Texas Auto Policies

By: Henry Moore

MOORE & BOMBEN PLLC

1101 East 11th Street
Austin, TX 78702
512-477-1663
Henry@moorebomben.com

University of Texas
The Car Crash Seminar
August 26 and 27, 2021
Austin, Texas

TABLE OF CONTENTS

I. GENERAL INSURANCE LAW AND TERMS 1

A. Statutory Requirements for Auto Insurance 1

B. Agency Approval of Auto Insurance Policies (Texas Dept. of Insurance) 3

C. Special Rules of Construction for Auto Insurance 3

II. CONTENT OF TEXAS AUTO POLICIES 6

A. Liability Coverage 6

B. Personal Injury Protection (PIP) 13

C. Medical Payments Coverage 15

D. Uninsured/Underinsured Coverage 15

E. Property Damage 24

F. Commercial Coverage 25

III. MISCELLANEOUS COVERAGE ISSUES 27

A. Misrepresentation on the Policy Application 27

B. Primary/Excess 27

C. Cancellation 28

IV. GENERAL PRACTICE TIPS 28

A. Discovery of the Policy 28

B. Balancing Coverage Between the Various Types of Insurance 28

C. Insurance Coverage as Evidence 29

D. Recommendations to Clients on Auto Coverage 29

E. The Human Condition 30

V. APPENDIX 31

Introduction

This paper is a revised version of previous papers presented at this seminar. Since the law is constantly evolving in this area, some of the updates are significant. If you have earlier versions of the paper, it might be best to discard them. The paper is written in outline form and is designed to get the practitioner started on their research when an auto insurance issue arises. It is not an exhaustive list of authority, but a starting point. One important caveat … much of the case law that has developed in the last few years has been based on the standard policy. That policy was written by the Texas Department of Insurance, and it is still in wide use, but now there are others. It is more important than ever to read the actual policy in play.

Many people have contributed to this effort. My daughter and partner, Jayme Bomben, has done exhaustive work, both on the original paper and the power point presentations that have accompanied this topic. My long-time legal assistant, Peggy Rothenberger, has helped a great deal over the years. I find myself frequently referring to the written works of Mark Ticer, Mark Kincaid, Tom Herald, and Janet Colaneri for reference. Finally, my colleagues from around the State have contributed immeasurably by their questions and comments, especially on the TTLA list serve. I appreciate all of the help.

TEXAS AUTO POLICIES

Insurance is a great concept. It spreads the risk. For a certain price (premium) another accepts the risk of certain losses (coverage), for a certain amount of time (policy period) with certain limits (policy limits). Another way of looking at insurance is as a legal betting scheme. "Bet I'm going to have a wreck," says the policy holder. "Bet you're not," says the insurance company. Of course, in the auto context this wager is required in Texas. It's codified in the Transportation Code, as the Safety Responsibility Act.

Problems arise when a great concept is put into practice. Enormous amounts of money are at stake, so fights abound over when and how much of the risk is covered. In the legal context, insurance policies are contracts, and that's the way courts approach them. All of the contract elements apply. Consideration, waiver, breach, ambiguity, parole evidence - all of the terms that we see in other contract disputes, arise in the insurance context. But there are some differences. First, there are some base line statutory requirements that are unique to auto policies. Second, the auto policy is approved by a state agency, the Texas Department of Insurance. Consequently, that agency's interpretations of the provisions are sometimes considered in the dispute. Finally, there are some special rules of construction that apply to all insurance contracts, including auto.

Most of this paper discusses the personal auto policy, but some car wrecks are covered by commercial policies. Different rules apply to these policies. The basic commercial general liability (CGL) excludes auto wrecks, but a separate endorsement often adds it back. More often commercial auto policies are written as separate coverage under a package of commercial insurance. We have added a section to this paper on commercial coverage.

I. General Insurance Law and Terms

A. Statutory Requirements for Auto Insurance

The Safety Responsibility Act (found in the Transportation Code) and the Texas Insurance Code mandate certain coverage in the auto policy and prohibit some provisions. These statutes form the bedrock of auto coverage in Texas. The Texas Department of Insurance has no authority to act outside the parameters of the Insurance Code, however it can, and at times seemingly does, ignore the Safety Responsibility Act. The Safety Responsibility Act only governs those policies that certify that they comply with the Act. As a practical matter that is nearly every personal auto policy, this distinction can be important. When trying to decipher whether a particular policy can get by with certain exclusions, it's important to know how these statutes interplay. This is a brief summary:

1. Tex. Transportation Code (Safety Responsibility Act)

Tex. Transp. Code §601.072 minimum limits

$30,000.00 after January 1, 2011

$60,000.00 for injuries per accident, if more than one person injured, for policies written after January 1, 2011.

$25,000.00 property damage per accident for policies written after April 1, 2008.

Allows deductibles of $250 per person injured or for property damage and $500 per accident under the liability coverage

Tex. Transp. Code §601.073 policy must contain

Name and address of the insured;

Coverage provided by the policy;

Premium charged;

Limits of policy;

Policy must state that it provides the coverage required by this section and that it is subject to this law;

Policy cannot be cancelled after a collision as to that collision;

Policy cannot require that the insured first pay the liability damages before the policy pays;

The policy, the application for the policy and any riders or endorsements consistent with this law constitute the entire policy.

Tex. Transp. Code §601.074 allowable terms

May contain a provision that allows the insurance company to be reimbursed by the insured for payments that are required by this law, but not required by the policy.

Allows prorating of insurance provided with other collectable insurance.

Tex. Transp. Code §601.075 prohibited terms

Policy may not insure against liability that worker's compensation is designed to cover.

Excepts domestic employees from this exclusion unless covered, or could be covered, under worker's compensation.

Excludes liability for injury to or destruction of, insured's own property

Tex. Transp. Code §601.076 permissive users

Owner's policy must provide coverage for permissive users in the United States and Canada.

Tex. Transp. Code §601.078 additional coverage

Excess coverage beyond the statutory minimum is not regulated by this act.

Tex. Transp. Code §601.081 minimum policy requirements.

This section details certain required terms in a policy before it can be used as proof of financial responsibility, including disclosure of "named driver" policies.

2. Tex. Insurance Code

Tex. Ins. Code §1952.051 policy forms

Policy forms for auto insurance are now regulated by Tex. Ins. Code §2301 (which permits insurers to draft their own forms, subject to the approval of the Texas Department of Insurance.)

Tex. Ins. Code §1952.052 standard policy

The older standard form is still approved. Insurance company must notify TDI that it intends to continue its use.

Tex. Ins. Code §1952.054 short term coverage

Prohibits the use of policies with less than 30 day coverage to renew driver's licenses or vehicle inspections. Policy must disclose this restriction.

Tex. Ins. Code §1952.056 effect of divorce

If a spouse is covered under the policy, the policy must continue coverage for that spouse during "a period of separation in contemplation of divorce."

Tex. Ins. Code §1952.057 drug forfeiture

Prohibits coverage for vehicles lost through forfeiture for a drug conviction.

Tex. Ins. Code §1952.101 Uninsured Motorist Coverage

Re-codification of 5.06-1 uninsured motorist coverage

Requires uninsured/underinsured motorist coverage on any policy, but allows coverage to be waived in writing.

Tex. Ins. Code §1952.102 definition of uninsured

Allows the TDI to define "uninsured motor vehicle" to exclude certain vehicles which are, in fact, uninsured.

Tex. Ins. Code §1952.103 underinsured

Defines underinsured vehicle.

Tex. Ins. Code §1952.104 UM limits

Requires 1) UM limits may not exceed liability limits, 2) UM coverage cannot cover intentional acts, and 3) if the owner or operator of the vehicle is unknown, then actual contact between the vehicles is required.

Tex. Ins. Code §1952.105 UM limits and deductible

1) UM limits, including property damage, must be offered up to the amount of the liability limits, 2) specifies a $250.00 deductible for property damage, 3) UM limits must at least equal Safety Responsibility limit

Tex. Ins. Code §1952.106 defines UM coverage

UM coverage must provide payment for "all amounts the insured is legally entitled to recover as damages" from the uninsured vehicle up to the limits of the policy "because of bodily injury or property damage"

Tex. Ins. Code §1952.107 may stack UM and collision coverage

For property damage, insured can elect to claim under his collision coverage or his UM coverage and choose the lesser deductible. May also stack collision and UM property damage coverage and pay only the lesser deductible. Cannot recover more than actual damages.

Tex. Ins. Code §1952.108 UM subrogation

Grants subrogation rights to the UM carrier against any person or organization legally responsible "for the loss, subject to the terms of the policy."

Tex. Ins. Code §1952.109 burden of proof, UM

Places the burden of proof on the UM carrier if there is a dispute over the insured status of the other vehicle.

Tex. Ins. Code §1952.110 UM venue

Mandates venue in either the county of the collision or the insured's county of residence at the time of the collision.

Tex. Ins. Code §1952.151 personal injury protection

Defines personal injury protection coverage as providing payment to the named insured, members of the insured's household, and "any authorized operator or passenger of the named insured's motor vehicle:

(1) arising from an accident,

(2) incurred within three years of accident

(3) for necessary medical or funeral expenses, as well as income or household services lost."

Tex. Ins. Code §1952.152 PIP required unless waived

Rejection must be in writing and continues through renewals of the policy

Tex. Ins. Code §1952.153 PIP minimum coverage

$2500 per person

Tex. Ins. Code §1952.154 lost income under PIP

Insurer may require medical proof before paying lost income

Tex. Ins. Code §1952.155 collateral source irrelevant to PIP

Benefits are paid regardless of fault, or other coverage. PIP carrier has no right of subrogation.

Tex. Ins. Code §1952.156 payments under PIP

Carrier must pay within 30 days of proof of claim

Policy **may** require original proof of loss within six months of accident and reasonable medical proof of an "alleged recurrence of injury" if there is a lapse in treatment.

Tex. Ins. Code §1952.157 Penalty for failure to

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Texas Auto Policies

First appeared as part of the conference materials for the
2021 The Car Crash Seminar session
"Texas Auto Policies"