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Date: TBD

To: All Motor Vehicle Insurance Companies, Rating Organizations, Producers, Agents, and the Maryland Automobile Insurance Fund

Re: Statutorily Required Uninsured/Underinsured Coverage for Diminution of Value Damages

The Maryland Insurance Administration (the “Administration”) is issuing this Bulletin to notify all insurers authorized to issue motor vehicle insurance in the state that the Administration has updated its enforcement position with respect to uninsured/underinsured (“UI/UIM”) coverage of diminution of value (“DV”)¹ claims.

For the reasons discussed below, it is the Administration’s enforcement position that Md. Code, Ann. Ins. § 19-509 (2017, 2023 Supp.) requires that the statutorily mandated UM/UIM coverage included in a policy of motor vehicle insurance issued in the state must, subject to the UI/UIM limits, cover diminution of value damage on the same terms and conditions as are required under Ins. § 19-504 and Md. Code, Ann. Transp. § 17-103 (2020, 2023 Supp.).

All vehicles registered and operated on public roadways in Maryland must be covered by a policy of motor vehicle liability insurance that meets minimum statutory requirements. *See* Md. Transp. Title 17, Subt. 1; Ins. § 19-504. Mandatory liability insurance includes coverage for bodily injury and for property damage caused by an at-fault insured driver. Property damage liability coverage pays for the economic losses resulting from damage to another person’s tangible property caused by an at-fault insured driver, subject to policy limits.

Maryland case law recognizes the diminution of a vehicle’s value as a valid and compensable element of damages. In *Frederick Motors v. Krausse*, 12 Md.App. 62 (1971), the Maryland Court of Special Appeals held that “if the plaintiff can prove that after repairs his vehicle

¹ Throughout this letter, we use the terms “diminution of value,” “diminished value,” and DV interchangeably to refer to the difference between a vehicle pre-accident market value and its post-damage, post-repair market value (sometimes referred to as “residual diminished value”).

has a diminished market value from being injured, then he can recover in addition to the cost of repairs the diminution in market value.” *See also, Krivant v. Dickerman*, 18 Md.App. 1 (1973). The Administration likewise recognizes that diminished value may be covered as a form of economic loss. [See, e.g. Consumer Guide to Auto Insurance, 42-43.](#)

UM/UIM coverage is a mandatory coverage that responds when an insured is unable to fully recover from an at-fault uninsured driver, an at-fault underinsured driver, or an at-fault driver who cannot be identified (such as hit-and-run driver). UM/UIM coverage pays the gap between the economic losses incurred by the insured and any liability insurance coverage available to the tortfeasor, up to the UIM/UM policy limits.²

UMPD has always been recognized as a component of UM/UIM coverage. However, the precise scope of UMPD coverage was clarified during the 2020 session of the General Assembly, when §§ 19-509(c) and (e) of the Insurance Article were amended to explicitly include references to “property damage.” Ch. 77, Md. Laws of 2020. Section 19-509(c) now states that UM/UIM coverage must include:

coverage for damages, subject to the policy limits, that ... the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of property damage, including loss of use of the insured vehicle

Chapter 77 was introduced in response to the Opinion of the Circuit Court for Baltimore City overturning an Order of the Commissioner requiring an insurer to pay its insured’s claims for car rental expenses under UMPD Coverage. The Circuit Court accepted the insurer’s argument that UMPD does not include the loss of the use of the damaged property. Pending the appeal of the Circuit Court’s ruling, the legislature clarified the scope of UMPD coverage, including the express statement that UMPD coverage includes loss of use. The Maryland Supreme Court subsequently issued an opinion that confirmed the Administration’s original ruling and acknowledged the 2020 legislation as a clarification of existing law. *Berry v. Queen*, 469 MD. 674 (2020). In the *Berry* Opinion, the Court explained that “the purpose of the uninsured motorist statute is to protect innocent individual injured by uninsured motorists **as if the uninsured tortfeasor carrier motor vehicle liability insurance in the amounts required by law.**” *Berry*, 469 Md. at 698-99, emphasis added.

Mandatory property damage liability coverage is typically referred to as “third party” coverage, in that the policy responds to the claim of a third party made against the at-fault insured driver. Because this requirement is imposed by statute, it cannot be contractually removed or altered in scope. A motor vehicle insurance policy must include liability coverage for payment for the damage or destruction of property of others in at least the amount required by statute. *See, e.g., Jennings v. GEICO*, 302 Md. 352 (1985).

² Pursuant to recent legislative amendments, the Insurance Article permits motor vehicle insurance policyholders to choose between standard UM coverage and Enhanced Underinsured Motorist (EUIM) coverage, as specifically delineated in § 19-509.1. For purposes of this section of the Administration’s Report, the analysis concerning DV would appear to apply equally to either selection, and therefore the distinction between UM coverage and EUIM coverage is not treated as a material one. This Report will use the abbreviation UM to refer to all types of uninsured and underinsured motorist coverage.

A motor vehicle insurance policy may also include optional, non-mandatory coverages (e.g. collision and comprehensive) that protect the policyholder in the event there is physical damage to the insured vehicle that is not caused by the negligence of a third party. These optional, non-mandatory physical damages coverages are typically referred to as “first party” coverage in that the coverage is provided as part of a direct contractual agreement between the insurer and the policyholder. Because neither the existence nor the scope of these physical damage coverages is mandated by statute, an insurer may lawfully exclude or limit coverage for DV as a compensable element of physical damage as a matter of contract. Hence, whether a claim for DV made under these first party coverages is covered depends in the first instance on the language of the policy. That flexibility does not exist because the coverage is a “first party” rather than a “third party” coverage; the flexibility exists because the existence and scope of those physical damage coverages are not mandated by statute.

UMPD is considered a form of “first party” coverage in that the coverage is provided as part of a direct contractual agreement between the insurer and the policyholder. Historically, there are carriers who have relied upon the first party nature of UMPD to contractually alter the scope of UMPD coverage, including the exclusion of DV as a category of compensable damages. The Administration has not historically disapproved these forms. Further, while consumer complaints premised on UMPD DV coverage disputes are rare, the Administration has in the past upheld the denial of DV claims under UMPD as not being a violation of the Insurance Article where DV losses were excluded by policy language.

The Administration has undertaken a review of these historic positions. The Administration notes that, while UMPD is a first party coverage, it is also a mandatory coverage and, in 2020, the general assembly clarified the mandatory scope of this coverage. Under § 19-509(c), UMPD is required to compensate the policyholder for “for damages, subject to the policy limits, that ... the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of property damage.” The Administration concludes that, because diminution of value is a category of damages that the insured is entitled by tort law to recover from the owner or operator of the uninsured motor vehicle, diminution of value damages, when proven, are required to be covered under UMPD, subject to the UM/UIM limits selected by the policyholder.

Consequently, the Administration hereby notifies all insurers that are authorized to write motor vehicle insurance in the state that:

1. Diminution of value, as a category of damages, is covered under the UMPD provisions of a policy of motor vehicle insurance issued in the state;
2. An insurer may not exclude, alter or specifically limit coverage for diminution of value damages under UMPD coverage; and
3. Language in any UMPD policy form that purports to exclude, alter, or specifically limit coverage for diminution of value damages under UMPD coverage is unenforceable and diminution of value claims submitted under UMPD coverage must be evaluated and when proven, paid to the same extent that diminution of value claims are evaluated and paid under mandatory property damage liability insurance, subject to the policyholder’s UM/UIM limits.

Motor vehicle insurers that have filed, issued, or delivered in-force policy forms that contain language excluding DV damages as a possible component of UM coverage are hereby directed to refile these policy forms without such language. Such revised filings must be submitted within 90 days from the date of this Bulletin.

All questions concerning this Bulletin should be directed to Property and Casualty Associate Commissioner William Fawcett at 410.468.2353 or William.Fawcett@Maryland.gov.