

Bulletin 96-2

Uninsured motorist coverage — SDCL 58-11-9

April 18, 1996

It has come to the attention of the South Dakota Division of Insurance that some uninsured motorist policy provisions contain references to physical contact requirements in regard to hit-and-run situations in order for coverage to be effective. It is the position of the Division that under uninsured motorist coverage, as set forth in SDCL 58-11-9, references in policies to physical contact requirements such as "hitting," etc., may no longer be used.

This position is based on a South Dakota court case, *Clark v. Resent Ins. Co. et.al.*, 270 N.W.2d 26 (S.D. 1978), which holds that physical contact may not be required for uninsured motorist coverages. This case has never been overturned or modified by subsequent case law or statute, and therefore, has full legal force and effect.

Be advised that if your company's policy language requires physical contact in a hit-and-run case to trigger the uninsured motorist coverage, that language is null and void. No future filings containing a requirement of physical contact, as pertains to hit-and-run coverage under uninsured motorist will be approved.

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