Bulletin 93-3

Coverage for uninsured and hit-and-run and underinsured

June 30, 1993

In a decision handed down June 9, 1993, the South Dakota Supreme Court affirmed the trial court's determination that a "consent to be bound" provision of a motor vehicle insurance contract was void as against public policy. Lois Kremer and Robert Kremer v. America Family Mutual Insurance Company, Slip Opinion #17738, June 9, 1993. Thus, the "consent to be bound" provision joins the "consent to be sued" provision as prohibited motor vehicle provisions.

Based upon the above decision and effective June 9, 1993, no policy provision relating to uninsured motorist and hit-and-run coverage pursuant to SDCL 58-11-9 and underinsured motorist coverage pursuant to SDCL 58-11-9.4 shall contain "consent to be sued" or "consent to be bound" provision in such a policy.

All Insurance carriers that have policies containing the "consent to be sued" or "consent to be bound" provisions shall make an immediate filing with the Director showing the appropriate change or changes in such policies. Those insurance carriers that are of the opinion that the policy language of its policies do not contain such prohibited clauses shall be required to respond in writing to the Director providing its position in this matter along with a copy of the appropriate South Dakota policy provision.

All insurance carriers that have policies containing the prohibited provisions shall, at the next renewal date of said policies, provide a properly amended policy or endorsement thereto to its policyholders.

Any insurance carrier that may have denied coverage or payment to its policyholders based upon the prohibited provisions on and after June 9, 1993, shall immediately advise the Director and their policyholders in writing and, further, shall reevaluate such denial of coverage or payment.

Nothing contained in this Bulletin shall prohibit insurance carriers from including in their policy provisions the requirement that they be notified by the insureds of any legal proceedings related to such coverages initiated by such insureds so as to preserve their right of intervention in such proceeding. Acceptable language in that regard could be as follows:

No judgment for damages arising out of a suit brought against the owner or operator of an "uninsured motor vehicle" is binding on us unless we:

1. Received reasonable notice of the pendency of the suite resulting in judgment; and

2. Had a reasonable opportunity to protect our interests in the suit.

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Director of Insurance