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Insurance; Limiting Recovery Under Multiple Casualty Insurance Policies ("Stacking")

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24. Id. §25 ¶ 3.
25. Id. §25 ¶ 4.
26. Id. §25 ¶ 5.
27. Id. §26 ¶ 1.
28. Id.
29. Id. §26 ¶ 2.
30. Id. §17 ¶ 2.
31. Id. §18.
32. Id. §22.
33. Id. §11 ¶ 2.
34. Id. §15.
35. Id. §26 ¶ 2.
36. Id. §27.
37. Id. §23 ¶ 4.
38. Id. §23 ¶ ¶1, 2.
39. Id. §23 ¶ 3.
40. Id. §29 ¶1. But under §17 the supervisor may hypothecate property in continuing the operation.
41. Id. §29 ¶ 2.
42. Id. §20.
43. Id. §31 (adding NRS 463.315(14)).

INSURANCE; LIMITING RECOVERY UNDER MULTIPLE
CASUALTY INSURANCE POLICIES ("STACKING")

Adds to NRS Chapter 687B

AB 617 (Committee on Commerce); STATS 1979, Ch 544

Chapter 544 specifies the limit of recovery where two or more casualty insurance policies cover the same loss and allows recovery under "uninsured motorist" coverage if the other motorist is under-insured.

Chapter 544 allows insurance companies to limit their liability where two policies or provisions cover the same loss.¹ A policy may limit the recovery to the higher applicable limit, and provide that the recovery be prorated between coverages in proportion to the aggregate of their limits.² For example, suppose two

\$20,000 policies cover the same loss. If the policies limit recovery to the higher applicable limit, the maximum recovery will be \$20,000, and both insurers are equally liable. If one policy provides \$30,000 coverage and another provides \$10,000, the limit is \$30,000; since the aggregate of the coverage is \$40,000, the \$30,000 policy covers three quarters of the loss (30,000/40,000). Any provision limiting benefits must be in "clear language"³ and "prominently displayed."⁴ An insured may choose to "stack"⁵ policies; if the insured pays a premium calculated for recovery to the policy limit under each policy, then any limiting provision is void.⁶

Insurance companies now must offer uninsured motorist coverage equal to the limits of bodily injury coverage sold to the insured.⁷ Uninsured motorist coverage now applies to damages beyond the limits of the other motorist's coverage.⁸ For example, if A suffers \$20,000 in damages, but the other driver only carries \$4,000 in insurance, then A's uninsured motorist coverage must cover the remaining \$15,000.⁹

Chapter 544 limits stacking of insurance benefits. With the repeal of no-fault insurance,¹⁰ stacking is primarily a problem of uninsured motorist coverage. If State Farm Mutual Automobile Insurance Co. v. Hinkel¹¹ the Nevada Supreme Court ruled that uninsured motorist coverage protects persons insured who are injured by uninsured motorists, even if the person injured was not driving an insured car.¹² As a result, if a person purchases two policies providing uninsured motorist coverage, both are applicable to any accident occasioned by an uninsured motorist.¹³ In State Farm Mutual Insurance Co. v. Christensen the court allowed five separate policies to cover the same accident.¹⁴ In Allstate Insurance Co. v. Maglish¹⁵ a single policy provided, in two provisions, \$15,000 uninsured motorist coverage on each of two vehicles. As both provisions covered all accidents¹⁶ the policy limits were combined¹⁷ and the limiting clause was held to be void.

Chapter 544 permits stacking where the insured "has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage."¹⁸ Applying this language to the Maglish facts, the increased premium reflects the additional risk, not an extra \$15,000 of insurance. Apparently, to allow stacking, the court would have to conclude that the additional premium was calculated for a separate \$15,000 of coverage.¹⁹

Under the Christensen facts (five separate policies providing uninsured motorist coverage), stacking probably will be premitted. Each premium was independently calculated to provide up to the policy limit; where the insured had paid separate premiums, he is entitled to separate benefits.²⁰

FOOTNOTES

1. 1979 Nev. Stats. ch. 544 (hereinafter "Ch. 544") §1 ¶1 (adding to NRS Ch. 678B).
2. Id.
3. Id.
4. Id.
5. "Stacking, in connection with uninsured motorist coverage, refers to the right to recover on two or more policies in an amount not to exceed the total of the limits of liability of all policies up to the full amount of the damages sustained." Van Hoozer v. Farmers Insurance Exchange, 219 Kan. 595, 607, 549 P.2d 1354, 1364-65 (1976).
6. Ch. 544 §1 ¶1 (adding to NRS Ch. 678B).
7. Id. §1 ¶2 (adding to NRS Ch. 678B).
8. Id.
9. Id. Contra, Garnder v. The American Insurance Company, 95 Nev. Adv. Op. 76, at 3, 593 P.2d 465, 467 (1979), holding uninsured motorist coverage not available if other motorist is under-insured.
10. 1979 Nev. Stats. ch. 660 69 (repealing NRS 484.263, 686B.055, 698.010-698.510).
11. 87 Nev. 478, 488 P.2d 1151 (1971).
12. Id. at 483, 488 P.2d at 1154.
13. United Services Automobile Assoc. v. Dokter, 86 Nev. 917, 920, 478 P.2d 583, 584 (1970).
14. State Farm Mut. Auto. Ins. Co. v. Christensen, 88 Nev. 160, 163, 494 P.2d 552, 553 (1972).
15. 94 Nev. Adv. Op. 200, 586 P.2d 313 (1978).
16. See State Farm Mut. Ins. Co. v. Hinkel, 87 Nev. at 486, 488 P.2d at 1156, where the dissent warns of the dangers of the decision.
17. Allstate Inc. Co. v. Maglish, 94 Nev. Adv. Op. 200 at 4, 586 P.2d at 315.
18. Ch. 544 §1 ¶1 (adding to NRS Ch. 678B).
19. In Allstate Ins. Co. v. Maglish, 94 Nev. Adv. Op. 200, at 5, 586 P.2d at 316, the court determined the purpose of the premium — hence the possibility of the

same result.

20. Id. at 3, 586 P.2d at 315, where the court explains that the insured is entitled to benefits to the extent of the premiums he paid.

SEE GENERALLY:

- 1) Beasley, In the Wake of Lopez-Like "Other Insurance" Provisions, 43 INTER ALIA (No. 1) 18 (April 1978).

MOTOR VEHICLES; NO-FAULT INSURANCE REPEALED

Adds sections to NRS Chapter 690B

Amends NRS 482.215, 482.280, 484.263, 485.200, 485.308, 485.3091, 485.380, 690B.020

Repeals NRS 686B.055, 698.010 to 698.510, inclusive

SB 313 (Committee on Commerce and Labor); STATS 1979, Ch 660

AB 108 (Sena); STATS 1979, Ch 684

(Effective January 1, 1980)

Chapter 660 repeals "no-fault" automobile insurance¹ while Chapter 684 mandates liability insurance. Both acts become effective on January 1, 1980,² which allows insurance companies to rewrite policies.

The discarded plan mandated no-fault coverage on every motor vehicle.³ This coverage provided \$10,000 in first party benefits for injuries arising out of automobile accidents, regardless of fault.⁴ Tort liability was abolished, except as to property damage (which was not covered by no-fault) or other economic loss beyond the limits of no-fault coverage.⁵ Tort actions were permitted for noneconomic damages only if the accident resulted in \$750 of medical expenses or a lengthy or substantial injury.⁶

Chapter 660 reinstates the tort system of automobile insurance and liability. The limitations imposed by the no-fault system no longer limit tort liability.⁷ First party insurance is still available, but it is no longer mandated.⁸ A new section stipulates that claimants are not bound by arbitration provisions in motor vehicle insurance policies.⁹ This section mirrors a section which was repealed when no-fault was enacted.¹⁰ Chapter 660 also deletes references to mandated no-fault coverage