

JULY 2002

WEST VIRGINIA INFORMATIONAL LETTER

NO. 140

TO: All Property and Casualty Carriers Licensed to Do Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and All Other Interested Persons

RE: Family Member Exclusions

The purpose of this informational letter is to clarify the family member exclusions included in automobile policies. A review of filings revealed that some automobile policies previously approved contain family member exclusions that are contrary to West Virginia Law. In *Lee v. Comer*, 159 W. Va. 585, 224 S.E.2d 721 (1976) our Court abolished immunity in an automobile liability case between child and parent. Later, in *Coffindaffer v. Coffindaffer*, 161 W. Va. 557, 244 S.E.2d 338 (1978) our Court likewise abolished immunity, in all contexts, between spouses. Any automobile family member liability exclusion applied within mandatory limits is therefore void. The same is true with respect to uninsured motorist coverage.

With respect to underinsured motorist policies, however, such an exclusion is sometimes applied to prevent an inappropriate increase of liability limits where a family member sues an at-fault relative, seeks to collect the liability coverage, and then claims that the same was insufficient thereby triggering the underinsured motorist coverage, all under the same policy. Family member exclusions in underinsured motorist policies written and applied simply for that purpose will be permitted.

Likewise, with respect to homeowners policies, which are not mandated, and which are not intended to substitute for health insurance coverage, such exclusions will continue to be approved.

If you have any questions regarding the contents of this Informational Letter, you may contact Mia Rowe, Director of Rates and Forms Division at (304) 558-2094, ext 130.

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INSURANCE COMMISSIONER