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BULLETIN NO. 22-04

DATE: May 4, 2022
TO: Private Passenger and Commercial Auto Insurance Carriers
FROM: Dean L. Cameron, Director
SUBJECT: Underinsured Motorist Coverage at Minimum Limits, *Pena v. Viking Decision*

This bulletin provides guidance to insurers issuing private passenger and commercial auto policies in the state of Idaho regarding the application of Underinsured Motorist (UIM) coverage at the minimum limits, as defined by 41-2502.

On February 1, 2022, the Idaho Supreme Court issued a decision in *Pena v. Viking Ins. Co*, 503 P.3d 201 (Idaho 2022) (*Pena*), which concluded in part that:

- A. The insured’s minimum limits offset UIM, for which the insured paid a premium, “provides illusory coverage;” *Pena*, 503 P.3d at 205, and
- B. Offset provisions are permissible under Idaho law, “so long as the amount of available UIM coverage exceeds the amount of liability coverage required by Idaho law.” *Pena*, 503 P.3d at 210.

As a remedy, the Court found the offset provision of the insured’s UIM unenforceable because it was illusory at minimum limits and ordered the insurer to pay the loss up to the policy’s UIM limits without the offset. *Pena*, 503 P.3d at 211. Above the minimum limits, the Court found offset to be a valid form of UIM coverage. *Pena*, 503 P.3d at 211.

The Department of Insurance is notifying insurers by this bulletin that, due to the February 1, 2022 *Pena v. Viking* decision, the Department views offset provisions of UIM coverage as unenforceable for policies with minimum limits UIM coverage. Per *Pena*, UIM claims that arise on such policies on or after the date of the decision, should be paid without the offset, i.e., as “excess” UIM coverage.

Further, the Department recommends that insurers offering offset UIM coverage at minimum limits revisit their application, renewal, and other processes to reflect the effects of *Pena*.

The Department has begun negotiated rulemaking for IDAPA 18.02.02, which includes a disclosure provision regarding UIM coverage. Insurers are invited to submit comments as to what rule changes may address the Court’s decision as well as improve the clarity of UIM coverage to consumers.

This Bulletin is not new law but is an agency interpretation of existing law, except as authorized by law or as incorporated into a contract. Requests for additional information or other inquiries regarding

this Bulletin can be directed to Deputy Director Wes Trexler at 208-334-4214 or weston.trexler@doi.idaho.gov.