payment be made within thirty days of receipt of a bill, the bill must be submitted to the PRO within thirty days (not ninety days as noted above). The obligation to pay is then stayed pending decision by the PRO. (§ 1797(b)).

NOTE: § 1797(b) does not specifically reference determination of causal relationship as a function of the PRO. The Insurance Department has taken the position that causation determinations are inherent in the entire PRO process and come within the "medically necessary" language of the MVFRL. In *Bodtke v. State Farm Ins. Co.*, Pa. Super., 637 A.2d 648 (1994), reversed other grounds, Pa., 659 A.2d 541 (1995), the court adopted the Insurance Department position.

NOTE: If the bills are not submitted to a PRO within 30 days, the carrier *must* pay the bills, even if the carrier ultimately submits the claim to a PRO between the 31st day and the 90th day. *Harcourt v. General Accident*, Pa. Super., 615 A.2d 71 (1992).

NOTE: During the initial PRO review, the PRO must include a member of the same *profession* as the service supplier (e.g. chiropractor, podiatrist, physical therapist, etc.). On any reconsideration, the PRO must include representation from the *specialty* within the *profession* of the medical service supplier. The initial review, for instance, might require a podiatrist while the reconsideration might require a podiatric surgeon. *Harcourt v. General Accident*, Pa. Super., 615 A.2d 71 (1992).

5. If the PRO ultimately determines that the medical service was necessary, the carrier must pay the properly calculated "customary charge" and must also pay 12% annual interest. (§ 1797(5)).

6. Where a carrier has refused to pay bills for past or future medical treatment but has *not* challenged the bills before a PRO, the medical service supplier may challenge the refusal to pay in court. If a court determines that the medical treatment was medically necessary, the carrier must pay the properly calculated charge, interest at 12%, cost of litigation, and all attorney fees. (§ § 1797(4) and (6)).

NOTE: In *Terminato v. Pennsylvania National Ins. Co.*, Pa. 645 A.2d 1287, (1994), the Supreme Court ruled that the administrative remedies (i.e. the PRO reconsideration) need not be exhausted before any resort to court. Regulations to the contrary at 31 Pa. Code § 69.52(m) are void.

NOTE: In *Kuropatwa v. State Farm*, Pa., 721 A.2d 1067 (1998), the Supreme Court ruled that the claimant/patient does have standing to sue the carrier following PRO determinations that result in termination of medical benefits. The MVFRL also clearly gives the right to sue to the medical service supplier.

NOTE: Any vagueness or due process deficiencies in § 1797(b) were corrected by the Insurance Department Regulations which provide detailed procedures. *Pennsylvania Medical Providers Association v. Foster*, Pa. Cmwlth, 613 A.2d 51 (1992). *Lynn v. Prudential*, Pa. Super., 619 A.2d 779 (1993).

7. If the carrier prevails in either the PRO proceeding or the court proceeding, the carrier is not required to pay the submitted bills. In addition, if any previously paid bills are found to cover medically unnecessary treatment, the medical service supplier must reimburse the carrier for the prior payments. (§ 1797(7))

E. Stacking of Benefits. (§ 1717)

Stacking of first party benefits (i.e. cumulation of limits) based either on the number of vehicles on the policy or the number of available policies is not permitted.

NOTE: When there is more than one policy at the same priority level, claimant may collect from more than one policy but may *not* collect *in toto* more than the highest coverage limit on any one policy. *Neilson v. Nationwide*, Pa. Super., 738 A.2d 490 (1999) (overruling *Laguna v. Erie Insurance Company*, Pa. Super., 536 A.2d 419 (1988) and *Manolakis v. Transamerica Ins. Co.*, Pa. Super., 578 A.2d 503 (1990)).

NOTE: An insured at a higher priority level cannot drop down to a lower priority level to collect benefits either exhausted or not available on the higher priority policy. *Wheeler v. Nationwide*, Pa. Super., 905 A.2d 504 (2006).

F. Coordination of Benefits. (§ 1719)

1. Policies providing for first party benefits as required under the Act are deemed to be primary over all other available accident and health policies, work loss programs, etc. *except* workmen's compensation.

2. Accident and health policies, programs, etc. are deemed to be amended by the Statute to insert a clause making benefits under these policies and programs excess above any first party policy or workmen's compensation coverage.

G. Subrogation. (§ 1720)

For actions arising out of the maintenance or use of a motor vehicle, no subrogation is permitted for workers' compensation, first party benefit, or any other payments made under group contracts, programs, or A&H type coverages.

NOTE: The bar on subrogation is constitutional and applies in all auto accident cases, regardless of the theory of liability. *Walters v. Kamppi*, Pa. Super., 545 A.2d 975 (1988).

CAVEAT: The Court of Appeals in *Wirth v. Aetna U.S. Healthcare*, 137 Fed. Appx. 455 (3d Cir. 2005) held that HMO subrogation rights granted by the HMO Act are **not** preempted by the §1720 MVFRL ban on subrogation. The Court of Appeals certified the issue to the Pennsylvania Supreme Court which agreed the MVFRL did not prohibit HMO subrogation. *Wirth v. Aetna U.S. Healthcare,* Pa., 904 A.2d 858 (2006).

CAVEAT: Payments under a self-insured ERISA plan, governed by federal law, are not subject to the MVFRL bar on subrogation. *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

CAVEAT: The bar on subrogation applies to Heart and Lung Act benefits, at least where the date of disability is prior to 8/31/93. *Fulmer v. Cmwlth. of Pennsylvania*, Pa. Cmwlth., 647 A.2d 616 (1994).

CAVEAT: As part of a workers' compensation reform statute effective 8/31/93, the bar on workers' compensation subrogation is deleted from the MVFRL. The amendments are substantive, not procedural, and will not be given retroactive effect. *Brogan v. WCAB*, Pa. Cmwlth., 637 A.2d 689 (1994), *Carrick v. Zurich American Ins. Co.*, 14 F.3d 907 (3d Cir., 1994). The compensation carrier's right to subrogation is governed by the date of accident, not by the date of the compensation payments. *Schraeder v. Schroeder*, Pa. Super., 682 A.2d 1305 (1996), *DePaul Concrete v. WCAB*, Pa. Cmwlth., 734 A.2d 481 (1999).

H. Statute of Limitations. (§ 1721)

1. In cases where no first party benefits have been paid, suit must be filed within four (4) years of the date of the accident. (§ 1721(a))

2. If first party benefits were previously paid, any suit for further benefits must be filed:

   (a) Within four (4) years of the last payment;

   (b) Within four (4) years of the date that the particular expense or loss in dispute was incurred.

3. The Statute of Limitations does not run on a minor but, unlike prior no fault law, does apparently run on other claimants under a legal disability. (§ 1721(b))

I. Preclusion of Evidence. (§ 1722)

A plaintiff is precluded from recovering in any tort or UM/UIM action for any benefits paid or payable under the MVFRL, under any auto policy, under workers' compensation coverage, or under any A&H type coverage. In short, the "Collateral Source" rule no longer applies in automobile accident claims.

CAVEAT: Effective 8/31/93, § 1722 is amended to delete reference to preclusion of workers' compensation benefits, a change consistent with a simultaneous restoration of workers' compensation subrogation rights. Claims arising out of pre-8/31/93 accidents will presumably be governed by the old § 1722 which precluded recovery for any amounts paid by workers' compensation.

CAVEAT: For accidents occurring prior to 7/1/90, plaintiffs are not precluded from collecting again for medical or wage losses covered by workers' compensation or any other coverage in excess of the then $10,000 medical minimum and $5,000 wage minimum. *Palmosina v. Laidlaw Transit Co.*, Pa. Super., 664 A.2d 1038 (1995) (workers' compensation), *Stroback v. Camaioni*, Pa. Super., 674 A.2d 257 (1995) (coverage above minimum).

CAVEAT: Social Security disability benefits do *not* qualify as § 1722 benefits and do *not* create an offset or credit against wage losses. *Browne v. Nationwide Mutual*, Pa. Super., 674 A.2d 1127 (1996). The same is true for benefits payable under an ERISA plan (*Orndoff v. Wilson*, Pa. Super., 760 A.2d 1 (2000)) and under personal disability policies paid for exclusively by the claimant either directly, or through payroll deductions which result in lower wages (*Tannenbaum v. Nationwide*, Pa. Super., – A.2d – (2007)).

CAVEAT: The language prohibiting a plaintiff from pleading and proving "special damages" has been deleted from the amended MVFRL. "Special damages", however, should still be precluded from pleading and evidence since they are not probative of the degree and extent of pain and suffering. *Martin v. Soblotney*, Pa., 466 A.2d 1022 (1983); *Carlson v. Bubash*, Pa. Super., 639 A.2d 458 (1994).

CAVEAT: The Superior Court in *Mowery v. Prudential Ins. Co.*, Pa. Super., 535 A.2d 658 (1987), affirmed the constitutionality of the "ineligible claimant" rules. In *McClung v. Breneman*, Pa. Super., 700 A.2d 495 (1997), the court ruled that "ineligible claimants" could not recover medical expenses from the tortfeasor. In *Bryant v. Reddy*, Pa. Super., 793 A.2d 926 (2002), the court expanded the preclusion to *all* medical and wage losses, not just the medical amounts that would have been covered by the $5,000 minimum MVFRL coverage.

NOTE: The preclusion rules apply only when coverage is actually in effect which is paid or payable. Where wage coverage has not been purchased on the policy, wage claims in tort are not restricted, reduced, or precluded simply because wage coverage *could have* been purchased. *Carroll v. Kephart*, Pa. Super., 717 A.2d 554 (1998).

J. Medical Examinations: (§ 1796)

The carrier is permitted to obtain a medical examination on application to the Court upon good cause shown. No definition of "good cause" is provided by the Statute. The claimant is entitled to a copy of any written report generated as a result of the examination. Failure to comply with a Court Order requiring the examination may result in forfeiture of first party benefits pending compliance. The forfeiture is not automatic and must be sought by further application to the Court.

NOTE: IME reports are conditionally privileged, thus barring defamation claims against the carrier and the IME physician. *Elia v. Erie Ins. Exchange*, Pa. Super., 634 A.2d 657 (1993).

CAVEAT: Superior Court decisions in *Keystone Insurance Company v. Caputo*, Pa. Super., 529 A.2d 1134 (1987), *State Farm Insurance Company v. Zachary*, Pa. Super., 536 A.2d 800 (1987), *State Farm Insurance Company v. Allen*, Pa. Super., 544 A.2d 491 (1988), *State Farm Insurance Company v. Hunt*, Pa. Super., 569 A.2d 365 (1990), *State Farm Insurance Company v. Swantner*, Pa. Super., 594 A.2d 316 (1991), and *Allstate Insurance Company v. McNichol*, Pa. Super., 617 A.2d 333 (1992), all address the "good cause" requirement of § 1796. The definition of "good cause" varies from decision to decision, depending upon the composition of the Superior Court panel. As a general rule, however, the Superior Court will *not* disturb the trial court decision absent an abuse of discretion or other gross impropriety.

In *Horne v. Century Insurance Company*, Pa. Super., 588 A.2d 546 (1991), the Superior Court in a footnote suggested that the carrier might have (but failed to) argue that an IME could be required by the insurance contract itself, without reference to § 1796. In *Fleming v. CNA*, Pa. Super., 597 A.2d 1206 (1991), the carrier pursued the argument raised in *Horne*. The Superior Court agreed that the contract itself required submission to an IME without any showing of "good cause." The claimant in *Fleming* failed to argue that the insurance contract language was illegal as contrary to the MVFRL or to public policy. A petition for IME based on *Fleming* and the insurance contract would appear to have a better chance for success than one based on § 1796 with its "good cause" burden of proof.

K. Attorney's Fees

The Statute makes the following provisions for attorney's fees:

1. Under § l7l6, the carrier must pay reasonable attorney's fees if it acted in an unreasonable manner in refusing to pay first party benefits when due.

CAVEAT: The report of a defense medical expert may not be sufficient to insulate a carrier from attorney fee claims if the Court finds "overwhelming contrary evidence" concerning the need for medical treatment. *Hill v. Nationwide Ins. Co.*, Pa. Super., 570 A.2d 574 (1990).

2. Under Section 1798(b), the carrier is required to pay reasonable attorney's fees if the carrier is found to have acted with no reasonable foundation in refusing to pay first party benefits.

3. Contingent fees are not permitted on first party benefit claims. (Section 1798(a)).

4. The carrier is entitled to attorney's fees from a claimant where the claimant has presented a fraudulent or excessive claim for first party benefits. (Section 1798(d)).

5. Where a carrier has refused payment for medical treatment or rehabilitative services *without* submitting the dispute to a PRO, the carrier must pay attorney fees and costs if a court ultimately determines that the treatment and services were medically necessary. (Section 1797(b)(6)).

III. UNINSURED/UNDERINSURED MOTORIST COVERAGE

A. Required Coverage

1. While UM/UIM coverages are no longer mandatory, carriers are required to *offer* such coverages on all policies issued or renewed on and after 7/1/90. (§ 1731)

NOTE: Effective 12/28/94, § 1731(b.1) through (b.3) were added to the MVFRL concerning rejection of UM coverage on rented or leased vehicles. The new provisions do *not* apply to common carriers by motor vehicle. Under the amendments, UM coverage on rental or leased vehicles may be rejected only if the specific statutory rejection form is signed by the person renting or leasing the motor vehicle.

NOTE: A signature on the reverse side of such a waiver in a rental form is valid. *Smith v. Enterprise*, Pa. Super., 833 A.2d 751 (2003)

CAVEAT: UM/UIM coverage must be offered on any "motor vehicle liability insurance policy" which is "delivered or issued for delivery in the Commonwealth with respect to any motor vehicle registered or principally garaged in the Commonwealth." In *Kromer v. Reliance Ins. Co.*, Pa. Super., 677 A.2d 1224 (1996), the court ruled that excess or umbrella policies are not "motor vehicle liability insurance policies" for purposes of the MVFRL and, as a result, UM/UIM coverages are not required. In accord, *Been v. Empire Fire and Marine*, Pa. Super., 751 A.2d 238 (2000). In addition, UM/UIM coverages need not be offered on a policy offering comprehensive coverage only. *Nationwide Ins. Co. v. Calhoun*, Pa. Super., 635 A.2d 643 (1993). The MVFRL does not apply to a policy issued and delivered in another state for a vehicle registered in that state, even though the vehicle may be principally garaged in Pennsylvania. *Insurance Company of the State of Pennsylvania v. Hampton*, Pa. Super., 657 A.2d 976 (1995) (Delaware vehicle and policy); *Bamber v. Lumbermen's Mutual Ins. Co.*, Pa. Super, 680 A.2d 901 (1996) (Washington D.C. vehicle and policy); *Nationwide v. West*, Pa. Super., 807 A.2d 916 (2002) (Ohio policy re: priority of recovery issues).

2. Unless coverage is waived by the first named insured on the policy by signing and dating an approved form, the insured is deemed to have elected UM/UIM coverage in amounts equal to the BI coverage. (§ 1731(c.1))

NOTE: "First named insured" literally means the first name listed on the policy even if the insurer by error failed to list the applicant (i.e. the person who requested coverage and filled out the application) first. *Jones v. Prudential*, Pa. Super., 856 A.2d 838 (2004).

CAVEAT: Where the UIM coverage rejection form changes the "all underinsured losses and damages" language in the form to simply "underinsured losses and damages," the change creates ambiguity rather than clarity and the form is void, resulting in UIM coverage. *American International Ins. Co. v. Vaxmonsky*, Pa. Super., 916 A.2d 1106 (2006).

CAVEAT: Under § 1731, UM/UIM waiver forms must each be on a separate sheet. The "separate sheet" requirement means only that UM and UIM forms must be separate from each other. A UM or UIM rejection form may on the same sheet address other options (e.g. stacking) for that same coverage. *Winslow-Quattlebaum v. Maryland Casualty Company*, Pa., 752 A.2d 878 (2000).

NOTE: A § 1731 waiver of UM/UIM is valid even if the carrier fails to provide a § 1791.1 invoice and notice at renewal. *Salazar v. Allstate*, Pa., 702 A.2d 1038 (1997), *Kline v. Old Guard*, Pa. Super., 820 A.2d 783 (2003).

CAVEAT: Where UM/UIM coverages have been waived, policy renewals must so state in prominent type. Failure to include this notice on the renewal form, however, does **not** void the waiver. *Franks v. Allstate Ins. Co.*, 897 F. Supp. 77 (1995).

CAVEAT: The named insured executing the waiver is precluded from claiming against any person based upon inadequate information. The Statute does not, however, specifically extend that preclusion to other named insureds or insureds affected by the election.

CAVEAT: The election form "may" be witnessed by an agent or broker. The effect of any failure to so witness is not addressed by the Statute.

CAVEAT: A waiver of UM/UIM coverage is effective not only against the insured and relatives in the household, but also against any party claiming under the insurance policy. *General Accident Insurance Co. v. Parker*, Pa. Super., 665 A.2d 502 (1995), *Blakney v. Gay*, Pa. Super., 657 A.2d 1302 (1995), *Salazar v. Allstate Ins. Co.*, Pa. 702 A.2d 1038 (1997). A corporate insured, though not having "relatives," can reject UM/UIM coverage, thereby waiving such coverage for any occupants of its vehicles. *Travelers Indemnity Co. v. DiBartolo*, 171 F.3d 168 (3d Cir. 1999).

NOTE: Where UM/UIM coverages have been waived, a subsequent request to increase BI limits on the policy does **not** require new UM/UIM rejection forms. *Smith v. Hartford*, Pa. Super., 849 A.2d 277 (2004), appeal denied, Pa., 867 A.2d 524 (2005).

B. Amount of Coverage

1. With the repeal of § 1732, the MVFRL no longer requires that UM and UIM coverages always be in equal amounts.

2. UM/UIM coverages may be equal to, less than, but never more than BI limits on the policy (§§ 1734, 1736). An insured may in writing request UM or UIM limits lower than the BI limits.

   NOTE: Only a request in writing is required to reduce the UM or UIM limits. The more restrictive forms and procedures of § 1731 (concerning rejection of coverages) are not applicable to requests for lower limits. *Lewis v. Erie Ins. Co.*, Pa., 793 A.2d 143 (2002), *Nationwide v. Heintz*, Pa. Super., 804 A.2d 1209 (2002), *Hartford v. O'Mara*, Pa. Super., 907 A.2d 589 (2006).

   NOTE: A reference only to "statutory" limits does not effect a reduction in limits but rather requires that UM/UIM limits equal the BI limits on the policy. *Peele v. Atlantic Express*, Pa. Super., 840 A.2d 1008 (2003).

3. When the first named insured fails to submit a properly completed election form, UM/UIM limits, absent written request for lower limits, will equal BI limits. (§§ 1731(C.1), 1734).

   NOTE: When the original named insured has properly requested lower limits, subsequently added named insureds, absent any request to increase limits, are bound by the original election. *Kimball v. CIGNA*, Pa. Super., 660 A.2d 1386 (1995). Where the named insured husband, following a divorce, is dropped from the policy and replaced as named insured by the wife, the original request for lower limits remains in effect despite the change in named insureds. *Nationwide v. Buffetta*, 230 F.3d 634 (2000).

   NOTE: When liability limits are changed through a form referencing both liability and UM/UIM limits, prior requests for lower limits, if not reasserted in the form, are voided and UM/UIM limits will equal the revised liability limits. *Blood v. Old Guard*, Pa. Super., 894 A.2d 795 (2006).

   CAVEAT: In the absence of a written request for lower limits, repeated payment of a reduced premium for lower limits will *not* justify the lower limits. *Breuninger v. Pennland Ins. Co.*, Pa. Super., 675 A.2d 353 (1996).

NOTE: Where the insurance application provides a section, with the signature line left blank, to request lower UM/UIM limits, the insured's signature at the end of the application form (but not in the lower limits selection section) will not constitute written request for lower limits. *Motorists Ins. Co. v. Emig*, Pa. Super., 664 A.2d 559 (1995).

NOTE: Where UM/UIM limits are retroactively increased to BI limits due to an improper § 1734 request, the carrier can retroactively bill the insured for the increased coverage. *Niemiec v. Allstate*, 33 Phila. 131 (1997).

4. Under the pre-Act 6 MVFRL, UIM coverage is "excess" rather than "gap" (i.e. tort recovery is a credit against damages, not against policy limits). *Bateman v. Motorists Mutual Ins. Co.*, Pa., 590 A.2d 281 (1991).

NOTE: Although the Insurance Department approved UIM endorsements with "gap" coverage, the full Superior Court in *Allwein v. Donegal Mutual*, Pa. Super., 671 A.2d 744 (1996) held such forms invalid since the MVFRL requires "excess" UIM coverage.

5. With split limits coverage, a bystander claim for negligent infliction of emotional distress triggers a separate limit of coverage. *Erie v. Shue*, Pa. Super., 741 A.2d 803 (1999).

6. Interest at the legal rate is owed on UM/UIM awards starting on the date the arbitrators agree on the award (even if it is not communicated to the parties at that time) and ending when claimant actually receives payment of the award (not when the check is mailed). *Perel v. Liberty Mutual*, Pa. Super., 839 A.2d 426 (2003).

C. Priority of Recovery. (§ 1733)

Where multiple policies are applicable, the priority of recovery outlined by the Statute is as follows:

1. The policy covering the motor vehicle occupied by the claimant.

NOTE: The MVFRL does not impose its priority of recovery provisions on out of state policies. *Nationwide v. West*, Pa. Super., 807 A.2d 916 (2002).

NOTE: See the discussion of the test for "occupant of a motor vehicle" discussed at page 7 of this outline. In addition, see *L.S. v. Eschbach*, Pa. Super., 822 A.2d 796 (2003) (Re: "essential to the use") and *Petika v. Transcontinental*, Pa. Super., 855 A.2d 85 (2004) (Re: "oriented").

2. The policy under which the claimant is an insured.

NOTE: Although the MVFRL, for first party benefit priority purposes, distinguishes between named insured coverage and member of the household coverage, no such distinction exists with regard to UM/UIM priority. Named insured coverage and household coverage are treated equally as excess to vehicle coverage and will prorate based on policy limits.

NOTE: Contrary to prior rulings under the old no fault law, the MVFRL will *not* provide an uninsured pedestrian with UM benefits from the policy covering a stolen vehicle. The uninsured pedestrian is neither an occupant of the stolen vehicle nor an "insured" under the policy or the MVFRL. *Frazier v. State Farm Ins. Co.*, Pa. Super., 665 A.2d 1 (1995).

3. Where there are multiple sources of equal priority (typically arising under § 1733(a)(2)), the carrier against whom a claim is first asserted must process the claim and then seek contribution pro rata (including costs of adjustment) from any other carriers.

D. Immunity

1. Sovereign immunity does not bar UM claims against a self-insured Commonwealth Agency. *Lowery v. Port Authority of Allegheny County*, Pa. Cmwlth., 914 A.2d 953 (2006), *Paravati v. Port Authority of Allegheny County*, Pa. Cmwlth., 914 A.2d 946 (2006).

2. Self-insureds enjoy immunity against UM claims by employees for injuries arising in the course of employment. *Hackenberg v. SEPTA*, Pa., 586 A.2d 879 (1991).

3. For accidents occurring between 10/1/84 and 7/1/90, immunity for the insurance carrier is precluded by *Chatham v. Aetna Ins. Co.*, Pa., 605 A.2d 329 (1992).

4. For accidents occurring between 7/1/90 and 7/2/93, immunity for the insurance carrier is precluded not only by *Chatham* but also by § 1735 as clarified by § 1737.

5. Effective 7/2/93, §§ 1735 and 1737 have been repealed as part of a workers' compensation reform statute. Although the repeal was apparently intended to restore immunity to the employer's carrier from UM/UIM claims, immunity defenses have been contested. Decisions interpreting pre-MVFRL immunity have given such immunity to self-insured employers. *Lewis v. School District of Philadelphia*, Pa., 538 A.2d 862 (1988). The question of pre-MVFRL immunity to an employer's carrier, however, was never fully resolved. In *Boris v. Liberty Mutual*, Pa. Super., 515 A.2d 21 (1986), the immunity was denied. In *Roux Laboratories v. Turner*, 843 F.2d 205 (3d Cir., 1988), the immunity was granted. In *Selected Risks v. Thompson*, Pa., 552 A.2d 1382 (1989), the Supreme Court discussed the issue and denied immunity on the technical ground that the policy in question was not actually issued to the employer. Subsequent to the repeal of §§ 1735 and 1737, federal and state intermediate appellate courts have disagreed on immunity. In *Electric Ins. Co. v. Wilkins*, 85 F.3d 611 (1996), the court, citing dicta from *Ducjai v. Dennis*, Pa., 656 A.2d 102 (1995), granted immunity in a post 7/2/93 accident. In *Warner v. Continental Ins. Co.*, Pa. Super. 688 A.2d 177 (1996), the court denied the claim to immunity. *Accord, Travelers v. DiBartolo*, 171 F.3d 168 (3d Cir. 1999). Immunity was also denied to the carrier for the co-employee/owner of the vehicle involved in the accident. *Gardner v. Erie Ins. Co.*, Pa., 722 A.2d 1041 (1999).

NOTE: Under *Brennan v. General Accident*, Pa., 574 A.2d 580 (1990) and *Azpell v. Old Republic Insurance Company*, Pa., 584 A.2d 950 (1991), virtually all UM/UIM issues (including immunity) are to be decided by the arbitrators with only a limited scope of appellate review.

E. Stacking/Coordination of Benefits.

1. Recovery of both UM and UIM motorist benefits for the same accident is expressly prohibited (Section 1731(d)).

NOTE: Prohibition upheld in *Erie Ins. Co. v. Danielson*, Pa. Super., 621 A.2d 656 (1993).

2. Stacking of BI and UIM coverages in a single policy, while not expressly prohibited in the statute, has been precluded by court decisions.

NOTE: Policy provisions allowing a setoff between Part A (i.e. liability coverage) and Part C (i.e. UM/UIM coverages) are enforceable. *Pennsylvania National v. Black*, Pa., – A.2d – (2007).

NOTE: The *Wolgemuth* restriction on combined BI/UIM recovery applies only to claims brought under single policy. UIM benefits may not be denied a claimant simply because a BI recovery had been effected from a family member under a different policy. *Marroquin v. Mutual Benefit Ins. Co.*, Pa. Super., 591 A.2d 290 (1991).

3. Stacking of BI and UM coverages in a single policy may be defeated by policy language which sets off one coverage against the other.

NOTE: See *Pennsylvania National v. Black*, Pa., – A.2d – (2007), *Jeffrey v. Erie Ins. Exchange*, Pa. Super., 621 A.2d 635 (1993), *State Farm Ins. Co. v. Broughton*, Pa. Super., 621 A.2d 654 (1993), and *Pempkowski v. State Farm*, Pa., 693 A.2d 201 (1997) for decisions upholding such policy provisions.

4. Stacking of limits is not permitted with regard to UM benefits provided by a self-insured. (§ 1731(d))

5. Absent a waiver of stacking on the policy in return for a reduced premium, "insureds" may stack in UM/UIM claims based on the sum of the limits of coverage on vehicles on applicable policies.

   CAVEAT: The definition of "insured" in the Statute may vary from the definition of "insured", "covered person" or "eligible person", etc., in the policy. The apparent statutory intent is to permit Class I stacking. Class II stacking is not addressed in the MVFRL.

   NOTE: The statute contemplates both interpolicy stacking and intrapolicy stacking, both of which are waived by use of the statutory form. *Generette v. Donegal*, Pa. Super., 884 A.2d 266 (2005).

   NOTE: Waiving of stacking is available even to named insureds who purchase coverage for only one vehicle. *Craley v. State* Farm, Pa., 895 A.2d 530 (2006).

6. The option to waive stacking may be exercised only by the first named insured and only by signing and dating an approved waiver form. The election to waive stacking is binding on all insureds, as defined in the Statute.

   NOTE: "First named insured" literally means the first name listed on the policy even if the insurer by error failed to list the applicant (i.e. the person who requested coverage and filled out the application) first. *Jones v. Prudential*, Pa. Super., 856 A.2d 838 (2004).

   NOTE: Unlike the tort remedy election and the UM/UIM coverage rejection option, the stacking waiver option does **not** include a statutory bar to claims based on inadequate information.

   NOTE: Although the stacking waiver is not by Statute binding on Class II claimants, such claimants are generally not permitted to stack under present Pennsylvania Law. See *Utica Mutual Ins. Co. v. Contrisciane*, Pa. 473 A.2d 1005 (1984).

   NOTE: Where the title of the waiver form varies slightly from the statutory language, the waiver of stacking is valid in spite of the slight deviation. *Allstate v. Seelye*, Pa. Super., 846 A.2d 1286 (2004), *Vosk v. Encompass*, Pa. Super., 851 A.2d 162 (2004).

7. When additional vehicles are added to a policy (as opposed to the replacement of an existing vehicle), a new waiver of stacking form must be obtained. *Sackett v. Nationwide*, Pa. – A.2d – (2007).

F. Consent/Exhaustion Clauses

1. The "consent to settle" clause in the UIM endorsement is limited by *Daley-Sand v. West American Ins. Co.*, Pa. Super., 564 A.2d 965 (1989), which adopts the Minnesota approach requiring the UIM carrier to "purchase" subrogation rights by matching the BI policy limit offer. Under *Baith v. CNA Ins. Co.*, Pa. Super., 593 A.2d 881 (1991), the claimant does not need to file a Petition with the court to enforce *Daley-Sand* rights. Written notice to the UIM carrier of the policy limit offer together with a reasonable time in which to match the offer is all that is required before the claimant accepts the BI offer and gives a general release to the tortfeasor. In *Nationwide v. Lehman*, Pa. Super., 743 A.2d 933 (1999), the Superior Court, without referencing its own earlier opinions to the contrary, held the carrier must demonstrate actual prejudice before any unauthorized settlement will bar a UM/UIM claim. In accord, *Cerankowski v. State Farm*, Pa. Super., 783 A.2d 343 (2001). A carrier may by wrongful denial of UM/UIM coverage waive any right to rely upon a "consent to settle" clause. *Kolbe v. Aegis Ins. Co.*, Pa. Super. 537 A.2d 7 (1987).

   NOTE: The "consent to settle" and "exhaustion" rules applicable in the BI/primary UIM context apply similarly in the primary UIM/excess UIM context. *Nationwide v. Schneider*, Pa. Super., 906 A.2d 586 (2006), allocatur granted, Pa., – A.2d – (2007).

2. The "consent to be bound" clause in a UM endorsement (providing that the carrier is not bound by a judgment against the tortfeasor without its prior written consent) is enforceable. *Sands v. Andino*, Pa. Super., 590 A.2d 761 (1991).

3. The "exhaustion" clause in the UIM endorsement requires exhaustion only as to any one motor vehicle tortfeasor, not as to all potential tortfeasors (*Werntz v. General Accident*, 1 D&C 4th 386 (1988)) and not as to *any* non motor vehicle tortfeasors (*Kester v. Erie Ins. Exchange*, Pa. Super., 582 A.2d 17 (1990)). Exhaustion as to any one motor vehicle tortfeasor, however, applies to both primary and excess policies (*USF&G v. Lombardi*, 14 D&C 4th 276 (1992)).

NOTE: The MVFRL does not define "exhaustion." In *Boyle v. Erie*, Pa. Super., 656 A.2d 941 (1995), a carrier's ten month delay in responding to a request for consent to settle estopped the carrier from raising either consent to settle or failure to exhaust as defenses. *Chambers v. Aetna*, Pa. Super., 658 A.2d 1346 (1995) broadens the *Boyle* holding to require only a credit for (not an exhaustion of) liability limits before seeking UIM benefits. In accord, *Kelly v. State Farm*, Pa. Super., 668 A.2d 1154 (1996), *Sorber v. American Motorist Ins. Co.*, Pa. Super., 680 A.2d 881 (1996). The UIM hearing may precede settlement or trial of the underlying tort claim (*Harper v. Providence Washington Ins. Co.*, Pa. Super. 753 A.2d 282 (2000)) even though a jury may later determine that the UIM driver was not at fault (*Krakower v. Nationwide*, Pa. Super., 790 A.2d 1039 (2002)).

NOTE: The "consent to settle" and "exhaustion" rules applicable in the BI/primary UIM context apply similarly in the primary UIM/excess UIM context. *Nationwide v. Schneider*, Pa. Super., — A.2d — (2006).

G. Exclusions

1. Territorial limitations in a policy are enforceable to bar UM/UIM claims. *Hall v. Amica Mutual Ins. Co.*, Pa., 648 A.2d 755 (1994).

2. "Regular use," "family use," or "household use" vehicle exclusions/definitions are not against public policy. *State Farm v. Craley*, Pa. Super., 844 A.2d 573 (2004), *Estate of Demutis v. Erie*, Pa. Super., 851 A.2d 172 (2004).

3. The owner of a registered uninsured motor vehicle is not automatically barred from collecting UM/UIM benefits from other coverage in the household, provided he is not occupying his owned UM vehicle at the time of the accident. *Henrich v. Harleysville Ins. Co.*, Pa., 620 A.2d 1122 (1993) as clarified in *Swords v. Harleysville Ins. Co.*, Pa. 883 A.2d 562 (2005). If the household policy has an exclusion avoiding coverage in such a case, the exclusion will be enforced. *Hart v. Nationwide*, Pa., 663 A.2d 682 (1995), *Old Guard Ins. Co. v. Houck*, Pa. Super., 801 A.2d 559 (2002), *Rudloff v. Nationwide*, Pa. Super., 806 A.2d 1270 (2002).

4. If the claimant is occupying an owned UM vehicle at the time of the accident, policy language prohibiting coverage will be enforced. *Windrim v. Nationwide Ins. Co.*, Pa., 641 A.2d 1154 (1994), *Eichelman v. Nationwide*, Pa., 711 A.2d 1006 (1998).

5. Where claimant seeks UIM coverage from a household policy other than the policy paying BI on a claim, benefits are provided if the named insured on the two policies are different. *Marroquin v. Mutual Benefit Ins. Co.*, Pa. Super., 591 A.2d 290 (1991). Benefits are denied if the named insureds on the policies are the same. *Paylor v. Hartford Ins. Co.*, Pa., 640 A.2d 1234 (1994), *Ridley v. State Farm Ins. Co.*, Pa. Super., 745 A.2d 7 (1999).

6. An exclusion of UIM coverage where the insured is occupying a "regularly used non-owned car" not insured on that policy is valid. *Burstein v. Prudential*, Pa., 801 A.2d 516(2002), *Stelea v. Nationwide*, Pa. Super., 830 A.2d 1028 (2003) and *Nationwide v. Harris*, Pa. Super., 826 A.2d 880 (2003).

7. "Household vehicle" exclusions barring UM/UIM coverage when the insured is occupying a household vehicle not covered on the policy are valid. *Prudential v. Colbert*, Pa., 813 A.2d 747 (2002), *Alderson v. Nationwide*, Pa. Super., 884 A.2d 288 (2005).

8. Policy language seeking to restrict UM/UIM coverage to insureds occupying cars (as opposed to trucks, buses, two or three wheel vehicles, etc.) is void. *Prudential v. Ziatyk*, Pa. Super., 793 A.2d 965 (2002), *Richmond v. Prudential (I)*, Pa. Super., 789 A.2d 271 (2001), *Prudential v. McAninley*, Pa. Super., 801 A.2d 1268 (2002), *Richmond v. Prudential (II)*, Pa. Super. 856 A.2d 1260 (2004).

9. Language in an antique auto policy restricting UM/UIM coverage to occupants of the antique auto is valid. *St. Paul Mercury Ins. Co. v. Corbett*, Pa. Super., 630 A.2d 28 (1993).

10. An exclusion of UM/UIM coverage when the vehicle is used to carry persons or property for a fee is valid. *Marino v. General Accident Ins. Co.*, Pa. Super., 610 A.2d 477 (1990). For a similar result with regard to first party benefits, see *Brosovic v. Nationwide*, Pa. Super., 841 A.2d 1071 (2004).

11. A UM/UIM exclusion which denies coverage for "use of any vehicle by an insured without permission" is valid, even when the claimant is an innocent passenger in a stolen vehicle. *Nationwide Ins. Co. v. Cummings*, Pa. Super., 652 A.2d 1338 (1994). The same is true when the vehicle is operated by a specifically excluded driver. *Progressive Ins. Co. v. Schneck*, Pa., 813 A.2d 828 (2002).

12. A UM/UIM exclusion of punitive damages is not only enforceable, such damages are not, in any event, recoverable in UM/UIM under the MVFRL. *Robson v. EMC Ins. Co.*, Pa. Super., 785 A. 2d 507 (2001), allocatur denied, Pa., 796 A.2d 984 (2002).

H. Subrogation/Preclusion of Evidence

1. For accidents occurring between 10/1/84 and 6/30/90, claimant may not plead, prove, or collect amounts covered by the then basic first party benefits of $10,000 medical, $5,000 wage, and $1,500 funeral (§ 1722). Subrogation is not permitted (§ 1720).

2. For accidents occurring between 7/1/90 and 8/30/93, claimant may not collect in UM/UIM for any amounts covered by any first party benefits, any workers' compensation, or any other health/disability benefits paid or payable. (§ 1722 as amended by Act 6). Subrogation is not permitted (§ 1720).

3. For accidents occurring on and after 8/31/93, claimant may not collect for amounts covered by any first party benefits or any other health/disability benefits paid or payable (§ 1722 as further amended). Amounts paid or payable by workers' compensation can be collected again in UM/UIM claims. Subrogation is not permitted for first party benefits or other health/disability benefits but the prohibition on workers' compensation subrogation is removed from the statute.

CAVEAT: Workers' compensation carriers may not subrogate against UM/UIM payments from personal auto carriers. *Standish v. American Manufacturers*, Pa. Super., 698 A.2d 599 (1997), *American Red Cross v. WCAB*, Pa. Cmwlth., 745 A.2d 78 (2000), *Entertainment Partners v. WCAB*, Pa. Cmwlth., 749 A.2d 551 (2000). In such cases, the claimant "double dips" by recovering and keeping payments from the workers' compensation carrier and the UM/UIM personal auto carrier for the same losses. *Ricks v. Nationwide,* Pa. Super., 879 A.2d 796 (2005). Workers' compensation carriers may subrogate against UM/UIM payments from employers' carriers. *Harper v. Providence Washington Ins. Co.*, Pa. Super., 753 A.2d 282 2000) and *City of Meadville v. WCAB*, Pa. Cmwlth., 810 A.2d 703 (2002).

4. An insurer paying UIM (and, by analogy, UM) benefits has subrogation rights not only against the UIM (or UM) tortfeasor, but also against *any* tortfeasor. *Travelers Ins. Co. v. Snell*, — F. Supp. — (E.D.Pa. 1997).

5. Where a wrongful denial of coverage by the liability carrier results in payment of UM benefits, the UM carrier may pursue recovery against the liability carrier based on the wrongful denial. *General Accident v. Federal Kemper*, Pa. Super. 682 A.2d 819 (1996).

6. The insured's failure to protect subrogation rights by suing the tortfeasor within the statute of limitations bars any UM/UIM claim. *Zourelias v. Erie*, Pa. Super., 691 A.2d 963 (1997).

I. Statute of Limitations

1. Contract, rather than tort, statute of limitations will apply to UM claims. *Boyle v. State Farm Ins. Co.*, Pa. Super., 456 A.2d 156 (1983), *Clark v. State Farm Ins. Co.*, Pa. Super., 599 A.2d 1001 (1991). For causes of action accruing on and after 2/18/83, the contract statute of limitations in Pennsylvania is four years, not six years (42 P.S. § 5525(8)).

2. The UM statute of limitations starts to run when claimant is in a motor vehicle accident, claimant suffers injury, *and* claimant knows or should know of the UM status of the tortfeasor. *Boyle v. State Farm Ins. Co.*, Pa. Super., 456 A.2d 156 (1993).

3. Predicting what the Pennsylvania Supreme Court would hold, the Court of Appeals ruled that the UIM statute of limitations starts to run on the date when the insured settles with or obtains an award from the adverse driver for less than the value of his damages. *State Farm v. Rosenthal*, – F.3d – (3d Cir., 2007).

4. Statute of limitations defenses must be presented to arbitrators, not the court. *Messa v. State Farm Ins. Co.*, Pa. Super., 641 A.2d 1167 (1994).

J. Arbitration

1. The MVFRL does not control the type, timing, or method of UM/UIM arbitration and the Insurance Commissioner does not have authority to mandate arbitration clauses in UM/UIM endorsements. *Insurance Federation v. Koken*, Pa., 899 A.2d 550 (2005).

2. Reference must be made to the policy provisions for the type of arbitration (e.g. usually the Uniform Arbitration Act of 1980, the Arbitration Act of 1927, or common law arbitration).

   NOTE: Class II claimants, though not parties to the insurance contract, are still bound by any arbitration provision in the policy. *Johnson v. Pennsylvania National Ins. Cos.*, Pa., 594 A.2d 296 (1991). If the policy contains no arbitration clause, UM/UIM claimants may not compel arbitration or selection of arbitrators. *McFarley v. AIIC*, Pa. Super., 663 A.2d 738 (1995).

   NOTE: Orders requiring arbitration are interlocutory and not immediately appealable. *Erie Ins. Exchange v. Midili*, Pa. Super., 675 A.2d 1267 (1996), *Rosy v. National Grange*, Pa. Super., 771 A.2d 60 (2001).

   NOTE: Arbitration clauses which permit appeals for trials *de novo* when awards are greater than $15,000 are void as against public policy. *Zak v. Prudential*, Pa. Super., 713 A.2d 681 (1998).

   NOTE: Arbitration clauses which provide for arbitration only if both parties agree are valid. *Amber-Messick v. Progressive Ins. Co.*, — F. Supp. — (E.D. Pa. 2005).

2. The Uniform Arbitration Act of 1980 (42 P.S. § 7301 *et seq.*) applies when specifically referenced or when "statutory arbitration" is referenced. The Uniform Act allows very limited appellate review, generally based on fraud, denial of due process, or improper conduct by arbitrators.

3. The Arbitration Act of 1927, though repealed in 1980, may still be used if specifically referenced in the arbitration agreement. *CIGNA v. Squires*, Pa. Super., 628 A.2d 899 (1993). The Act of 1927 allows appellate review of errors of law. *Nationwide v. Calhoun*, Pa. Super., 635 A.2d 643 (1994).

NOTE: Since the court under the 1927 Act has ultimate jurisdiction over legal issues, arbitration and Declaratory Judgment litigation may proceed simultaneously with the court having the final say on legal issues. *Bottomer v. Progressive Ins. Co.*, Pa. Super. 816 A.2d 1172 (2003).

4. Common law arbitration applies when no other statutory arbitration system is specified in the policy. Virtually no appellate review is permitted at common law other than for fraudulent conduct of the arbitrators.

5. Under all of the above systems, the arbitrators must be impartial. Where the policy calls for "disinterested arbitrators," arbitrators may not have at any time represented one of the parties. *Donegal v. Longo*, Pa. Super., 610 A.2d 466 (1992), *Bole v. Nationwide Ins. Co.*, Pa., 379 A.2d 1346 (1977). Prior service as an arbitrator for a party, however, does not require disqualification. *Land v. State Farm Ins. Co.*, Pa. Super., 600 A.2d 605 (1991). Where the policy calls for "competent arbitrators," prior representation of a party does not automatically disqualify an arbitrator absent evidence of that arbitrator's inability to act impartially. *Sheehan v. Nationwide*, Pa. Super., 779 A.2d 582 (2001).

6. Under *Brennan v. General Accident Ins. Co.*, Pa., 574 A.2d 580 (1990) and *Nationwide v. Patterson*, 953 F.2d 44 (3d Cir. 1991), the arbitrators, once the existence of an arbitration agreement is established, decide all factual, legal, and coverage issues. Arbitrators also decide, at least in the first instance, **where** the arbitration will take place. *Santiago v. State Farm*, Pa. Super., 683 A.2d 1216 (1996). Where the arbitration agreement provides that "covered person"/carrier disputes on "policy coverages" go to arbitration, arbitrators also decide who qualifies as a "covered person." *Borgia v. Prudential*, Pa., 750 A.2d 843 (2000). If, however, the policy provides that arbitrators may not decide coverage issues or that arbitrators decide only tort liability and damage issues, then coverage disputes do not fall within the arbitration agreement and must be decided by a court. *State Farm v. Coviello*, 233 F.3d 710 (3rd Cir., 2000), *Nationwide v. Cosenza*, 258 F. 3d 197 (3d Cir., 2001), *Henning v. State Farm*, Pa. Super., 795 A.2d 994 (2002).

7. Arbitrators do *not* have jurisdiction over statutory "bad faith" claims. *Nealy v. State Farm*, Pa. Super., 695 A.2d 790 (1997).

8. Arbitrators do not have jurisdiction over disputes concerning or enforcement of UM/UIM settlements. *Nationwide v. Moustakidis*, Pa. Super., 830 A.2d 1288 (2003).

IV. ASSIGNED CLAIMS PLAN (§§ 1751-1757)

A. Eligible Claimant.

To be eligible for Assigned Claims Plan benefits, the claimant must:

1. Be a resident of the Commonwealth of Pennsylvania;

2. Be injured in a motor vehicle accident in the Commonwealth of Pennsylvania;

3. Not be the owner of a motor vehicle of the type required to be registered under Pennsylvania law;

4. Not be an operator/occupant of a motor vehicle owned by the Federal government;

5. Not be an operator/occupant of a motor vehicle owned by a self-insurer or entity immune from liability for benefits or for uninsured motorist or underinsured motorist benefits.

   NOTE: Since vehicles (whether registered or unregistered)owned by non-Pennsylvania residents are not required to provide MVFRL benefits, an occupant of such a vehicle is *not* an eligible claimant under the Assigned Claim Plan. *Rosado v. Constitution State Service Co.*, Pa. Super., 625 A.2d 1239 (1993); *Bridges v. Gary*, Pa. Super., 633 A.2d 170 (1993); *Zeigler v. Constitution State Service Co.*, Pa. Super., 634 A.2d 261 (1993). Where, on the other hand, the unregistered vehicle is owned by a Pennsylvania resident, the vehicle is then of the type required to be registered and innocent occupants of such a vehicle qualify for MVFRL benefits. *Ortiz v. Gamble*, Pa. Super., 759 A.2d 408 (2000), *Parnell v. Constitution State Service Company*, — A.2d — (2000).

6. Not be otherwise barred from first party benefits under other provisions of the Statute;

7. Not be an operator/occupant of certain recreational vehicles or motorcycle type vehicles. (Section 1752(a))

B. Ineligible Claimants.

Even if a claimant meets the eligibility requirements as above, coverage will still be excluded if the claimant contributes to the injury:

1. While intentionally injuring himself or another;

2. While committing a felony;

3. While seeking to elude lawful arrest;

4. While knowingly converting a motor vehicle. (§ 1752(b))

C. Benefits. (§ 1753)

1. Medical benefits are provided up to a dollar limitation of $5,000;

2. No income loss benefits are provided;

3. No accidental death benefits are provided;

NOTE: The $1,500 funeral benefit previously provided through the Assigned Claims Plan has been eliminated.

4. Uninsured motorist benefits are provided up to $15,000 (with a $30,000 cap for all claims arising out of any one accident) but the amount of available uninsured motorist coverage is reduced by any medical payments provided through the Assigned Claims Plan. (§ 1754). There is no provision for underinsured motorist coverage through the Assigned Claims Plan.

NOTE: Where claimant has received first party benefits (but, due to a UM waiver, no UM payments) from an insurance policy, UM benefits are *not* provided by the Assigned Claims Plan. *Walker v. Fennell*, Pa. Super., 627 A.2d 771 (1993).

NOTE: The Plan must make UM benefits available to occupants of uninsured motor vehicles (other than the uninsured owner). *Assigned Claims Plan v. English*, Pa., 664 A.2d 84 (1995).

D. Coordination of Benefits. (§ 1755)

1. The Assigned Claims Plan receives a credit for all workmen's compensation or similar payments.

2. The Assigned Claims Plan receives a credit for all available accident and health benefits.

E. Subrogation.

The Assigned Claims Plan has subrogation rights against the tortfeasor in accordance with Pennsylvania tort law. (§ 1756)

NOTE: Where the claimant gives a release of all claims to the tortfeasor, that release also extinguishes all claims by the Assigned Claims Plan against the tortfeasor. Any such unauthorized release results in forfeiture of claimant's right to recover benefits from the Plan. *Melendez v. Pa. Assigned Claims Plan*, Pa. Super., 557 A.2d 767 (1989). In addition, the Plan, under *Brikaljik v. Paxton National Ins. Co.*, Pa. 522 A.2d 531 (1987) likely has the right to recover from claimant any amounts previously paid in first party benefits.

F. Statute of Limitations. (§ 1757)

1. The Statute of Limitations is four (4) years from the date of the accident.

2. For minors, the Statute of Limitations starts to run when they reach eighteen (18).

3. There is no sixty (60) day grace period as under the no fault system (i.e., a claimant was permitted to file against the Assigned Claims Plan sixty (60) days after he received a final determination that the carrier to whom he had originally made application would not cover the loss).

V. PROOF OF FINANCIAL RESPONSIBILITY. (§ 1781-1787)

A. General Rules.

Proof of financial responsibility through insurance or qualifying self-insurance must be provided:

1. Before restoration of a suspended or revoked license.

2. When a defendant is convicted of a traffic offense (other than a parking violation) that requires a Court appearance.

3. After any accident that must be reported to the police (i.e., an accident causing death or injury or causing property damage to the extent that the vehicle is disabled or constitutes a safety hazard).

4. After notice of failure to satisfy a judgment arising from an accident covered by the Motor Vehicle Financial Responsibility Law.

5. At the registration or renewal of registration of a motor vehicle.

6. At the annual inspection of the vehicle.

NOTE: This provision is not in the MVFRL but in Vehicle Code at 75 P.S. 4727

B. Self-Insurance. (§ 1787)

1. The applicant must provide evidence of reliable financial arrangements, deposits, reserves, resources, or commitments sufficient to pay the minimum first party benefits, liability coverages, and uninsured motorist coverage required by the Statute.

NOTE: UM must be provided by a self-insured and is not subject to waiver or rejection as with insurance policies. *Gutman v. Worldwide Ins. Co.*, Pa. Super., 630 A.2d 1263 (1993).

NOTE: UM coverage required from a self-insured entity cannot be avoided by sovereign immunity. *Lowery v. Port Authority of Allegheny Co.*, Pa. Cmwlth., 914 A.2d 953 (2006), *Paravati v. Port Authority of Allegheny Co.*, Pa. Cmwlth., 914 A.2d 946 (2006).

NOTE: UIM is not required from a self-insurer. If UIM is voluntarily offered (e.g. through a car rental contract), MVFRL requirements on waivers, rejection, or limits are not applicable. *Ingals v. Hertz*, Pa. Super., 683 A.2d 1252 (1996).

NOTE: Self insureds providing liability protection with car rentals need not provide §1791 and §1791.1 notices concerning availability of coverage. *Saunders v. Hertz*, Pa. Super. 717 A.2d 561 (1998).

2. Stacking of uninsured motorist benefits against a self-insured is specifically prohibited.

3. Self-insureds are not required to participate in the Assigned Claims Plan or the Assigned Risk Plan.

C. Penalties For Failure to Maintain Financial Responsibility.

1. Suspension of motor vehicle registration (§ 1786(d))

2. Revocation of driver's license (§ 1786(d))

NOTE: A driver may defend against suspension proceedings by demonstrating that coverage was improperly cancelled. *Eckenrode v. Cmwlth. of Pa.*, Pa. Cmwlth., 853 A.2d 1141 (2004).

3. $300 fine (§ 1786(f))

D. Mandatory Offer of Liability and UM/UIM Coverages (§ 1792)

1. Carriers must make available for purchase liability and UM/UIM coverages of up to $100,000.00/$300,000.00 or, in the alternative, a $300,000.00 single limit. A property damage coverage of $5,000.00 must be offered.

CAVEAT: Policy provisions which seek to reduce available coverage to minimum limits where the victim is a family member are void as against public policy and as violative of § 1792. The so called "intrafamily reduction" is not enforceable and any higher policy limits will apply to family members as well as strangers to the policy. *Lambert v. McClure*, Pa. Super., 595 A.2d 629 (1991). A similar exclusion or reduction in homeowner's policies is permissible since there is no statute mandating the offer of higher coverages. *Neil v. Allstate Insurance Company*, Pa. Super., 549 A.2d 1304 (1988).

NOTE: An auto dealership which sells and delivers an auto to an unlicensed driver without confirming the existence of coverage or a valid driver's license is liable under 75 P.S. § 1574 for damages caused by the unlicensed/uninsured driver/owner. *Pizzonia v. Colonial Motors*, Pa. Super., 639 A.2d 1185 (1994). Where an auto is leased to a corporation, however, the lessor is not required to identify possible driver employees of lessee to confirm valid licenses. *Burkholder v. Genway Corp.*, Pa. Super., 637 A.2d 650 (1994).

NOTE: Where the WHO IS AN INSURED clause extends coverage to permissive users only when "required by law," coverage is extended since §1786(f) prohibits an owner from operating or permitting operation of a motor vehicle without financial responsibility. *Progressive Ins. Co. v. Universal Underwriters*, Pa. Super., 898 A.2d 1116 (2006).

2. Private passenger automobile policies will automatically have a $500.00 collision deductible absent a written request by the named insured for a lower deductible. The minimum allowable deductible is $100.00.

VI. TORT OPTIONS.

A. Notice of Options.

1. For all policies issued or renewed on or after July 1, 1990, carriers must advise each named insured of the two tort options available under the MVFRL. (§ 1705(a)(1))

   NOTE: Failure by a carrier to give premium differential between limited tort and full tort options neither voids otherwise valid limited tort elections (*Donnelly v. Bauer*, Pa., 720 A.2d 447 (1998)), nor gives rise to Consumer Protection Law, Unfair Insurance Practices Act, or bad faith claims (*Booze v. Allstate Ins. Co.*, Pa. Super., 750 A.2d 877 (2000)).

2. Any named insured may make the tort election. Such election will bind all other named insureds and insureds. (§ 1705(a)(2))

   NOTE: When any named insured makes the tort election in writing, all named insureds and all insureds are barred from claiming liability based on being inadequately informed. Compare:

   (a) UM/UIM coverage waiver where only the named insured signing the form is so barred;

   (b) UM/UIM stacking waiver where no statutory bar is imposed.

3. If no named insured responds after the two required notices of the available tort elections, there will be a presumption that the "full tort" alternative was elected. That election will apply to all named insureds and insureds under the policy. (§ 1705(a)(3))

B. Application of Options.

1. An owner of a currently registered private passenger motor vehicle who does not have financial responsibility is deemed to have selected the "limited tort" option. (§1705(a)(5))

   NOTE: If the owner of the currently registered UM vehicle qualifies for full tort status as an "insured" under a policy and if the owner is not occupying the UM vehicle at the time of the accident, the owner is full tort. *Berger v. Rinaldi*, Pa. Super. 651 A.2d 553 (1994).

NOTE: Under *Schwartzberg v. Greco*, Pa. Super., 793 A.2d 945 (2002), the owner, not the vehicle, must have financial responsibility. Schwartzberg owned the vehicle and, since his license was suspended, had it insured by his girlfriend but with himself listed as an excluded driver. Since Schwartzberg had no financial responsibility, he was bound by limited tort.

2. A person who neither owns a currently registered private passenger motor vehicle nor qualifies as an insured under a private passenger motor vehicle policy has "full tort" rights. (§ 1705(b)(3))

   NOTE: While a parent/owner of a currently registered uninsured motor vehicle is deemed to have selected limited tort, the children of the parent/owner have full tort rights. *Holland v. Marcy*, Pa., 883 A.2d 449 (2005) (reversing *Hames v. PHA*, Pa. Cmwlth., 696 A.2d 880 (1997)).

3. Pedestrians are not subject to limited tort regardless of their status as named insureds or insureds on limited tort policies. *L.S. v. Eschbach*, Pa., 874 A.2d 1150 (2005).

4. Once an election of tort option has been made (or is deemed to have been made), the election remains in effect until the carrier receives a properly executed option form changing the election. (§ 1705(b)(1))

4. If a person qualifies as an insured under 2 or more policies with conflicting tort option elections, the tort option election on the policy covering the motor vehicle involved in the accident controls. If no vehicle insured under the conflicting policies is involved in the accident, the "full tort" option applies. (§ 1705(b)(2))

NOTE: If a person is a "named insured" on a limited tort policy but qualifies as an "insured" on the full tort policy covering the vehicle occupied in the accident, full tort applies. *Hoffman v. Troncelliti*, Pa., 839 A.2d 1013 (2003). If the person owns a registered, uninsured auto (and is thus "deemed" limited tort), but is occupying his insured full tort auto at the time of the accident, full tort applies. *Progressive Halcyon Ins. Co. v. Kennedy*, Pa. Super., 908 A.2d 911 (2006).

C. Full Tort Option.

1. Plaintiff can seek recovery for all unreimbursed economic and non-economic loss arising out of an automobile accident. (§ 1705(c))

CAVEAT: If an accident occurs in NJ and claimant's MVFRL carrier does business in NJ, then the NJ "verbal threshold" (similar to the MVFRL "limited tort" option) applies, regardless of any full tort selection on the MVFRL policy. *Dyszel v. Marks*, 6 F.3d 116 (3d Cir., 1993).

D. Limited Tort Option.

1. Unless plaintiff falls within one or more of seven exceptions, plaintiff can seek recovery only for unreimbursed economic loss arising out of an automobile accident. (§ 1705(d))

NOTE: The court should *not* instruct the jury that plaintiff selected limited tort for a lower premium but should state only that plaintiff must prove a "serious injury." *Price v. Guy*, Pa., 735 A.2 668 (1999).

NOTE: The exceptions to limited tort status in (a) through (d) below are available only on claims against third parties, not on UM/UIM claims. *Rump v. Aetna*, Pa., 710 A.2d 1093 (1998).

2. Exceptions:

(a) If the tortfeasor is a convicted or ARD drunk driver (§ 1705(d)(l)(i))

(b) If the tortfeasor is operating a motor vehicle registered out of state (§ 1705(d)(l)(ii))

(c) If the tortfeasor intended to injure himself or another (§ 1705(d)(1)(iii))

(d) If the tortfeasor is uninsured (but this exception does not apply to any resulting UM claim) (§ 1705(d)(1)(iv))

(e) If recovery is sought against a person in the business of designing, manufacturing, repairing, servicing, or maintaining vehicles for acts or omissions arising out of such a business. (§ 1705(d)(2))

(f) If plaintiff is an occupant of a motor vehicle other than a private passenger motor vehicle. (§ 1705(d)(3))

(g) If plaintiff suffers a personal injury resulting in death, serious impairment of a body function, or permanent serious disfigurement. (§ 1705(d)).

NOTE: In *Washington v. Baxter*, Pa., 719 A.2d 733 (1998), the Supreme Court rejected the *Dodson* Superior Court decision which had governed determination of "serious injury" exceptions to the limited tort option under the MVFRL. Under the new test, whether a "serious injury" exists should be determined in all but the clearest cases by a jury. The fact finder is to evaluate two issues:

1. What body function, if any, was impaired; and

2. Was the impairment of the body function serious?

The focus of the inquiry is not on the injuries but rather on how the injuries affected a particular body function, a topic generally requiring medical evidence. In determining whether any impairment is serious, the fact finder should consider the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and "any other relevant factors." The court specifically holds that an impairment need not be permanent in order to be serious. In accord, *Long v. Mejia*, Pa. Super., 896 A.2d 596 (2006).

NOTE: Summary judgment for defendants is still possible and, in fact, was affirmed in the *Washington* case. In accord *McGee v. Muldowney*, Pa. Super., 750 A.2d 912 (2000) (no treatment in the five years prior to the motion for summary judgment, no absence from employment, albeit with a change in professions from plumber to electrician).

NOTE: The jury is not to be told that plaintiff elected limited tort and that, by so doing, paid a lower premium. *Price v. Guy*, Pa. 735 A.2d 668 (1999).

NOTE: Soft tissue injuries can constitute "serious injury." *Chanthavong v. Tran*, Pa. Super., 682 A.2d 334 (1996). With proper proof, mental disorders or psychiatric problems can constitute a "serious injury." *Hames v. PHA*, Pa. Cmwlth., 696 A.2d 880 (1997).

E. Tort Statute of Limitations.

1. The statute of limitations on claims for noneconomic detriment by limited tort claimants does not start to run until the claimant knows or has reason to know that any injuries from the accident constitute a "serious injury." *Walls v. Scheckler*, Pa. Super., 700 A.2d 532 (1997).

2. The statute of limitations on claims for economic detriment by limited tort claimants begins to run on the day of accident even if medical and wage losses initially fall within available insurance coverage. To protect against future economic detriment that may eventually exceed available coverage, plaintiff must file a suit within two years of the accident and support the claim for potential future uninsured losses through expert testimony. *Haines v. Jones*, Pa. Super., 830 A.2d 579 (2003).

F. New Jersey Tort Issues.

1. Courts have split on whether New Jersey insureds subject to the New Jersey verbal threshold will be subject to either "verbal threshold" or "limited tort" when the accident occurs in Pennsylvania. *Perkins v. Cheung*, 1996 WL 37767 (E.D. Pa. 1996) (limited tort not applicable); *Roghanchi v. Rorick*, 1992 WL 279530 (E.D. Pa. 1992) (limited tort not applicable); *Petitte v. Panteli*, CP Carbon County (6/30/99) (limited tort not applicable); *Koch v. Venezia Transportation*, 2001 U.S. Dist. LEXIS 8664 (2001) (limited tort not applicable); and *Dalessio v. Nicosie*, Phila. CCP 6/93, No. 1234 (1996) (limited tort applicable).

2. Under the New Jersey "deemer" statute, a Pennsylvania plaintiff insured by a carrier licensed in New Jersey is subject to the New Jersey verbal threshold when the accident occurs in New Jersey, regardless of that plaintiff's tort selection under the MVFRL policy. *Dyszel v. Marks*, 6 F.3d 116 (1993), *Whitaker v. DeVilla*, NJ, 687 A.2d 738 (1997).

3. New Jersey insureds involved in New Jersey accidents with Pennsylvania insureds will be subject to the verbal threshold, or not, depending on whether the carrier for the Pennsylvania insured is licensed to conduct business in New Jersey, thus subject to the "deemer" statute. In such cases, the New Jersey insured is subject to the tort option on the New Jersey policy. Where the Pennsylvania insured is covered by a carrier not subject to the "deemer" statute, the New Jersey insured is entitled to full tort recovery.

VII. ACTIONS ON INSURANCE POLICIES.
(42 P.S. 8371) Effective July 1, 1990

A. Statutory Cause of Action.

1. In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

   (a) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%

   (b) Award punitive damages against the insurer.

   (c) Assess court costs and attorney fees against the insurer.

B. Effective Date.

Although the effective date of the statute is clearly July 1, 1990, there will still be argument as to the dates that will trigger application of the statute. If, for instance, the allegedly wrongful denial of coverage occurs *before* July 1, 1990, then the statute will not apply absent additional acts of bad faith *after* July 1, 1990. *Adamski v. Allstate Insurance Company*, 738 A.2d 1033 (1999). At least one court has ruled that if the insurance contract itself predates July 1, 1990, the statute cannot apply to any claims arising under the statute. *Bryant v. Liberty Mutual Insurance Company*, — F. Supp. — (E.D. Pa. 1990).

C. Policies Affected.

   (a) Policies issued under and subject to jurisdiction of ERISA are not governed by the Actions on Insurance Policies statute. Any remedies against carriers on such policies must be under the terms of ERISA. *Smith v. Hartford Insurance Group*, — F. Supp. — (M.D. Pa. 1990), *Cannon v. Vanguard*, — F. Supp. — (1998), *Norris v. Continental Casualty Co.*, — F. Supp. — (2000).

   (b) Policies issued under and subject to the jurisdiction of the HMO Act are not governed by the Actions on Insurance Policies statute. *DiGregorio v. Keystone Health Plan*, Pa. Super., 840 A.2d 361 (2003).

(c) Trial courts initially split on whether the punitive damage statute applied to MVFRL first party claims. In *Barnum v. State Farm Ins. Co.*, Pa. Super., 635 A.2d 155 (1993), the Superior Court ruled that only MVFRL remedies were available on first party benefit claims. *Barnum*, however, was reversed on other grounds at Pa., 652 A.2d 1319 (1995). Trial courts now continue to split on the issue of "bad faith" damages in first party benefit claims. In *Knox v. Worldwide Insurance Group*, 140 PLJ 185 (1992), *Hice v. Prudential*, Westmoreland CCP (1997), *Slaby v. Nationwide*, Northumberland CCP (1997), and *Abbazio v. Nationwide*, Monroe CCP (1996), the courts permitted the "bad faith" claim. In *Cacciotti v. MDA*, Dauphin CCP (1996) and *Cohen v. State Farm*, Monroe CCP (1996), the court dismissed claims based on 42 P.S. § 8371.

(d) SEPTA is not an insurance carrier and thus not subject to bad faith causes of action under the Actions on Insurance Policies statute. *SEPTA v. Holmes*, Pa. Cmwlth., 835 A.2d 851 (2003).

D. Statute of Limitations.

(a) The statute itself makes no reference to statute of limitations. Since the statute essentially creates a tort cause of action with tort type remedies, the two year tort statute of limitations will apply. *Haugh v. Allstate*, 322 F. 3d 227 (3rd Cir., 2003), *Ash v. Continental*, Pa. Super., 861 A. 2d 979 (2004).

E. Procedural Issues.

(a) A claim for bad faith damages under this statute is *not* subject to garnishment. Absent an assignment of the bad faith claim by the insured to a tort plaintiff, the tort plaintiff cannot through garnishment seek to recover a verdict in excess of policy limits or any other type of "bad faith" damages. *Brown v. Candelora*, Pa. Super., 708 A.2d 104 (1998).

(b) The parties to a statutory bad faith suit in state court are not entitled to a trial by jury. *Mishoe v. Erie*, Pa. 824 A.2d 1153 (2003).

(c) The statutory cause of action does not apply to a carrier's failure to timely pay a judgment in a bad faith suit. *Ridgeway v. U.S. Life*, Pa. Super., 793 A.2d 972 (2002).

NOTE: In *Haslip v. Pacific Mutual Life Insurance Company*, the United States Supreme Court, although affirming an award of punitive damages in an Alabama case, noted that the absence of certain procedural safeguards could render a given punitive damage system unconstitutional under the Due Process Clause of the Constitution. Trial level decisions thus far have upheld the constitutionality of the statute, even in light of the *Haslip* decision. *Coyne v. Allstate Insurance Company*, 771 F. Supp. 673 (E.D. Pa. 1991), *W.W. Development Company v. Scottsdale Insurance Company*, 769 F. Supp. 178 (E.D. Pa. 1991).

F. Application of Statute.

1. Coupling payment of clearly owed policy benefits with a demand for a release of bad faith claims is itself bad faith. *Hayes v. Harleysville*, Pa. Super., 841 A.2d 121 (2003).

2. Attorney fee awards may include fees for prosecuting the bad faith claim as well as any fees for litigating underlying claims. *Polselli v. Nationwide*, 126 F.3d 524 (3d Cir. 1997), *Bonenberger v. Nationwide*, Pa. Super., 791 A.2d 378 (2002).

3. Insurers are not, prior to an actual settlement, required to pay reserves or offers to UM/UIM claimants as "undisputed amounts." Failure to so pay is not "bad faith." *Williams v. Nationwide*, Pa. Super., 750 A.2d 881 (2000).

4. Once a settlement has been reached or a judgment has been entered against a carrier, the carrier's fiduciary duty as an insurer is extinguished and the Actions on Insurance Policies statute no longer applies. *Ridgeway v. U.S. Life*, Pa. Super., 793 A.2d 972 (2002).

5. A carrier may in UM/UIM cases dispute medical causation even if the carrier earlier paid medical first party benefits for the same treatment. Such a denial is not bad faith since different analyses apply for the different coverages. *Pantelis v. Erie Insurance Exchange*, Pa. Super., 890 A.2d 1063 (2006).

6. Bad faith exists where "the insurer did not have a reasonable basis for denying benefits under the policy and knew or recklessly disregarded its lack of reasonable basis." *O'Donnell v. Allstate*, Pa. Super., 734 A.2d 901 (1999).

7. Bad faith is a frivolous or unfounded refusal to pay the proceeds of a policy done with dishonest purpose, motivated by self interest or ill will. *Terletsky v. Prudential*, Pa. Super., 649 A.2d 680 (1994).

8. In a third party context, a carrier may be found guilty of bad faith where it intransigently refuses to settle a claim that could have been settled within policy limits where the insurer lacked a bona fide belief that it had a good possibility of winning at trial, thus causing a large damage award against the insured. *The Birth Center v. St. Paul Ins. Co.*, Pa., 787 A.2d 376 (2001).

9. A carrier may be found guilty of bad faith where it misrepresented the amount of coverage, arbitrarily refused to accept evidence of causation, secretly placed the insured under surveillance, acted in a dilatory manner, and forced the insured into arbitration by presenting an arbitrary low offer bearing no reasonable relationship to the insured's reasonable medical expenses and where the eventual award proved to be 29 times higher than the offer. *Hollock v. Erie Insurance Exchange*, Pa. Super., 842 A.2d 409 (2004).

10. Any facts giving rise to a bad faith claim must be proved by clear and convincing evidence, a standard higher than a mere preponderance of evidence. *Terletsky v. Prudential*, Pa. Super., 649 A.2d 680 (1999).

11. There is no heightened duty of good faith in first party or UM/UIM cases. A carrier always owes a duty of good faith and fair dealing. UM/UIM cases, however, are inherently adversarial and a carrier may legitimately protect its interests through discovery and litigation. *Condio v. Erie Insurance Exchange*, Pa. Super., 899 A.2d 1136 (2005).

VIII. RELATED STATUTORY PROVISIONS.

A. Motor Vehicle Insurance Fraud (Criminal Provision at 18 P.S. 4117)

1. Effective April 8, 1990.

2. Criminal offense to submit a claim (or to aid in or solicit a claim) supported by a statement containing false, incomplete, or misleading information if:

   (a) The statement is material to the claim, and

   (b) The statement is intended to defraud.

3. Criminal offense for a lawyer to compensate non-lawyers for referral of a client. Advertising specifically excepted.

4. Carriers are immune from liability for supplying information to Federal or state authorities where the carrier has reason to believe that the information relates to insurance fraud under the statute.

5. Carriers have a civil remedy against a criminal defendant for conduct constituting a crime but only if the court finds that the "Defendant has engaged in a pattern of violating" the statute.

6. State RICO law (18 P.S. 911(h)) amended to include insurance fraud under the definition of "racketeering activity."

B. Motor Vehicle Insurance Fraud (Civil Provisions at 75 P.S. 1801 et seq.)

1. Effective February 7, 1990.

2. Carriers required to establish anti-fraud plans on or before December 31, 1990.

3. Carriers required to report suspected fraud to Federal, state or local authorities and also to Index Bureau.

4. Civil penalty of up to $10,000 for failure to establish or follow anti-fraud plan.

5. Carriers immune from civil liability for making required reports of suspected fraud.

6. Pa. Insurance Department to create Motor Vehicle Insurance Fraud Index Bureau to receive and store information on suspected fraud.

NOTE: In *Pennsylvania Bar Association v. Commonwealth of Pennsylvania*, Pa. Cmwlth. - A.2d - (1992), the Commonwealth Court declared § 1822 of this statute unconstitutional since it required report of attorneys to the Fraud Index Bureau without notice to the attorney and without any requirement that the attorney actually be suspected of fraudulent conduct.

C. Driving Under the Influence. Commercial Vehicles (75 P.S. 3731.1) Effective April 1, 1992

1. Blood alcohol content necessary for conviction reduced from .10 to .04.

2. Applies to operators of commercial vehicles where the vehicle

(a) has a gross weight rating greater than 26001 lbs.

(b) is designed for 16 or more occupants, or

(c) carries certain hazardous materials.

D. Certification of Pleadings and Motions

1. Effective July 1, 2002, P.R.C.P. 1023.1 adopts the substantial equivalent of Rule 11 of the Federal Rules of Civil Procedure.

2. All pleadings must be signed by an attorney of record.

3. By signing, the attorney certifies:

(a) That he has read the pleading;

(b) That he has a good faith belief that the pleading is well grounded in fact and under existing law (or under a reasonable attempt to create or change existing law);

(c) That the pleading is not filed for any improper purpose (e.g., to delay, to harass, to increase cost of litigation, etc.);

(d) That the factual allegations have or, after discovery, are likely to have evidentiary support; and

(e) That denials of factual allegations are based on evidence or on the lack of information or belief.

4. A motion for sanctions may be filed if, at least 28 days after demand, the offending allegation or denial has not been withdrawn or corrected.

5. Sanctions can include striking pleadings, fines payable into court, and attorney fee awards to the moving party.