IADC COMMITTEE NEWSLETTER

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IN THIS ISSUE

This article provides an overview of uninsured/underinsured motorist coverage issues involving an unknown or "John Doe" driver in a sample of jurisdictions throughout the United States.

Unknown Automobile Operators: How States are Vetting Unknown Driver Claims for Uninsured Motorist Coverage

ABOUT THE AUTHOR



Adam Rust is a shareholder in the Knoxville, Tennessee office of Lewis Thomason, P.C. and represents individuals and businesses in a diverse range of legal matters. He handles lawsuits involving transportation issues, commercial litigation, employment law and construction. He also advises LLCs, partnerships, and corporations throughout Tennessee and regularly defends professionals in liability matters. In addition to his legal practice, Mr. Rust is committed to nonprofit advocacy and serves on the Board of Directors for Street Hope TN, Inc., which assists children who are victims of human trafficking, and Surgery on Sunday, Inc., which facilitates pro bono surgeries for uninsured patients. He currently serves as the Chair of the Transportation Committee for the International Association of Defense Counsel. He can be reached at ARust@LewisThomason.com.

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Mike Bassett
Vice Chair of Publications
The Bassett Firm
mbassett@thebassettfirm.com

Uninsured motorist coverage provides insureds with security in the event that they are injured by an uninsured or underinsured motorist. This coverage ensures that an injured driver will not be hung out to dry in the event they suffer injuries from an uninsured or underinsured driver. For these claims, the process is relatively simple. If an insured is injured by an unknown driver, oftentimes through a hit-and-run, the insured may have to comply with certain requirements in order to be covered.

The following cases and statutes from various jurisdictions show how courts differ in the required conditions to obtain coverage for an accident with an unknown driver.

1. Tennessee

The Tennessee Code Annotated § 56-7-1201 *et seq.*

In Tennessee, every automobile liability policy must include uninsured motorist coverage unless the insured rejects such coverage in writing. Tenn. Code Ann. § 56-7-1201(a). A plaintiff can file and recover under a "John Doe" action in order to be compensated from his or her uninsured motorist policy in the event that the plaintiff is harmed by an "unknown" operator or motorist. Tennessee Code Annotated § 56-7-1206(b).

The statute provides that if the owner or operator of any motor vehicle that causes bodily injured or property damage to the insured is unknown, the insured shall have no right to recover under the uninsured motorist provision unless:

(1)

> (A) [a]ctual physical contact has occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured; or
>
> (B) The existence of the unknown motorist is established by clear and convincing evidence, other than nay evidence provided by occupants in the insured vehicle;

(2) The insured or someone on the insured's behalf has reported the accident to the appropriate law enforcement agency within a reasonable time after its occurrence; and

(3) The insured was not negligent in failing to determine the identity of the other vehicle and the owner or operator of the other vehicle at the time of the accident.

Under Tennessee law, insureds may prove that an insurable accident occurred with an unknown driver by showing physical contact with the unknown driver's vehicle or proving the unknown motorist by independent witnesses. Tenn. Code Ann. § 56-7-1201(e). Insureds seeking to recover against an unknown driver in Tennessee must also timely notify the appropriate law

enforcement agency of the accident as well as not be negligent in determining the identity of the other vehicle operator.

2. California

California Insurance Code § 11580.2(a)(1)

In California, insurers cannot issue auto liability policies without uninsured motorist coverage unless the insured agrees through proper form in writing that they do not wish to have such coverage. Generally under California law, the determination as to whether an insured is entitled to coverage shall be made by an agreement between the insured and the insurer, or arbitration if needed.

When an uninsured motorist is unknown, the insured must satisfy the requirements under section 11580.2(b)(1)-(2) to receive coverage. The requirements are (1) the bodily injury must have arisen out of physical contact with the automobile with the insured or an automobile that the insured is occupying; and (2) the insured or someone on his or her behalf reported the accident within 24 hours to the police department to the city where the accident occurred. Different requirements exist if the accident occurs outside of the city limits. Therefore, in order for an insured to recover under UM coverage for an accident involving an "unknown driver," there must be physical contact between the two automobiles, and the accident must have been reported to the applicable police department within 24 hours.

3. Florida

Fla. Stat. § 627.727(1)
Brown v. Progressive Mut. Ins. Co., 249 So.2d 429 (Fla. 1971).

In Florida, insurers are mandated to include uninsured motor vehicle coverage unless the insured rejects such coverage in writing. An insured who has a claim against an insolvent insurer as defined in section 631.54 must present the claim to the Florida Insurance Guaranty Association.

The UM Statute in Florida is void of any requirement for physical contact between an uninsured person and insured in accidents involving an unknown driver. Florida courts have even been unwilling to give effect to policy provisions limiting uninsured coverage to instances where physical contact occurs between the uninsured unknown driver and the insured driver. In *Brown*, the Supreme Court noted that the requirement of physical contact for recovery in an automobile insurance policy was "fallacious" and the question of whether an accident actually did occur as a claimant claims it did is a question for a judge or jury.

4. Iowa

Iowa Code § 516A.1
Rohret v. State Farm Mut. Auto. Ins. Co., 276 S.W.2d 418 (Iowa 1979)

In Iowa, automobile liability insurers are mandated to offer uninsured, underinsured, or hit-and-run coverage unless the insured rejects such coverage in writing. Uninsured

motorist coverage applies when four conditions are met: (1) the injured person is an insured under the policy provisions; (2) the injured person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle; (3) the injury to the insured was caused by an accident; and (4) the injury arose out of the ownership, maintenance, or use of an uninsured motor vehicle.

It is a long-standing rule in Iowa that physical contact is required to recover under a UM policy for an unidentified motorist. In Iowa, if an insured is claiming UM coverage against their insurer for an accident involving a driver whose identity is not known, the insured must prove physical contact between the two vehicles to recover from the insurer.

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