



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

NED McWHERTER
GOVERNOR

ELAINE A. McREYNOLDS
COMMISSIONER

B U L L E T I N

TO: All Insurers Doing Business in Tennessee

FR: Elaine A. McReynolds *EAM*
Commissioner

RE: Comparative Negligence - Uninsured Motorist Claims

DA: June 29, 1993

The Department has received a noticeable increase in complaints regarding denial of liability and uninsured motorist claims due to the use of a comparative negligence analysis by adjusters. As you are aware, the McIntyre decision of the Tennessee Supreme Court in 1992 instituted a system of modified comparative negligence in Tennessee wherein a plaintiff must be less than 50% at fault in order to recover. Defendants are assessed liability according to their percentage of negligence. Plaintiff's awards are reduced by the percentage of negligence assigned to the plaintiffs.

On uninsured motorist claims, we have found that some insurers are under the mistaken belief that the uninsured motorist must be solely at fault in order for an insured to recover under uninsured motorist. This is not the case. T.C.A. 56-7-1201 requires that the uninsured motorist be positively identified and solely at fault only in order for the \$200 deductible under uninsured motorist to be waived. It does not require the uninsured motorist to be solely at fault in order for the insured to recover under UM.

Regarding comparative negligence, it appears to the Department from the complaints it is receiving that company adjusters are, in some cases, determining that the plaintiff in third party cases or the insured in uninsured motorist cases is 50% or more at fault without sufficient or substantial evidence to support such a finding. It appears that companies may be doing this in order to wrongfully deny liability claims. It appears that companies may be attempting to simply settle their own insured's claims under their collision coverage, thus allowing the companies to charge a deductible on the loss and to charge their insureds points and increase the insured's future premiums due to the loss.

This notice is intended to put companies on notice that the Department considers such actions to be the basis for unfair trade practice and will act accordingly in the event a pattern or practice of such conduct is discovered.

EAM/cmf