

GENERAL STATUTORY LAW AND CASE LAW
PERTAINING TO TORTS AND AUTO INSURANCE
IN COLORADO

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I. STATUTES OF LIMITATIONS:

1. Automobile negligence: 3 years from the date the action arose (usually accident). C.R.S. § 13-80-101.
2. UM/UIM: 3 years from date the action arose [action arises in UIM case when settlement or judgment occurs between victim and under insured party. *Brown v. American Family Ins. Group*, 989 P.2d 196 (Colo.App. 1999)].
3. Non-Auto Negligence: 2 years. C.R.S. § 34-80-102.

II. LIABILITY:

1. Minimum Auto Limits: \$25,000 per person/\$50,000 per accident liability limits for post-July 1, 2003 auto accidents. C.R.S. § 10-4-610, 620, 621. \$25,000 per person/\$50,000 per accident liability limits + PIP for pre-July 2003 auto accidents. C.R.S. § 10-4-706.
2. Negligence Law: Reasonable person standard. Damages offset by percentage of negligence attributed to plaintiff. Plaintiff must be less negligent than defendant to recover. C.R.S. § 13-21-111.
3. Joint and Several Liability: Generally, parties are only liable for their pro-rata share of fault. C.R.S. § 13-21-111.5. However,

tortfeasors that are not a party to the pending action must be identified early in the process. C.R.S. § 13-50.5-103. Further, there are times when there is joint and several liability in tort such as conspiracy or intentional acts. C.R.S. § 13-50.5-101 to § 13-50.5-106.

4. Contribution between Joint Tortfeasors: Allowed, see joint and several liability.

5. Bailment: Generally yes. Negligence presumed if bailor cannot return property in same condition as received. *Chabot v. Williams Chevrolet*, 491 P.2d 612 (Colo.App. 1971).

6. Age of Reason: 18 to sue and be sued. Children of tender years are required to exercise only such care to avoid danger as may fairly and reasonably be expected from persons their age; and if there is doubt as to whether minor is chargeable with negligence due to his age, the question should be submitted to the jury. *Lewis v. Buckskin Joe's, Inc.*, 396 P.2d 933 (Colo. 1964). The responsibility of a person for his criminal conduct is the same for persons between the ages of 10 and 18 as it is for persons over 18 except to the extent that responsibility is modified by the provisions of the "Colorado Children's Code." No child under 10 years of age shall be found guilty of any offense. C.R.S. § 18-1-101.

7. Primacy of Rental Company: Depends upon "other insurance" clause in policy. "Pro-rata," unless otherwise defined, is dollar for dollar through limits (not on a percentage). *Metropolitan P & C. v. Hertz*, 981 P.2d 109 (Colo. 1999).

8. Spousal Tort Immunity: No. *Rains v. Rains*, 97 Colo. 19 (Colo. 1935).

9. Parent Tort Immunity: Limited to when parent's negligence is simple and when discharging parental duties. *Reaves v.*

Horton, 518 P.2d 1380 (Colo.App. 1973), *aff'd in part, rev'd in part*, 526 P.2d 304, (Colo. 1974). However, child may recover damages if injured while engaged in business or employment having nothing to do with discharge of parental duties. *Treverton v. Treverton*, 378 P.2d 640 , 151 Colo. 418 (Colo. 1966) or if caused by wilful and wanton conduct. *Hansen v. Hansen*, 608 P.2d 364 (Colo.App. 1979).

10. Resident Relative Exclusion: Permitted. C.R.S. §10-4-630(2).
11. Seat Belt Defense: Yes. However, failure to wear a seat belt may constitute failure to mitigate non-economic damages only. C.R.S. §§ 42-4-237, 42-2-105.5.
12. Dram Shop Law/ Liquor Liability: Limited liability for vendors and social hosts including limited duty (liability only for provision of alcohol to visibly intoxicated persons or minors) and caps on damages. C.R.S. §§ 13-21-103, 12-47-801.
13. Direct Actions: Direct actions by third parties are not permitted in Colorado. *Farmers Exchange v. District Court*, 862 P.2d 944 (Colo. 1993).
14. Workers' Compensation Subrogation: Allowed against third party but not employer. C.R.S. § 8-4-203.
15. Setoff for Collateral Source: Yes, unless collateral source is benefits under contract paid for by claimant. C.R.S. § 13-21-111.6.
16. Emergency Defense: Emergency Defense is a defense to negligence claims. Sudden emergency doctrine does not impose lesser standard of care on person caught in emergency situation; person is still

expected to respond to situation as reasonably prudent person under the circumstances, and emergency is merely circumstance to be considered in determining whether actor's conduct was reasonable. Sudden emergency can be presented when that party was confronted with sudden or unexpected occurrence not of party's own making. *Young v. Clark*, 814 P.2d 364 (Colo. 1991).

17. Liability for Dog Bites: In order to establish that person who owns or keeps a domestic animal is liable for injuries inflicted by such animal, plaintiff must prove: that animal has vicious or dangerous tendencies; that owner or keeper had knowledge or notice thereof; and that owner or keeper did not exercise reasonable care to prevent injuries reasonably anticipated to result from such tendencies. *Dubois v. Myers*, 684 P.2d 940 (Colo.App. 1984).

18. Ski area liability: C.R.S. §33-44-101 *et seq.* limits claims against ski areas. Generally it lists the "inherent dangers of skiing" and then prohibits claims resulting from the "inherent dangers of skiing." It also places a cap of \$250,000 on damages that can only be lifted for economic damages that the Court finds are justified.

III. PROPERTY DAMAGE:

1. Measure of Property Damage: Market value before occurrence compared with market value after, repairs limited by market value. C.J.I. 4th 6:11, 6:12. *State v. Morison*, 148 Colo. 79, 365 P.2d 266 (1961); and *Trujillo v. Wilson*, 117 Colo. 430, 189 P.2d 147 (1948).

2. Does the title determine vehicle ownership?: No. It is only prima facie evidence of ownership. C.R.S. §§ 42-3-126, 42-6-109, 110.

3. Is diminished value allowed on first party claims?: Yes, if not otherwise excluded or limited by policy. See measure of damages for property damage.
4. Is diminished value allowed on third party claims?: Yes. See measure of damages for property damages.

IV. HOMEOWNERS:

1. Premises Liability: Controlled by statute. Hierarchy of duty owed whether injured person is invitee, licensee or trespasser. C.R.S. § 13-21-115.
2. Are parents liable for their children's actions?: Yes. Limited to recovery to \$3,500 where acts were maliciously or willfully done by a minor under 18 years of age and living with parents, plus court costs and attorney fees. C.R.S. §§ 13-21-107, 107.5. In cases of theft, liability is costs plus theft plus \$100 as a penalty. C.R.S. § 13-21-107.5

- #### **V. PIP/MEDICAL PAYMENTS:**
- PIP was abolished for policies issued after July 1, 2003. There is no mandatory medical pay. Med pay will be determined by the policy. However, see Colorado Insurance Commissioner's Emergency Regulation 03-E-10 written to "promote a smooth transition from a no-fault auto system to a tort system in the State of Colorado."

VI. UNINSURED MOTORIST:

1. Is UM coverage required?: Yes. C.R.S. §§ 10-4-609, 42-7-103.

2. Is a written rejection required?: Yes. C.R.S. § 10-4-609(a).

3. Do UM limits need to equal BI limits?: No. However, an offer needs to be extended. C.R.S. § 10-4-620 - \$25,000/\$15,000/\$15,000. (Effective July 1, 2003.)

4. Can UM coverage be stacked?: Yes, unless limited by the policy. C.R.S. § 10-4-609(b)(2).

5. Is insured's UM pro-rata or excess over the UM of a non-owned vehicle?: Depends upon "other insurance" clause in policy. "Pro-rata," unless otherwise defined, is dollar for dollar through limits (not on a percentage). *Metropolitan P & C. v. Hertz*, 981 P.2d 109 (Colo. 1999).

6. Is physical contact required for UM recovery?: No. Further, no corroborating evidence is required. *Mavashev v. Windsor Insurance Co.*, 72 P.3d 469 (Colo. App. 2003).

7. Does the PIP threshold have to be pierced for UM recovery?: Unresolved in Colorado but the consensus is no. (Only applies on pre-July 1, 2003 accidents.) Post July 1, 2003 no threshold.

8. Can the value of the UM claim be offset by the amount paid under PIP and./or medical payments?: No for pre-July 1, 2003 accidents, depends upon language of policy for post-July 1, 2003 accidents.

9. Is workers' compensation subrogation allowed?: For pre-July 1, 2003 claims, only against third parties for non-PIP type expenses against non-

employment related parties. For post-July 1, 2003 accidents, only against non-employment related parties. C.R.S. § 8-41-203 sets out general workers' compensation subrogation rights. Subrogation claims are only applied against economic loss portion of a judgment.

10. What vehicles are covered under UM?: Currently any vehicle owned by the insured is covered under the UM/UIM provisions of the policy. Therefore, only one car in family needs insurance coverage.
11. "Arise out of the use of an auto": Generally any reasonable nexus between the conduct of the insured and the "use" of the vehicle will trigger coverage. *Aetna v. McMichael*, 906 P.2d 92 (Colo. 1995).

VII. UNDERINSURED MOTORIST:

Colorado's statutory scheme addresses underinsured motorist coverage in the same statute as uninsured motorist coverage. C.R.S. § 10-4-609.

1. Is UIM required?: UIM must be offered but may be rejected. C.R.S. § 10-4-609
2. Is a written rejection required?: Yes, per UM Statute. C.R.S. § 10-4-609.
3. Do UIM limits need to equal BI limits?: No, but must be offered. C.R.S. § 10-4-609.
4. Is settlement of the liability claim needed for UIM recovery?: Unresolved in Colorado, but consensus is yes. *Brown v. American Family Ins. Group*, 989 P.2d 196 (Colo.App. 1999). Carrier may be bound by litigation and is permitted to intervene. *Freeman*

v. *State Farm*, 946 P.2d 584 (Colo.App. 1997).

5. Is UM/UIM carriers' consent needed to settle the underlying liability claim?: Yes, if required by policy. If consent obtained, UM/UIM carrier has exposure to value of settlement, not limits of underlying liability policy. However, a provision requiring consent to sue is unconstitutional. *Harry v. Hawkeye-Security Ins.*, 972 P.2d 279 (Colo.App. 1992).

6. Is insured's UIM pro-rata or excess over the UIM of a non-owned vehicle?: Depends upon "other insurance" clause in policy. "Pro-rata," unless otherwise defined, is dollar for dollar through limits (not on a percentage). *Metropolitan P & C. v. Hertz*, 981 P.2d 109 (Colo. 1999).

7. Can the available amount of UIM coverage be reduced by the tortfeasor's liability limits?: Yes. C.R.S. § 10-4-609 is construed to allow certain offsets of amounts that the insured received from the tortfeasor's carrier and the uninsured/underinsured motorist benefits the insured receives under a policy other than his or her own when injured by uninsured motorist, except the insurer may not offset amounts an insured receives under "separate and distinct" insurance or other agreements. *Farmers Ins. Ex. v Walther*, 902 P.2d 930 (Colo.App. 1995).

8. Can the value of the UIM claim be offset by the amount paid under PIP and medical payments?: No for pre-July 1, 2003 accidents. Depends upon language of policy for post-July 1, 2003 accidents.

9. Is workers' compensation subrogation allowed?

For pre-July 1, 2003 claims, only against third parties for non-PIP type expenses against non-employment related parties are permitted. For post-July 1, 2003 claims, C.R.S. § 8-41-203 provides for subrogation of monies paid by a worker's compensation carrier. However, case law has ruled that uninsured motorist carrier's liability to insured is contractual, and although it is based upon the contingency of a third party's tort liability, the state compensation insurance fund does not become a third-party beneficiary under the insurance contract. *State Comp. Ins. Fund v Gulf Ins. Co.*, 628 P.2d 182 (Colo.App. 1981) and *State Comp. Ins. Fund v Commercial Union Ins. Co.*, 631 P.2d 1168 (Colo.App. 1981).

10. If not, can the value of the claim be offset by the workers' compensation payments?:

Co-employees and employees are effectively immune from liability for work-related injuries. However, their percentage of fault may be used to reduce the liability of non-employment related tortfeasors. See joint and several liability.

11. Is UIM subrogation allowed?:

Yes. (For pre-July 1, 2003 accidents, PIP expenses can be recovered from a tortfeasor that did not have complying insurance. C.R.S. § 10-4-715.) However, Colorado case law has stated that subrogation is not allowed to the extent any reduction in benefits resulted in insured's inability to obtain full compensation for the loss sustained. *Kral v American Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989).

**VIII. STATUTORY CAPS
ON DAMAGES:**

1. Non-economic damages in general:
(pain and suffering, loss of enjoyment of life, mental anguish, etc.) \$366,250 (with clear and convincing evidence, \$732,500). C.R.S. § 13-21-102.5(3)(a).
2. Permanency: No cap.
3. Impairment: No cap.
4. Economic: No cap.
5. Derivative non-economic damages:
(damages to persons not suffering actual physical harm, i.e., loss of consortium negligent infliction of emotional distress) \$366,250 (with jurisdiction by clear and convincing evidence). C.R.S. § 13-21-102.5(3)(b).
6. Dram Shop (Liquor Liability): \$219,750 for all damages (economic, non-economic, permanency, impairment). C.R.S. § 12-47-801(3)(c) and C.R.S. § 12-47-801(4)(c).
7. Wrongful Death:
 - a. Non-economic:
(general) \$341,250. C.R.S. § 13-21-203(1).
 - b. Solatium:
(no proof required, must be elected by plaintiff, does not include economic or

burial/funeral expenses) \$68,250. C.R.S. § 13-21-203.5. The cap applies to each defendant. *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

c. Limitation on all damages:
(if deceased does not leave dependants or widow) \$366,250, unless death caused by “felonious killing” as defined by C.R.S. § 15-11-803(1)(b), C.R.S. § 13-21-203(1).

d. Punitive or exemplary damages: Only for claims arising on or after August 8, 2001. Limited to one-to-one ratio with compensatory damages, and cannot be pled in initial claim for relief. C.R.S. § 13-21-203(c).

8. Punitive or Exemplary Damages: Generally, one-to-one ratio with compensatory damages. May be reduced or increased (not to exceed three times the amount of compensatory damages) by court. Not recoverable in arbitration or administrative proceedings. C.R.S. § 13-21-102.

9. Interest on Damages: 9% from date cause of action accrues, compounded annually from date suit is filed until satisfied. For appeals of judgments, interest will be 2 points above discount rate. C.R.S. § 13-21-101.

IX. LITIGATION:

1. Offer of Settlement: Formal pleading filed during litigation. If party making offer “beats” offer at time of trial, that party is entitled to all costs (not attorneys fees) incurred by that party after offer was filed. Once file, offer must be accepted within 10 days or it is withdrawn. C.R.S. § 13-17-202.

2. Costs: Defined C.R.S. § 13-16-122.
3. Frivolous, Groundless
And Vexatious Actions: If plead, may entitle prevailing party to all costs and attorneys fees. C.R.S. § 13-17-102.

X. PRIMACY SCHEDULES:

1. Liability: Attached.
2. UM: Attached.
3. UIM: Attached.