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Bulletin: Property and Casualty 04-15-A

To: Property and Casualty Insurance Companies

Re: Motor Vehicle Liability Insurance - Invalid Exclusions

Date: November 10, 2004

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Bulletin 04-15 was withdrawn by the Administration on October 5, 2004 pending the issuance of this revised and modified Bulletin, which clarifies the actions being taken by the Maryland Insurance Administration ("MIA") in light of the Opinion issued by the Court of Appeals in S*alamon v. Progressive Classic Ins. Co.*, 379 Md. 301(2004).

Salamon held that the "business-use" exclusion contained in a policy of private automobile insurance issued by Progressive was void and, thus, could not be relied upon by Progressive to deny its insured coverage and defense for a third-party claim that fell within the mandated statutory minimums.[1] The *Salamon* Court's holding was premised on its conclusion that, in light of the comprehensive nature of the statutory provisions regulating motor vehicle insurance, policy exclusions that excuse or reduce the insured parties' liability coverage below the statutory minimum levels of coverage are invalid, unless those exclusions are expressly or implicitly authorized by statute or otherwise upheld by a Maryland appellate court.

The MIA expects that insurers are adjusting and settling claims in accordance with the holding in *Salamon*. The MIA will apply the holding to any complaints which have a similar issue and that are filed with the MIA.

In order to assure compliance with Maryland law as interpreted by *Salamon*, MIA is taking the following actions:

[1] In *Stearman v. State Farm*, 381 Md. 436 ((2004), the Court of Appeals made clear that exclusions, whether authorized by statute or not, are valid above the statutorily required minimum limits.

- Effective immediately, the MIA will not approve any policy exclusion that purports to excuse or reduce compulsory liability coverages below statutorily mandated minimum levels unless the exclusion is expressly or implicitly authorized by statute. For exclusions to compulsory liability coverages that are not expressly authorized by statute, a carrier that believes that the exclusion is implicitly authorized, must identify and explain the implicit statutory authorization. If an exclusion to compulsory liability coverages is not expressly or implicitly authorized by statute, the policy must provide, by an approved endorsement, that, with respect to compulsory liability coverages, the exclusion applies only to coverage in excess of the mandatory minimums.

- With respect to all policy forms currently approved for use in Maryland, the MIA requires all carriers to file *by June 1, 2005*, an amendatory endorsement that limits all exclusions for compulsory liability coverages that are not expressly or implicitly authorized by statute to coverage in excess of the statutory minimum levels of coverage. For exclusions to compulsory liability coverages that are not expressly authorized by statute, a carrier that believes that the exclusion is implicitly authorized, must identify and explain the implicit statutory authorization. This explanation must be submitted with or in lieu of the carrier's amendatory endorsement.

Therefore: 1) If an insurer believes that all exclusions are expressly or implicitly authorized by statute, then the insurer need only file an explanation for the implicit authorizations. 2) If the insurer believes that some, but not all, of its exclusions are expressly or implicitly authorized by statute, then the carrier should file a single amendatory endorsement for those exclusions which are not expressly or implicitly authorized and an explanation for those which are expressly or implicitly authorized. 3) If the insurer believes that none of the exclusions contained within the policy are expressly or implicitly authorized, then the insurer should file a single amendatory endorsement that limits all exclusions for compulsory liability coverages to coverage in excess of the statutory minimum levels of coverage.

An example of an acceptable amendatory endorsement is attached hereto as Exhibit 1 and an example of the appropriate explanation is attached hereto as Exhibit 2.

Questions regarding the information provided in this bulletin or the steps required for compliance should be directed to Cathy Ruppel, Insurance Analyst, Property and Casualty Unit, by phone at 410468-2316, by email at **cruppel@mdinsurance.state.md.us** or by letter to the Maryland Insurance Administration, 525 St. Paul Place, Baltimore, Maryland 21202.

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Alfred W. Redmer, Jr.
Insurance Commissioner

EXHIBIT 1

Amendatory Endorsement:

If it is determined that an exclusion set forth in the policy is not authorized under the laws of the State of Maryland, that exclusion will be deemed to be amended so as to apply only to coverage in excess of the statutorily required minimum limits of liability.

EXHIBIT 2

"INVALID AUTO EXCLUSIONS 102504"

Intentional Acts Exclusion:

Exclusion A.1. states that we do not provide Liability Coverage for any "insured" who intentionally causes "bodily injury" or "property damage."

MD. INS. CODE ANN. § 19-501(c)(2) defines a "Motor vehicle accident: as an occurrence that does not include one that is caused intentionally by or at the direction of the insured.

Property Damage Exclusions:

Exclusion A.2. excludes "property damage" to property owned or being transported by that "insured:. Exclusion A.3. excludes "property damage" to property rented to, used by or in the care of that "insured" but does not apply to "property damage" to a residence or private garage.

We note that the insured's property that is owned or being transported by that "insured" along with property in the care, custody or control of the insured should be covered under a separate Homeowners policy.

In addition, MD. INS. CODE ANN. § 17-103(b)(2) supports Exclusion A.2. by requiring security in the form of a vehicle liability insurance policy to provide for at least the payment of claims for property of others damaged or destroyed in an accident of up to $15,000, in addition to interest and costs.

Course of Employment Exclusion:

Exclusion A.4. excludes "bodily injury" to an employee of that "insured" during the course of employment. This exclusion does not apply unless workers' compensation benefits are required or available.

Bodily injury sustained by an employee of the insured while in the course of employment should be covered under workers' compensation benefits as required by state law.

Public or Livery Conveyance Exclusion:

We reiterate that Exclusion A.5. only applies in situations where the vehicle is actually hired or rented to others for a charge. Thus, an insured who operates or owns a taxicab would not be afforded liability coverage under the Personal Auto Policy as such motor vehicle is generally used as a public or livery conveyance, and presents a commercial exposure that should be provided coverage under a commercial auto policy.

Furthermore, MD. INS. CODE ANN. § 19-501(B)(2)(ii) maintains that a "motor vehicle" does not include a taxicab. A taxicab is defined under MD. INS. CODE ANN. § 11-165 as a motor

vehicle for hire that is designed to carry seven or fewer individuals, including the driver, and is used to accept or solicit passengers for transportation for hire between those points along highways in this State as the passengers request.

Reasonable Belief Exclusion:

In the 1975 development of the simplified Personal Auto Policy (PAP), the former permission requirement (omnibus clause) contained in the Family Auto Policy was revised to the current "reasonable belief" exclusion. This revision was made to eliminate the burden of trying to establish a fact situation. In a large majority of permission cases, companies were not able to establish facts whereby coverage could be denied. Thus, specific permission of the owner every time a permissive operator wants to drive the vehicle is not required, as long as the operator can establish a reasonable belief that he/she was entitled to use the vehicle.

In *Salamon,* the court describes *National Grange Mut. Ins. v. Pinkney,* 284 Md. 694, 399 A.2d 877 (1979). In *Pinkney,* the court held that omnibus (permissive user) clauses could be valid. The court acknowledged that not all omnibus clauses contain the same language and thus, they must be interpreted pursuant to their terms on a contract by contract or case by case basis.

In light of this, we believe the "reasonable belief" exclusion is not prohibited by legislation of case law, as it is less restrictive than on omnibus clause.

Other Part A Exclusions:

The remainder of the exclusions contained in Part A – Liability Coverage not mentioned above present those types of exposures that should be afforded coverage under a separate policy such as a commercial auto policy, a nuclear energy liability policy or a commercial general liability policy.