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Administrative Letter 2020-06

TO: All Property & Casualty Insurers Licensed to Write Motor Vehicle Insurance on Motor Vehicles

RE: Property Damage Liability Claims Involving Clean-Up, Removal of Vehicles and Debris from Roadways and Property Adjacent to Roadways

The purpose of this administrative letter is to remind insurers licensed to write motor vehicle policies on vehicles principally garaged or used or are issued or delivered in the Commonwealth of their duties with respect to at-fault accidents. The at-fault insurer is responsible for payment of the reasonable costs of clean-up, recovery, and certain towing expenses under the terms of the property damage liability coverage of the motor vehicle policy that requires coverage for “all damages the insured is legally obligated to pay.”

If the investigation of the claim indicates that the insured is responsible for the accident, then the insurer of the at-fault vehicle is required to pay under the vehicle's property damage liability coverage the reasonable costs of: (1) removing debris from the roadway, including liquids and other material, (2) removing the at-fault and not-at-fault vehicles from a roadway or from property adjacent to a roadway, and (3) towing not-at-fault vehicles away from the scene of the accident. The cost of removing vehicle accident debris and the cost of removing the at-fault or not-at-fault vehicles from a roadway or from property adjacent to a roadway after an accident are sometimes referred to as "clean up and recovery costs." The at-fault driver is responsible for the clean-up of the roadway and the recovery of vehicles involved in the accident on the roadway and adjacent to the roadway.

These clean-up and recovery costs must also be paid in any claim involving a single-vehicle accident if the driver of the vehicle is at-fault for the accident.

The Bureau of Insurance has received complaints from towing companies that have made claims with the at-fault insurers seeking payment for clean-up and recovery costs, Insurers have denied these third-party claims for many reasons. For example, insurers have refused to pay these costs because (i) the insured’s policy does not have towing coverage; (ii) the towing and recovery company does not have a contract with the state or local government; and (iii) they do not have to pay claims from towing and recovery operators. None of these reasons are adequate justification for denial of these claims.

This administrative letter does not require an insurer to pay for the cost of towing the at-fault vehicle away from the scene of the accident unless that vehicle's policy includes the relevant physical damage coverage.

The Bureau also reminds insurers that if the insurer declines to pay all or any part of a claim for clean-up, recovery, and towing, the insurer is required to issue to the claimant (the insured or a third-party claimant) a written denial letter that includes a reasonable explanation for the denial of all or part of the claim, as required by 14 VAC 5-400-70 A of the Administrative Code. The Rules Governing Unfair Claims Settlement Practices defines "third party claimant as "any person asserting a claim against an insured or a provider filing a claim on behalf of an insured under an insurance policy." See 14 VAC 5-400-20 of the Virginia Administrative Code. This definition includes towing companies that respond to an accident at the request of state or local authorities for clean-up, recovery, and towing services.

The Bureau notes that each claim must be reviewed and evaluated on its merits.

Please direct any questions regarding this administrative letter to:

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Sincerely,

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