A L A B A M A L A W S U M M A R Y

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1. **Compulsory Insurance State: YES**

Alabama Code 1975, § 32-7A-4 (1975), provides that no person shall operate, register, or maintain registration of, and no owner shall permit another person to operate, register, or maintain registration of, a motor vehicle designed to be used on a public highway unless the motor vehicle is covered by a **liability insurance policy**, motor vehicle liability bond, or deposit of cash.

Minimum limits of bodily injury liability coverage are **$25,000.00** per person; **$50,000.00** per accident; and **$25,000.00** property damage.

2. **No-Fault State: NO**

3. **Financial Responsibility State: YES**

Alabama's Motor Vehicle Safety Responsibility Act, is codified at *Alabama Code 1975*, §§ 32-7-1, *et seq*.

Alabama Code 1975, § 32-7-22, states in pertinent part:

> (f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:
>
> (1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be cancelled or annulled as to that liability by any agreement between the

insurance carrier and the insured after the occurrence of the injury or damage. Any statement made by the insured or on his or her behalf and any violation of the policy shall not defeat or void the policy.

(2) The satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of injury or damage.

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section.

(4) The policy, the written application for the policy, if any, and any rider or endorsement which does not conflict with this chapter shall constitute the entire contract between the parties.

Alabama's statute, written prior to compulsory insurance laws, only applies to a motorist who has been in an accident, after which the motorist is required to provide proof of insurance or post financial security as a condition to keeping his driver's license and to prove that he is financially liable to respond in damages for future accidents.

In this respect, *Alabama Code 1975*, § 32-7-6, states in pertinent part:

(a) If 20 days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of five hundred dollars ($500), the director does not have on file evidence satisfactory that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement or conditional release providing for the payment of an agreed

amount in installments with respect to all claims for injuries or damages resulting from the accident, which agreement or conditional release may include reasonable interest as set out in Section 32-7-7, the director shall determine the amount of security which shall be sufficient in his or her judgment to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against each operator or owner.

(b) The director shall, within 60 days after the receipt of the report of a motor vehicle accident, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in the accident, and if the operator is a nonresident the privilege of operating a motor vehicle within this state, and if the owner is a nonresident the privilege of the use within this state of any motor vehicle personally owned, unless the operator or owner or both shall deposit security in the sum so determined by the director. Notice of the suspension shall be sent by the director to the operator and owner, not less than 10 days prior to the effective date of the suspension, and shall state the amount required as security.

(c) This section shall not apply under the conditions stated in Section 32-7-7 nor in any one of the following if:

(1) The operator or owner if the owner had in effect at the time of the accident an automobile liability policy with respect to the motor vehicle involved in the accident.

Out-of-state policies must provide the minimum coverage required under Alabama law by "deeming up" to the minimum required coverages.

4. **Statutes of Limitation**

Two-year statute of limitations pursuant to *Alabama Code 1975*, § 6-2-38, applies to:

- Actions for wrongful death;
- personal injury;

- any injury to the person or rights of another not arising from contract; and
- respondeat superior actions.

Six-year statute of limitations pursuant to *Alabama Code 1975*, § 6-2-34, applies to:

- False imprisonment or assault and battery;
- trespass to real or personal property;
- detention or conversion of personal property; and
- contractual actions.

A claim under the Alabama Uninsured Motorist Act (*Alabama Code 1975*, § 32-7-23), although a quasi-contractual action, is subject to the six-year statute of limitations applicable to contracts and not the two-year statute governing personal injury. Cline v. Aetna Ins. Co., 317 F. Supp. 1229 (S.D. Ala. 1970).

5. **Negligence Rules**

Alabama does not codify rules related to negligence in respect to operation and use of a motor vehicle. Certain provisions of the Alabama Pattern Jury Instructions do apply, however:

- APJI 26.00 Duty Owed by Operator of Motor Vehicle

The driver of a motor vehicle upon a public highway is under a duty to exercise reasonable care to avoid inflicting injury or damage upon others who may be lawfully using the same public highway. Reasonable care means such care as a reasonably prudent person would exercise under the same or similar circumstances.

- APJI 26.08 Duty to Keep a Lookout

A driver of a motor vehicle must keep a lookout for those who are also using the highway and must exercise due care to anticipate the presence of others on the highway. A motor vehicle driver is chargeable with knowledge of what a prudent and vigilant operator would have seen, and is negligent [or contributorily negligent] if he fails to discover a vehicle

which (a traveler whom) he could have discovered in time to avoid the injury. A driver is also negligent [or contributorily negligent] if he sees a vehicle (person) located in a dangerous situation upon a highway and does not then exercise due care to avoid injury or damage.

- APJI 28.15 Sudden Emergency

If a person, without fault of his own, is faced with a sudden emergency, he is not held to the same correctness of judgment and action as if he had time and opportunity to fully consider the situation, and the fact that, if it be a fact, that he does not choose the best or safest way of escaping peril or preventing injury is not necessarily negligence, but the standard of care required in an emergency situation is that care which a reasonably prudent person would have exercised under the same or similar circumstances.

- APJI 30.00 Contributory Negligence – Definition

Contributory negligence is negligence on the part of the plaintiff that proximately contributed to the alleged (injury) (death) (property damage).

- APJI 30.02 Effect of Contributory Negligence

If you are reasonably satisfied from the evidence that the plaintiff was guilty of contributory negligence, the plaintiff cannot recover for any initial simple negligence of the defendant.

Negligence per se is not codified, but the jury may be instructed that violation of certain Alabama "rules of the road" is "negligence as a matter of law." APJI 26.11 (Violation of Rules of the Road – Negligence Per Se). The jury may also be instructed that violation of rules of the road is "presumed to be negligence but such a violation is not under all circumstances negligence, and it is a jury question whether such violation in a particular case is negligence." APJI 26.12 (Violation of Rules of the Road – Prima Facie Evidence of Negligence).

6. **Seat Belt Defense: NO**

Alabama Code 1975, § 32-5B-7, provides that failure to wear a seat belt shall not be considered evidence of contributory negligence and shall not limit the liability of an insurer, nor shall any conviction of violating the requirement to wear a seat belt be entered on the driving record of any individual.

7. **Bystander Claim: YES**

Alabama applies a "zone of danger test" to limit recovery for emotional injury to those plaintiffs who either sustain a physical impact as a result of a defendant's negligent conduct, or who are foreseeably placed in immediate risk of physical harm by that conduct. AALAR, Ltd. v. Francis, 716 So.2d 1141 (Ala. 1998)

Alabama does not recognize a separate tort of "negligent infliction of emotional distress." The Alabama Supreme Court noted it had previously refused to recognize negligent infliction of emotional distress as actionable, and that even if such a cause of action were recognized, it would not be extended to bystanders. Gideon v. Norfolk Southern Corp., 633 So.2d 453 (Ala. 1994)

8. **Dram Shop: YES**

Alabama Code 1975, § 6-5-71, provides:

> (a) Every wife, child, parent or other person who shall be injured in person, property or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.
>
> (b) Upon the death of any party, the action or right of action will survive to or against his executor or administrator.
>
> (c) The party injured, or his legal representative, may commence a joint or separate action against the person intoxicated or the person who furnished the liquor, and all such claims shall be by civil action in any court having jurisdiction thereof.

In substance, a person who is injured by an intoxicated person or "in consequence" of a person's intoxication is granted a right of action against a defendant selling, giving or otherwise disposing of liquors or beverages to another "contrary to the provisions of law."

The selling of liquor to minors is accorded special treatment in *Alabama Code 1975*, § 6-5-70 , which provides:

> Either parent of a minor, guardian or a person standing in loco parentis to the minor having neither father nor mother shall have a right of action against any person who unlawfully sells or furnishes spirituous liquors to such minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority. Only one action may be commenced for each offense under this section.

Thus, a right of action is provided against a person who unlawfully sells or furnishes liquor to a minor, if the defendant had knowledge or was chargeable with notice or knowledge of the minority.

9. **Immunity Rules: YES**

- **Parental immunity:**

  Children are barred from suing their parents for a negligently inflicted injury. The bar is not, however, absolute. The immunity of parents is imposed for the protection of family control and harmony and exists only where the suit or prospect of suit might disturb family relations. Owens v. Auto Mutual Indemnity Company, 177 So. 133 (Ala. 1937).

  Parental immunity does not extend to emancipated children.

  Parental immunity does not exist in cases of sexual abuse, although proof of such abuse must be tested under the clear and convincing evidence standard rather than the more lenient substantial evidence standard. Hurst v. Capitell, 539 So.2d 264 (Ala. 1992).

Limited immunity is provided to foster parents. Negligence claims may not be asserted; wanton claims may be and are not barred.

In Newman v. Cole, 872 So.2d 138 (Ala. 2003), the Alabama Supreme Court created a limited exception to parental immunity for a civil wrongful death action by the personal representative of a decedent child against the child's parents where the parent willfully and intentionally inflicted the injury that causes the child's death. Proof of the willful and intentional nature of the injury causing death must be tested under the clear and convincing standard.

- **Interspousal immunity:**

  Current Alabama law does not recognize a defense of interspousal immunity.

  In Bonner v. Williams, 370 F.2d 301 (5th Cir. 1966), Fifth Circuit Court of Appeals applied Alabama law and held that a wrongful action may be maintained by a deceased spouse's personal representative or dependent against the tortfeasor's spouse or his estate.

- **Governmental immunity:**

  A 1994 amendment to *Alabama Code 1975*, § 11-47-190, added language limiting recovery against a municipality or any officer or employee or agent thereof to $100,000.00 per injured person and a maximum of $300,000.00 per occurrence.

  Sovereign immunity is otherwise not abrogated.

10. **Uninsured/Underinsured Motorist Coverage: YES**

Alabama Code 1975, § 32-7-23, mandates uninsured (UM)/under insured (UIM) coverage in the amounts of $20,000.00 per person and $40,000.00 per accident.

- A named insured may reject UM/UIM coverage, but the rejection must be in writing. Insurance Co. of N. Am. v. Thomas, 337

So.2d 365 (Ala. 1976).

- Alabama law does not permit one named insured to reject coverage for another named insured. See Nationwide Ins. Co. v. Nicholas, 868 So.2d 457, 464 (Ala. Civ. App. 2003)

- In Ex parte Carlton, 2003 Ala. LEXIS 112 (Ala. 2003), the Supreme Court of Alabama focused on the "**legally entitled to recover**" language of the UM statute and overruled a series of exceptions that had been carved out of the law to allow insureds to recover such benefits when the insured could not have maintained a cause of action against an otherwise insured motorist tortfeasor due to some sort of legal defense not based upon any allegation of contributory negligence of the insured, such as *statutory immunity* for the tortfeasor.

- For example, Carlton overruled State Farm Automobile Insurance Co. v. Baldwin, 470 So. 2d 1230 (Ala. 1985), which held that a member of the armed services could recover UM benefits for injuries sustained in a collision with a uninsured vehicle driven by an civil employee of the federal government regardless of the fact that Baldwin was otherwise prohibited from recovering against the uninsured motorist as a result of governmental immunity. Also overruled was Hogan v. State Farm Mutual Automobile Insurance Co., 730 So. 2d 1157 (Ala. 1998), which held that a passenger could recover UM benefits for injuries sustained in an automobile accident where she was otherwise precluded from suing the negligent driver, who was insured, under Alabama's guest statute.

The statutory definition of "uninsured motor vehicle" includes underinsured motorists. *Alabama Code 1975,* § 32-7-23(b)(4).

11. **Stacking Rule of UM Coverage and UIM Coverage**

Where a person is insured under more than one automobile liability insurance policy or is insured under an automobile liability insurance policy which provides coverages for more than one vehicle, issues arise as to whether the

insured is entitled to stack the separate policies or the separate coverages afforded by the multi-vehicle policy.

The Alabama Supreme Court has addressed the issue of stacking under that provision in the following decisions (these stacking principles apply equally in both uninsured and underinsured motorist cases):

- Passengers in one of the vehicles covered under a multi-vehicle policy are entitled to stack the coverage for up to two additional coverages within that policy. Travelers Insurance Company, Inc. v. Jones, 529 So.2d 234 (Ala. 1988)

- The statutory limitation on stacking does not apply where the insurer issued separate single-vehicle policies rather than one multi-vehicle policy. For example, a plaintiff who was a resident relative of a State Farm insured was found to be an insured by definition under each of five separate single-vehicle policies. State Farm Mutual Automobile Insurance Company v. Fox, 541 So.2d 1070 (Ala. 1989)

- The statute allowing stacking does not apply "to an attempt by a passenger in another person's insured vehicle to stack uninsured motorist coverages under separate single-vehicle insurance policies on vehicles not owned by him or occupied by him at the time of his injury." The Court again followed its single-policy analysis and emphasized that the passenger was an insured by definition only under the policy on the vehicle which he occupied at the time of the accident. The passenger may, however, stack on a multi-vehicle policy of one coverage up to two additional coverages. State Farm Mutual Automobile Insurance Company v. Faught, 558 So.2d 921 (Ala. 1990).

- The statute does not prevent stacking under two or more separate contracts of insurance by an insured. The statutory language clearly imposes a limitation only on the number of uninsured motorist coverages that can be stacked within one contract of insurance. The law does not prohibit the stacking of uninsured motorist coverages provided under separate multi-vehicle contracts; it only limits stacking to a total of three coverages under each separate contract of insurance. The language of § 32-7-23(c) cannot be interpreted to allow stacking only under one multi-

vehicle insurance contract. Canal Indemn. Co. v. Burns, 682 So.2d 399 (1996).

In summation, the following stacking rules apply:

Driver-insured under "fleet" policy = one coverage plus two.

Driver-insured by definition and multiple policies = no limitation.

Passenger under "fleet" policy = one coverage plus two.

Passenger and multiple policies = usually limited to one policy.

Additionally, a person insured under the uninsured motorist coverage of a company's "fleet" policy must exhaust the stacked coverage under that particular policy before asserting a claim to underinsured motorist benefits under the insured's own personal policy. In other words, the insurance on the vehicle operated by the claimant at the time of the accident is "primary," and coverage on any other vehicle is "secondary." Isler v. Federated Guar. Mut. Ins. Co., 594 So.2d 37 (Ala. 1992).

12. **Contact Rule for UM Exposure: NO**

"Phantom drivers" constitute uninsured motorists under Alabama law.

An insurance policy's UM provision cannot establish an evidentiary hurdle of corroborative evidence of an accident involving a phantom drive in order to bar legally entitled drivers from a recovery under the policy. An insured may therefore recover UM benefits if he presents substantial evidence by his own testimony that he sustained injuries from an accident involving the wrongful conduct of a phantom driver. Walker v. GuideOne Specialty Mut. Ins. Co., 834 So.2d 769 (Ala. 2002).

13. **Underinsured Motorist Offset: YES**

The underinsured motorist carrier is entitled to an offset for the amounts of the tortfeasor's liability limits if provided in the language of the insurance policy. Guess v. Allstate Ins. Co., 717 So.2d 389, 391 (Ala. Civ. App. 1998).

14. **Subrogation of Underinsured Motorists: YES**

When the plaintiff maintains a claim against the tortfeasor or wishes to settle his claim against the tortfeasor and give notice of same to his underinsured carrier, the procedure to do so was first set forth in Lowe v. Nationwide Ins. Co., 521 So.2d 1309, 1310 (Ala. 1988):

- "A plaintiff is allowed *either* to join as a party defendant his own liability insurer in a suit against the underinsured motorist *or* merely to give it notice of the filing of the action against the motorist and of the possibility of a claim under the underinsured motorist coverage at the conclusion of trial."

The insurer can either then participate, opt-out, or intervene; but whether in or out, the insurer is bound by the fact finder's decisions on the issues of liability and damages if given proper and timely notice. The "opt-out" procedure in Alabama exists in most states in one form or another. If sued or put on notice of an underinsured claim, the liability carrier must make an immediate evaluation of its position in the matter and opt-out if appropriate in its judgment:

- "Expressing concern that evidence of underinsured motorist insurance could have a corrupting influence on a jury in determining the liability of an underinsured motorist, this Court specifically recognized in Lowe that the liability insurer has the absolute right to elect not to participate in the trial of its insured's claim against an underinsured motorist, provided the election is timely. The Court also recognized that if the insurer is not joined, but merely is given notice of the filing of the action, it can decide either to intervene or stay out of the case. We wrote: 'The results of either [of these choices] parallel those . . . where the insurer *is* joined as a party defendant.' (Emphasis in Lowe.) Stated differently, if the insurer is joined as a defendant by its insured, it is afforded the option under Lowe, if it acts timely, of being dismissed as a party to the case. Consequently, the insurer's withdrawal from the case under Lowe terminates its right to participate in discovery. Rule 36, A.R.Civ.P." Ex Parte Edgar, 543 So.2d 682, 684 (Ala. 1989).

At what point, however, can the insurer opt-out and what are its rights once it does? In Edgar, the trial court denied and the Supreme Court upheld the

insurer's request to withdraw from the case since the insurer also conditioned its withdrawal on continued participation in discovery and a reservation of a right to intervene if it deemed necessary and to do so to protect its interest. The insurer, if it acts timely, can be dismissed as a party to the case by opting-out and, in doing so, terminates its right to participate in discovery. In Edgar, the insurer's motion to withdraw was denied, however, not because of its delay in filing, but because

- "[t]he clear import of Alfa's motion, as amended, is that Alfa wanted out of the case, but only if it could monitor the progression of the case through the discovery process and then intervene if it deemed it necessary in order to protect its interest."

Consequently, opting-out terminates all rights of the insurer in the suit, except those rights arising under circumstances that would call for the insurer to "opt-in" to the suit. Whether the insurer's motion to withdraw is timely made is left to the discretion of the trial court, to be judged from the posture of the case. "Logically, the insurer would not want to withdraw from the case too early, before it could determine, through the discovery process, whether it would be in its best interest to do so. On the other hand, the insurer cannot delay, unnecessarily, in making its decision to withdraw. We believe that it would not be unreasonable for the insurer to participate in the case for a length of time sufficient to enable it to make a meaningful determination as to whether it would be in its best interest to withdraw." Edgar, 543 So.2d at 685.

But, after opting-out, at what point can the insurer opt-in and resume participation in the case? Although Edgar describes the opting-out procedure as dismissing the insurer as a party, Southern Guar. Ins. Co. v. Welch, 570 So.2d 654 (Ala. 1990), states without elaboration that an insurer can opt-in:

- "[O]ur focus has been on whether an underinsured motorist insurance carrier has had adequate notice of potential settlements by its insured to bind it to subsequent judgments against it. We find from the record that Southern Guaranty had sufficient notice of the likelihood of a settlement between [the parties]. . . . Once it had notice of the possible settlement between [the parties], Southern Guaranty should have 'opted back in' to preserve its rights under the policy. Having decided not to participate in the trial, Southern Guaranty will not now be heard to complain of the

judgment against it." Southern Guaranty, 570 So.2d at 657.

Notice and subrogation are intimately intertwined in Alabama UIM cases. When the tortfeasor's liability insurer extends a full and final settlement offer, the insured must give his underinsured motorist carrier notice of this offered settlement and the underinsured carrier should consent to the settlement and forgo any right of subrogation for any underinsured motorist coverage it may subsequently pay, or else pay to its insured the amount offered by the tortfeasor and preserve its right of subrogation.

In Lambert v. State Farm, 576 So.2d 160 (Ala. 1991), the Alabama Supreme Court set out the following rules to govern this procedure:

- **The insured should give notice to the underinsured carrier of a claim under the policy for underinsured motorist benefits as soon as it appears that the insured's damages may exceed the tortfeasor's limits of liability coverage.**

- **If the tortfeasor's carrier and insured ultimately enter into a proposed settlement that would release the tortfeasor from all liability, the insured, before agreeing to the settlement, should immediately notify the underinsured carrier of the proposed settlement and the terms of any release.**

- **At the time the insured so notifies the underinsured carrier, the insured should also inform the underinsured carrier whether he will seek underinsured motorist benefits in addition to the benefits payable under the settlement proposal, so that the carrier can determine whether it will refuse to consent to the settlement, will waive its right of subrogation against the tortfeasor, or will deny any obligation to pay underinsured motorist benefits. If the insured gives the carrier notice of the claim for UIM benefits, the UIM carrier should immediately begin investigating the claim, should conclude such investigation within a reasonable time, and should notify its insured of the action it proposes with regard to the claim for UIM benefits.**

- **The insured should not settle with the tortfeasor without allowing**

the UIM carrier a reasonable time within which to investigate the insured's claim and to notify its insured of its proposed action.

- **If the UIM carrier refuses to consent to a settlement between its insured with the tortfeasor, or if the carrier denies the claim of the insured without a good faith investigation into its merits, or if the carrier does not conduct its investigation within a reasonable time, the carrier would, by any of those actions, waive any right to subrogation against the tortfeasor or the tortfeasor's insurer.**

- **If the UIM carrier wants to protect its subrogation rights, it must, within a reasonable time, and, in any event before the tortfeasor is released by the carrier's insured, advance to its insured an amount equal to the tortfeasor's settlement offer.**

The "reasonable time" within which to conduct the investigation and decide whether to front the tortfeasor's limits or consent to the proposed settlement is generally considered to be 30 days, but each case depends on its own unique circumstances. The 30 day period, however, is suggested to be optimal and is most often the appropriate length of time.

15. **Adjudication for UM Claims**

"Under Alabama law, a plaintiff may join as a defendant his uninsured/underinsured-motorist carrier in an action against another motorist. The plaintiff is not required to first obtain a judgment against the uninsured/underinsured motorist." Ex parte State Farm Mut. Auto. Ins. Co., 893 So. 2d 1111, 1115 (Ala. 2004).

The insurer may bring a third-party action, see Economy Fire & Cas. Co. v. Goar, 551 So.2d 957 (Ala. 1990), or a cross-claim, see Smith v. Brownfield, 553 So.2d 573 (Ala. 1989), against the uninsured or underinsured motorist.

A plaintiff may either join as party defendant his own liability insurer in a suit against the uninsured motorist or merely give notice of the filing of the action against the motorist and the possibility of an underinsured motorist coverage claim after the conclusion of the trial.

16. **Judge/Jury Trial: YES**

The right to trial by jury is guaranteed by the Alabama Constitution of 1901, subject to jurisdictional restrictions in regard to district courts, discussed below. A defendant may demand a jury trial, if not demanded by the plaintiff. Once demanded, the jury request may not be withdrawn without the consent of all opposing parties.

17. **DUI - Can Cause of Action for Punitive Damages Be Maintained Against Insured: YES**

Causing an automobile accident while driving under the influence of intoxicating substances can give rise to punitive damages if the finder of fact determines that the defendant's conduct rises to level of wantonness. See, *generally*, Stamp v. Jackson, 887 So.2d 274 (Ala.Civ.App. 2003), in which a finding of wantonness and the assessment of punitive damages by the jury was affirmed where evidence showed the defendant was intoxicated at the time of the accident and had been convicted of DUI on several previous occasions.

Generally, it does not violate the public policy of Alabama for an insurance company to exclude coverage of punitive damages in a liability policy. However, in the context of UM/UIM insurance, an exclusion of punitive damages in the policy violates Alabama's UM act. Omni Insurance Co. v. Foreman, 168 So.2d (Ala. 2001); Hill v. Campbell, 804 So.2d 1107, 1116 (Ala.Civ.App. 2001).

18. **Loss of Use: YES**

Loss of use for a **personal vehicle** is compensable in Alabama in addition to compensation based on the difference in the before and after value of the vehicle. Lary v. Gardener, 908 So.2d 955, 959 (Ala. Civ. App. 2005); Hannah v. Brown, 400 So.2d 410 (Ala. Civ. App. 1981).

The owner of a **commercial vehicle** which is damaged or disabled by the wrongful act of another is entitled to recover for the reasonable market value of the hire or use of the vehicle during the time reasonably necessary for its repair plus the reasonable expense of making such repair. Hannah, *supra*, at 410.

- "The owner of a commercial vehicle which is damaged or disabled by the wrongful act of another is entitled to recover for the reasonable market value of the hire or use during the time reasonably necessary for its repair plus the reasonable expense of making such repair. If you find for the plaintiff, you may include in your verdict such sum as you find from the evidence would represent the fair and reasonable market value of the hire or use of such vehicle during the time reasonably necessary to make such repairs plus the reasonable expense of making such repair." *Alabama Pattern Jury Instruction* 11.25 (Commercial Vehicle).

19. **Total Loss ACV: YES**

Insurance contracts are to be enforced as they are written, assuming that there are no ambiguities in the provisions at issue. Watkins v. United States Fid. & Guar. Co., 656 So.2d 337 (Ala. 1994). In Alabama, insurance contracts are construed "liberally in favor of the insured and strictly against the insurer." Allstate Ins. Co. v. Skelton, 675 So.2d 377 (Ala. 1996).

Hence, Alabama courts will enforce as written an insurance policy paying actual cash value for a total loss on the vehicle. See, *generally*, Langford v. Federated Guaranty Mut. Ins. Co., 543 So.2d 675, 678 (Ala. 1989) (analyzing and enforcing the terms of an insurance policy paying actual cash value on a vehicle agreed to be a total loss).

20. **Diminished Value: NO**

Where an insurance policy provides that the insurer will pay to "repair the damaged [automobile] or part, or replace the [automobile] or part," the insurer is "not required to compensate its insured for any possible difference between the value of the insured automobile before the collision and the value of that automobile after the damage caused by the collision has been repaired. Kanellis v. Pac. Indem. Co., 917 So.2d 149, 150 (Ala. Civ. App. 2005) (citing, Pritchett v. State Farm Mut. Auto. Ins. Co., 834 So.2d 785, 790 (Ala. Civ. App. 2002)).

In these respects, the pattern jury instructions state

- "The measure of damages for the damage to personal property is the difference between the reasonable market value of the property immediately before its damage and the reasonable market value immediately after its damage. In other words, if you find for the plaintiff you should determine from the evidence the reasonable market value of the (name property) immediately before it was damaged and then determine from the evidence the reasonable market value of the (name property) immediately after it was damaged in its damaged condition. The difference as found by you in the market value would be the measure of damage. (The loss of use of a personal automobile during a reasonable period for repair is an element of recoverable damages in addition to the difference between the before and after reasonable market value.)"

  Alabama Pattern Jury Instruction 11.23 (Personal Property – Measure of)

- "Evidence has been introduced in this case about expense of repairs to the (name property). This evidence may be considered by you in determining the extent of damage suffered by the plaintiff and as going to the question of market value.

  "If the (name property) could be restored to its former condition at a reasonable expense which would not exceed its reasonable market value at the time of its damage as found by you from the evidence, such reasonable repair expense would represent the damage which the plaintiff would be entitled to recover.

"If the (name property) was so damaged that it could not be restored to its former condition and value at a reasonable expense equal to or less than its reasonable market value at the time of its damage as found by you from the evidence the plaintiff would only be entitled to recover its reasonable market value (less any salvage value as found by you from the evidence)."

Alabama Pattern Jury Instruction 11.24 (Personal Property – Effect of Evidence of Repair Expense)

21. **Salvage Rules**

When an insurer settles on the basis of total loss, whatever salvage may remain belongs to the insurer, and that if the owner desires to obtain that salvage, he must do so by purchasing it from the insurer or by allowing a deduction from the settlement of the value thereof. Langford v. Federated Guaranty Mut. Ins. Co., 543 So.2d 675, 678 (Ala. 1989). This outcome obviously assumes the policy language at issue does not deliberately grant the insured additional rights regarding any salvage.

Alabama adopted the Uniform Transfer of Title and Anti-Theft Act in 2006, codified as *Alabama Code 1975*, § 32-8-87, which sets forth the following provisions for insurance companies when declaring a total loss to an insured's vehicle:

- (c) If an insurance company acquires a motor vehicle in settlement of an insurance claim and holds the vehicle for resale and procures the certificate of origin or certificate of title from the owner or lienholder within 15 days after delivery of the vehicle to the insurance company, and if the vehicle was not a total loss as defined by this section, the insurance company need not send the certificate of origin or certificate of title to the department but, upon transferring the vehicle to another person, other than by the creation of a security interest, the insurance company shall complete an affidavit of acquisition and disposition of the motor vehicle on a form prescribed by the department and deliver the certificate of origin or certificate of title, affidavit, and any other documents required by the department to the transferee at the time of delivery of the motor vehicle.

(d) For the purposes of this section, a total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to a person when a vehicle is damaged and the damage to the vehicle is greater than or equal to 75 percent of the fair retail value of the vehicle prior to damage as set forth in a current edition of a nationally recognized compilation of retail values, including automated data bases, as approved by the department. The compensation for total loss as defined in this subsection shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental, or for anything other than the amount paid for the actual damage to the motor vehicle. A vehicle that has sustained minor damage as a result of theft or vandalism shall not be considered a total loss. Any person acquiring ownership of a damaged motor vehicle that meets the definition of total loss for which a salvage title has not been issued shall apply for a salvage title, other than a scrap metal processor acquiring such vehicle for purposes of recycling into metallic scrap for remelting purposes only. This application shall be made before the vehicle is further transferred, but in any event, within 30 days after ownership is acquired.

(q) (1) Any motor vehicle for which an insurance company has paid a total loss due, in part, to being damaged by water shall be deemed a flood vehicle. The motor vehicle's certificate of title and every subsequent certificate of title shall contain the designation "flood vehicle."

(2) Each person who sells, exchanges, donates, delivers, or otherwise transfers any interest for which a certificate of title bearing the designation "flood vehicle" has been issued shall disclose in writing the existence of this designation to the prospective purchaser, recipient in exchange, recipient by donation, or recipient by other act of transfer. The disclosure shall be made at the time of or prior to the completion of the sale, exchange, donation, delivery, or other act of transfer and shall contain the following information in no smaller than 10 point type: The certificate of title of this motor vehicle contains the designation "flood vehicle."

22. **Tax Owed**

Please refer to immediately preceding section.

23. **Average Material Damage Labor Rates Statewide**

No such average exists and is determined market to market.

24. **Diminution in Value or Damage Quotient**

Please see discussion in section 20.

25. **Direct Action State**

No third party direct actions against liability insurers are allowed.

26. **Joint and Several Liability**

Liability of joint tortfeasors is said to be joint and several in Alabama, in that they may be held liable for the entire resulting loss, without apportionment of damages. These principles manifest themselves through several important consequences, include effects on the nature of compensatory and punitive damages recoverable, restrictions upon joint tortfeasors' ability to obtain contribution or indemnity from one another, and may have substantial effects concerning releases and satisfactions of judgments as to one but not all of the joint tortfeasors.

- Persons may be deemed to be joint tortfeasors where either their separate act combine and concur to produce a single harmful result, or where they are in certain relations with each other, such as principal and agent or joint venturer.

- **The underlying theory behind the treatment of joint tortfeasors is that the right of action against the same is one and indivisible and that they are jointly and severally liable for the entire damages. Therefore, the jury is not permitted to assess separate amounts against joint tortfeaors.** See, *generally*, Beloit Corp. v. Harrell, 339 So.2d 992 (Ala. 1976); Rose v. Rogers, 632 So.2d 434 (Ala. 1993).

27. **Bad Faith Status**

- **Bad Faith and UM/ UIM:**

The standard by which the conduct of insurers is judged arguably should be higher in regard to uninsured motorist claims than it is for other first party insurance coverages. The public interest in this coverage means that insurers should be obligated to exercise the greatest care and highest level of good faith and fair dealing. Sanford v. Liberty Mut. Ins. Co., 536 So.2d 941 (Ala. 1988).

"Uninsured motorist coverage in Alabama is a hybrid in that it blends the features of both first-party and third-party coverage. The first-party aspect is evident in that the insured makes a claim under his own contract. At the same time, however, third-party liability principles also are operating in that the coverage requires the insured to be 'legally entitled' to collect-- that is, the insured must be able to establish fault on the part of the uninsured motorist and must be able to prove the extent of the damages to which he or she would be entitled. The question arises: when is a carrier of uninsured motorist coverage under a duty to pay its insured's damages?" LeFevre v. Westberry, 590 So.2d 154, 159 (Ala. 1991).

With this case, recognize the issues triable to the UM carrier as set out in APJI 20.50 (Uninsured motorist coverage elements of Plaintiff's case):

> **"In order to recover, the plaintiff must prove, in summary: (1) a policy of insurance in existence; (2) that the alleged UM was uninsured; (3) that the UM is legally responsible for the injuries; and (4) the extent of the plaintiff's injuries and damages. Only if the plaintiff has proven the truth of each element is he entitled to recover against the carrier."**

"Legally entitled" is common policy language: in the State Farm policy at issue in Westberry, the policy stated, "We will pay damages for bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle." The policy went on to address the "two questions [that] must be decided by agreement between the insured and us:

> 1. Is the insured legally entitled to collect damages from the owner or driver of the uninsured motor vehicle, and
>
> 2. If so, in what amount?" In Quick v. State Farm Mut. Auto. Ins. Co., 429 So.2d 1033 (Ala. 1983), the Court noted that "legally entitled to recover as damages" has been interpreted to mean that "the insured must be able to establish fault on the part of the uninsured motorist, which gives rise to damages and must be able to prove the extent of those damages." Quick, 429 So.2d at 1035 (emphasis added.)

The competing interests debated in LeFevre concerned the application of the doctrine of bad faith to uninsured motorist coverage versus the recognition of the adversarial relationship created by the uninsured motorist contract and the unwillingness to turn the coverage "into something more like first-party coverage that what it was designed to be."

Thus, the Court designed the following procedures that an insurer must follow when its insured has notified it of a claim under the UM/ UIM provision of an automobile liability policy:

> **(1) When a claim is filed, the carrier has an obligation to diligently investigate the facts, fairly evaluate the claim, and act promptly and reasonably;**
>
> **(2) the carrier should conclude its investigation within a reasonable time and notify its insured of the action it proposes;**
>
> **(3) mere delay does not constitute vexatious or unreasonable delay in the investigation of a claim if there is a bone fide dispute on the issue of liability;**
>
> **(4) mere delay in payment does not rise to the level of bad faith if there is a bona fide dispute on the issue of damages; and**

(5) if the UM carrier refuses to settle with its insured, its refusal to settle must be reasonable. This procedure must, of course, take into consideration the facts and circumstances of each case. LeFevre, 590 So.2d at 161.

And, as noted in Bowers v. State Farm Mut. Auto. Ins. Co., 460 So.2d 1288 (Ala. 1984), an uninsured motorist carrier is not liable to its insured until the tort liability of the uninsured motorist has been established. An uninsured motorist carrier has the right to delay payment until liability is established. In Bowers, the Court held that partial payments negated the existence of bad faith on the part of the insurer.

- **Bad Faith Generally:**

Alabama Pattern Jury Instruction 20.37 (Bad Faith) provides:

"Every insurance policy contains a duty implied by law of good faith and fair dealing with the other party to the policy. This duty requires that neither party interfere with the rights of the other to receive the benefits of the policy. The plaintiff claims that the defendant insurer has violated this implied duty of good faith and fair dealing.

"The defendant insurer denies that it has violated this implied duty of good faith and fair dealing. Therefore, the burden is upon the plaintiff to reasonably satisfy you from the evidence of the truthfulness of each of the following claims:

"1. That there was an insurance contract between the parties;

"2. That by the terms of the contract the defendant insurer was obligated to pay the plaintiff's claim;

"3. That the defendant insurer intentionally refused to pay the plaintiff's claim;

"4. That there was no reasonably legitimate, arguable or debatable reason for that refusal to pay, that is, no reason

that was open to dispute or question; and

"5. That the defendant insurer had actual knowledge that there was no reasonably legitimate, arguable or debatable reason."

28. **Loss of Consortium**

- **Wife:**

"If you find for the plaintiff, you may also determine the amount of money that will reasonably compensate the plaintiff for any damages sustained by loss of his wife's consortium and services. Consortium is defined as the right of a husband to his wife's company, fellowship, cooperation and assistance in the marital relationship as a partner in the family unit. Loss of consortium includes the impaired ability of his wife to perform her usual services in the care of the home (and in the education and rearing of the children) as well as his loss of her society, companionship and comfort, taking into account the length of time of such loss *[and the reasonably certain duration of any future loss of consortium]*." *Alabama Pattern Jury Instruction* 11.13 (Consortium and Services – Wife)

- **Husband:**

"If you find for the plaintiff, you may also determine the amount of money that will reasonably compensate the plaintiff for any damages sustained by loss of her husband's consortium and services. Consortium includes love, companionship, affection, society, comfort, solace, support, sexual relations and services. You may take into consideration the length of time of such loss (and the reasonably certain duration of any future loss of consortium)." *Alabama Pattern Jury Instruction* 11.13-A (Consortium and Services – Husband)

- **Minor Child Temporary Disability:**

"If you are reasonably satisfied from the evidence that the plaintiff lost the services of his minor child as a proximate consequence of the

negligence of the defendant(s), then the plaintiff would be entitled to recover an amount which would reasonably and fairly compensate the plaintiff for the reasonable monetary value of such services." *Alabama Pattern Jury Instruction* 11.16 (Loss of Services – Minor Child Temporary Disability)

- **Minor Child Permanent Disability:**

  If you are reasonably satisfied from the evidence that minor child of the plaintiff, has suffered a permanent injury and disability and that the plaintiff will suffer a loss of services of his minor child in the future, as a proximate consequence of the negligence of the defendant(s), the plaintiff would be entitled to recover an amount which would reasonably and fairly compensate the plaintiff for the reasonable monetary value of such services to the date the minor child reaches his majority." *Alabama Pattern Jury Instruction* 11.17 (Loss of Services – Minor Child Permanent Disability)

29. **Wrongful Death Statute**

Alabama Code 1975, § 6-5-410, provides:

"A personal representative may commence an action and recover such damages as the jury may assess in a court of competent jurisdiction within the State of Alabama, and not elsewhere, for the wrongful act, omission, or negligence of any person, persons, or corporation, his or their servants or agents, whereby the death of his testator or intestate was caused, provided the testator or intestate could have commenced an action for such wrongful act, omission, or negligence if it had not caused death."

All damages awarded for wrongful death in Alabama are **punitive only; no damages may be awarded for loss of income or services or other general compensatory damages:**

- "In a suit brought for a wrongful act, omission, or negligence causing death the damages recoverable are punitive and not compensatory. Damages in this type of action are entirely punitive, imposed for the preservation of human life and as a deterrent to others to prevent similar

wrongs. The amount of damages should be directly related to the amount of wrongdoing on the part of the defendant(s). In assessing damages you are not to consider the (pecuniary) (monetary) value of the life of the decedent, for damages in this type of action are not recoverable to compensate the family of the deceased from a (pecuniary) (monetary) standpoint on account of (his) (her) death, nor to compensate the plaintiff for any financial or pecuniary loss sustained by (him) (her) or the family of the deceased on account of (his) (her) death. Your verdict should not be based on sympathy, prejudice, passion or bias, but should be directly related to the culpability of the defendant(s) and necessity of preventing similar wrongs in the future." *Alabama Pattern Jury Instruction* 11.18 (Unlawful Homicide)

30. **Tort Threshold**

- **Negligence:**

"Negligence is the failure to discharge or perform a legal duty owed to the other party." *Alabama Pattern Jury Instruction* 28.00 (Definition)

"Negligence means the failure to exercise (reasonable) (ordinary) care; that is, such care as a reasonably prudent person would have exercised under the same or similar circumstances. Therefore, negligence is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or, the doing of something which a reasonably prudent person would not have done under the same or similar circumstances." *Alabama Pattern Jury Instruction* 28.01 (Negligence and Ordinary Care)

"The duty owed by the defendant to the plaintiff was to exercise reasonable care not to injure or damage the plaintiff; that is, to exercise such care as a reasonably prudent person would have exercised under the same or similar circumstances." *Alabama Pattern Jury Instruction* 28.02 (Duty Owed – Negligence and Ordinary Care)

- **Contributory Negligence:**

"If you are reasonably satisfied from the evidence that the plaintiff was

guilty of contributory negligence, the plaintiff cannot recover for any initial simple negligence of the defendant." *Alabama Pattern Jury Instruction* 30.02 (Effect of)

Alabama is not a "comparative negligence" state, and the Supreme Court has refused to adopt comparative negligence principles absent an act of the Legislature.

- **Negligent Entrustment:**

"The burden of proof is upon the plaintiff to reasonably satisfy you by the evidence of each of the following conditions:

> "1. That the defendant (was the owner) (had the custody and control) of the vehicle involved in the occurrence complained of and did negligently entrust the vehicle to (name of driver).
>
> "2. That the driver (name)(was incompetent to operate the vehicle)(or state averments of complaint as to incompetency of driver).
>
> "3. That the defendant knew, or by the exercise of reasonable care should have known that (name driver)(was incompetent to operate the vehicle)(or state averments of complaint as to incompetency of driver).
>
> "4. That the plaintiff was (injured)(damaged) as a proximate result of the incompetency of the driver (name).

"If the plaintiff has failed to reasonably satisfy each of you by the evidence of the existence of any one of these conditions stated to you (he)(she) cannot recover. On the other hand if the plaintiff has reasonably satisfied you by the evidence that each of the conditions I have stated to you is true, then the plaintiff would be entitled to recover." *Alabama Pattern Jury Instruction* 26.16 (Negligence – Entrustment of Motor Vehicle to Another

- **Wantonness:**

"Wantonness is the conscious doing of some act or omission of some duty under knowledge of existing conditions and conscious that from the doing of such act or omission of such duty an injury will likely or probably result. Before a party can be said to be guilty of wanton conduct it must be shown that with reckless indifference to the consequences he either consciously and intentionally did some wrongful act or consciously omitted some known duty which produced the injury." *Alabama Pattern Jury Instruction* 29.00 (Wantonness – Definition)

"'Willfully means intentionally, knowingly, and purposefully.' Therefore, willfulness is the conscious doing of some act or omission of some duty under knowledge of existing conditions coupled with a design or purpose to inflict injury." *Alabama Pattern Jury Instruction* 29.03 (Willfulness – Definition)

- **Outrage:**

"If you are reasonably satisfied by the evidence that the defendant's (name) conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, so as to be regarded as atrocious and utterly intolerable in civilized society and such conduct either intentionally or recklessly caused the plaintiff (name) emotional distress, so severe that no reasonable person could be expected to endure it, then the defendant is subject to liability in damages for such distress and also any bodily harm resulting from the distress." *Alabama Pattern Jury Instruction* 29.05 (Outrage)

31. **Jurisdictional Information (Per Court Type)**

The **Alabama Supreme Court** generally has exclusive jurisdiction of appeals in civil cases in which the amount involved exceeds $50,000.00. It may deflect certain appeals to the Alabama Court of Civil Appeals, however; the court pursues a rather vigorous program of referring matters to appellate mediation as a precondition of further proceedings before it.

The **Alabama Court of Civil Appeals** "shall have exclusive appellate jurisdiction of all civil cases where the amount involved, exclusive of interest

and costs, does not exceed $50,000, all appeals from administrative agencies other than the Alabama Public Service Commission, all appeals in workers' compensation cases, [and] all appeals in domestic relations cases. *Alabama Code 1975*, § 12-3-10.

Alabama is divided into 41 judicial circuits. Less populated counties combine together to form a single circuit; more densely populated counties – Jefferson County for example, which includes the Birmingham metropolitan area – form their own circuit.

- **Circuit courts** have original jurisdiction of all civil actions in which the matter in controversy exceeds $10,000.00. They have "concurrent" jurisdiction with the district courts of matters between $3,000.00 and $10,000.00. Proceedings may be jury or non-jury. Circuit courts have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in certain cases. *Alabama Code 1975*, § 12-11-30.

- **District courts** have jurisdiction of civil actions in which the matter in controversy does not exceed $10,000.00. They have original jurisdiction over all actions in which the matter in controversy does not exceed $3,000.00. Such actions are placed on the "small claims" docket, and parties may appear with or without an attorney, and the rules of procedure and evidence are relaxed. *Alabama Code 1975*, § 12-12-31.

    - Appeals may be had from the district court to the circuit court by filing a notice within 14 days of the entry of judgment. All district court trials are non-jury; on appeal, however, a jury may be demanded.

- **Municipal courts** are generally established by *Alabama Code 1975*, § 12-14-1. "The municipal court shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction." Additionally, the municipal court "shall have concurrent jurisdiction with the district court of all acts constituting violations of state law committed within the police jurisdiction of the municipality which may be prosecuted as breaches of municipal ordinances."

32. **Liens**

The "hospital lien" statute in Alabama is codified at *Alabama Code 1975*, § 35-11-370:

> "Any person, firm, hospital authority or corporation operating a hospital in this state shall have a lien for all reasonable charges for hospital care, treatment and maintenance of an injured person who entered such hospital within one week after receiving such injuries, upon any and all actions, claims, counterclaims and demands accruing to the person to whom such care, treatment or maintenance was furnished, or accruing to the legal representatives of such person, and upon all judgments, settlements and settlement agreements entered into by virtue thereof on account of injuries giving rise to such actions, claims, counterclaims, demands, judgments, settlements or settlement agreements and which necessitated such hospital care, subject, however, to any attorney's lien."

In respect to impairment of the lien, *Alabama Code 1975*, § 35-11-372, provides:

> "Any acceptance of a release or satisfaction of any such action, claim, counterclaim, demand or judgment and any settlement of any of the foregoing in the absence of a release or satisfaction of the lien referred to in this division shall prima facie constitute an impairment of such lien, and the **lienholder shall be entitled to a civil action for damages on account of such impairment, and in such action may recover from the one accepting such release or satisfaction or making such settlement the reasonable cost of such hospital care, treatment and maintenance**. If the lienholder shall prevail in such action, the lienholder shall be entitled to recover from the defendant, costs and reasonable attorney's fees.

33. **Settlement Payment**

Although not specifically codified, the minimum dollar threshold requiring court approval for the settlement of a minor's claim is generally accepted to be $2,500.00.

It is customary for a claimant's attorney to hold settlement payments in trust until release documents are executed. There is no codified deadline in Alabama for making payment upon settlement of a claim.

34. **Releases**

A release is binding according to its terms in the absence of fraud or misrepresentation.

In respect to an unnamed third party referred to in a release as "any and all parties," or similar language or by words of like import, who have paid no part of the consideration for the release and who are not the agents, principals, heirs, assigns of, or who do not otherwise occupy a privity relationship and who asserts the release as a defense, the unnamed party has the burden of proving that he was a "party intended to be released and that his release was within the contemplation of the parties at the time the release was signed." Pierce v. Orr, 540 So.2d 1364 (Ala. 1989). See, also, APJI 11.39 (Specific Release).

Alabama Code 1975, § 12-21-109, states, "All receipts, releases and discharges in writing, whether of a debt of record, a contract under seal or otherwise, and all judgments entered pursuant to pro tanto settlements, must have effect according to their terms and the intentions of the parties thereto."

A third party has the right to plead, when timely interposed, the amount of the settlement as shown in a release, even in those cases where the express language in the release reserved the injured party's right to proceed against other joint tortfeasors. Wylam Ice Co. v. King, 304 So.2d 1 (Ala. 1974).

When the language of the document is not in terms of a general release, the reservation of the right to sue other parties is not essential. American Pioneer Life Ins. Co. v. Sandlin, 470 So.2d 657 (Ala. 1985).

35. **Cancellation Procedure**

The reasons for which a policy of automobile liability insurance may be canceled are set forth in *Alabama Code 1975*, § 27-23-1, the most common of which are

- Nonpayment of premium;
- the policy was obtained through a material misrepresentation;
- any insured violation of the terms and conditions of the policy;
- the named insured failed to disclose fully his motor vehicle accidents and moving violations for the preceding 36 months if called for in the application;
- the named insured failed to disclose in his written application or in response to inquiry by his broker, or by the insurer or its agent, information necessary for the acceptance or proper rating of the risk; and
- any insured made a false or fraudulent claim or knowingly aided or abetted another in the presentation of such a claim.

The notice of cancellation must be mailed or delivered to the insured at least 20 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, 10 days prior is allowed if accompanied by the reason. *Alabama Code 1975*, § 27-23-23.

Where the reason for cancellation is not included in the notice of cancellation, the insurer shall, upon written request of the insured mailed or delivered to the insurer "not less than 15 days prior to the effective date of cancellation," specify in writing the reason for the cancellation. *Alabama Code 1975*, § 27-23-26.

36. **Payment and Penalties**

There are no common law or statutorily defined periods of time in which a claim must be paid, for which a failure to do so would result in a penalty to the insurer.

37. **Subrogation: What is Available**

The "made whole" rule in Alabama established by Powell v. Blue Cross & Blue Shield of Ala., 581 So.2d 772 (Ala. 1990), was overruled in Ex parte State Farm Fire & Casualty Co., 764 So.2d 543 (Ala. 2000).

If the insurance contract expressly provides for subrogation, the "made whole" rule does not apply; i.e., the insurer may subrogate regardless of whether the insured has been "made whole" or fully compensated for his or her injuries. If the contract does not provide for subrogation, the insurer cannot subrogate until

the insured has been "made whole."

Thus, while the doctrine of subrogation is of purely equitable origin and nature, it may be modified by the insurance contract.

38. **Department of Insurance Information**

"There shall be a Department of Insurance of the State of Alabama with such subordinate bureaus and divisions as the commissioner determines to be necessary." *Alabama Code 1975*, § 27-2-1.

The commission of the department is authorized to "[c]onduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this title or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations or investigations shall be borne by the state except as otherwise expressly provided." *Alabama Code 1975*, § 27-2-27.

In conducting investigations, the commissioner may "invoke any legal, equitable, or special remedy for the enforcement of orders or provisions of the act."

With respect to enforcement, the commissioner "may institute such actions or other proceedings as may be required for enforcement of any provisions of this title. If the commissioner has reason to believe that any person has violated any provision of this title for which criminal prosecution would be in order, he shall give the information relative thereto to the Attorney General or the district attorney having jurisdiction of any such violation." *Alabama Code 1975*, § 27-2-19.

- ALDOI Contact Numbers:

  (334) 269-3550 *General*
  (334) 241-4192 *Fax*
  (334) 241-4126 *Producer Licensing*
- ALDOI Contact Numbers:

(334) 241-4141 *Consumer Services*
(334) 241-4145 *Rates and Forms*
(334) 241-4117 *Legal*

39. **Adjuster Licensing Requirements**

An "adjuster" is defined in Alabama as a person who, for compensation as an independent contractor, or as the employee of such an independent contractor, or for fee or commission, investigates and negotiates settlement of claims on behalf of the insurer.

The definition of an "adjuster" **shall not include, nor require, a license of a salaried employee of an insurer**. *Alabama Code 1975*, § 27-9-1.

Firms and corporations, as well as individuals, may be licensed as an adjuster. Each individual associated in such firm or corporation and who exercises, or proposes to exercise, license powers shall file application with the commissioner, pay the license fee and qualify as though for an individual license. The license issued to a firm or corporation shall list thereon all individuals who are thereby authorized to act as an adjuster or, in lieu thereof, the commissioner may issue a separate license as to each such individual. *Alabama Code 1975*, § 27-9-2(d).

The adjuster must be a full-time salaried employee of a licensed adjuster, or a graduate of a recognized law school or must have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster. *Alabama Code 1975*, § 27-9-3(3).