

How to Effectively Present and Defend PIP (Personal Injury Protection) and UM/UIM Claims

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Fundamentals

1. Personal Injury Protection (PIP) Benefits

ORS 742.520 requires coverage for every “motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle.” Coverage is provided for the insured, members of the insured’s family living in the same household, or children living in the insured’s household. Coverage is also provided for passengers occupying the insured vehicle and pedestrians hit by the insured vehicle. ORS 742.520(2)(b) (PIP is not primary for pedestrians, see below).

Not all vehicles are included in the definition of private passenger motor vehicle. Private passenger motor vehicle is defined as “a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery other than farming, a self-propelled mobile home and a farm truck.”

Practice Pointer – note that motorcycles and commercial vehicles are excluded from the mandatory PIP requirements.

a. ORS 742.520 – Requirements of PIP

PIP benefits apply to a person’s injury or death resulting from the “use, occupancy or maintenance of any motor vehicle.” ORS 742.520(2)(a). However, there are exclusions for non-private passenger motor vehicles as well as for motorcycles not owned by the injured person.

Practice Pointer – Review the policy; ORS 742.520 provides the minimum standards; the policy may provide more coverage than the law requires.

Be aware that different states have different requirements (including Washington). The state of issue of the insurance policy typically controls.

b. Minimum requirements for coverage – ORS 742.524

Medical Payments: PIP must allow for “Reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the person’s injury.” ORS 754.524(1)(a). The minimum amount of coverage is \$15,000 per person. Id.

Medical expenses are presumed reasonable and necessary unless the medical provider is given a denial within 60 days after the insurer receives notice of a claim for services from the provider. ORS 742.524(1)(a).

Practice Pointer: Insurer is required to conduct a reasonable investigation “based on all available information” before denying a claim. ORS 746.230(1)(d). See *Ivanov v. Farmers Ins. Co. of Oregon*, 344 Or 421 (2008) (reversing grant of summary judgment for Farmers on grounds that insurer is required to establish that denials were based on reasonable investigation).

Wage Loss: “If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person’s disability until the date the person is able to return to the person’s usual occupation. This benefit is subject to a maximum payment of \$3,000 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, ‘income’ includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.” ORS 742.524(b). The 2009 legislature increased the maximum wage payment to \$3,000/month from the previous maximum of \$1,250/month.

Essential Services: “If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonably incurred by the injured person for essential services that were performed by a person who is not related to the injured person or residing in the injured person’s household in lieu of the services the injured person would have performed without income during the period of the person’s disability until the date the person is reasonably able to perform such essential services. This

benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.” ORS 742.524(c).

Funeral Expenses: “All reasonable and necessary funeral expenses incurred within one year after the date of the person’s injury, but not more than \$5,000.” ORS 742.524(d).

Child Care: “If the injured person is a parent of a minor child and is required to be hospitalized for a minimum of 24 hours, \$25 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or for as long as the person is unable to perform essential services that the person would have performed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$750.” ORS 742.524(e).

In addition, Oregon law permits a deductible of \$250 to be included in a PIP policy. ORS 742.524(f).

c. Amount allowed for provider charges – ORS 742.525

The amount allowed for medical expenses under Oregon PIP policies is the lesser of the amount normally charged to members of the public, or the amount in the workers' compensation fee schedule. This is available from the Oregon State Insurance Division Website.

Hospital charges are subject to adjusted cost-to-charge ratio specified in a fee schedule published pursuant to ORS 656.248. Hospitals are permitted to charge the amount of the charges multiplied by the cost-to-charge ratio, or 90% of the charges, whichever is greater. ORS 742.525(2).

d. Relationship to Other Insurance – ORS 742.526

PIP is primary for anyone in the insured vehicle.

If the occupant of the vehicle has another motor vehicle policy, that policy is secondary.

If another family member in the same household as the injured person has another motor vehicle policy, that policy is the next to cover the injured person.

If the injured person has health insurance, it is available after all PIP policies are exhausted.

Pedestrians (and bicycles)

For individuals who are struck by a vehicle as a pedestrian or on a bicycle, the PIP medical benefits are available in the following order:

1. Individual's motor vehicle policy
2. Motor vehicle policy of family members living in individual's household
3. Individual's health insurance, other governmental benefits, or gratuitous benefits
4. Motor vehicle policy of vehicle that struck individual

Practice Pointer: Pedestrians (and bicycles) are entitled to PIP wage benefits as well.

Workers' Compensation (or other medical benefits): If injured person is entitled to receive workers' compensation or other medical or disability benefits, PIP can be eliminated by the policy. ORS 742.526(2). However, the insured may be entitled to medical and wage benefits not provided by workers' compensation.

Practice Pointer: Review the policy to determine what conditions could eliminate PIP.

e. Stacking

Oregon cases have held that there is no statutory provision precluding stacking of PIP benefits when the damages exceed the limits of coverage. *Porter v. Utah Home Fire Ins. Co.*, 58 Or App 729 (1982), overruled on other grounds by *Employers' Fire Ins. v. Love It Ice Cream*, 64 Or App 784 (1983); see also *Anderson v. Farmers Insurance Co. of Oregon*, 188 Or App 179, 71 P3d 144 (2003) (allowing stacking under pre-1999 version of law because of policy language).

In 1999, ORS 742.520(2)(a)(A) was amended and confirmed an intent to preclude stacking of PIP policies. The amendment was designed to specifically limit PIP coverage to the vehicle described in the policy and not individual policies on each vehicle in a household.

f. PIP and Health Insurance Reimbursement

There are three methods for an insurance company to recover PIP payments or health insurance payments made on behalf of an injured person.

1. Interinsurer arbitration – ORS 742.534

Allows “every authorized motor vehicle liability insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor vehicle accident by a person for whom personal injury protection benefits have been furnished by another such insurer, or for whom benefits have been furnished by an authorized health insurer,” to be reimbursed by the insurer of the at fault party. ORS 742.534. This is what insurers usually elect because the insurer does not have to pay attorneys fees. ORS 742.534 is only permitted if: (1) the PIP insurer is entitled to reimbursement by its policy; (2) the PIP insurer has not elected recovery by lien under ORS 742.536; and (3) the PIP insurer has requested reimbursement under ORS 742.534. ORS 742.534. The statute also specifies that the amount being paid back be reduced for any percentage of fault of the insured. Disputes between insurers are sent to arbitration. ORS 742.534.

ORS 742.534(1) limits the liability carrier’s responsibility to the policy limits. But, this does not mean that interinsurer arbitration is not available once the policy limits are paid. In *Providence Health Plan v. Charriere*, 666 F Supp 2d (D Or 2009), the court held that even if liability limits had already been paid, interinsurer arbitration was still available, even if unlikely to result in any funds being recovered.

Practice Pointer: Note that this does not apply to uninsured or underinsured motorist coverage as it specifies that it is only for damages for which the insured would be held legally liable.

2. Lien – ORS 742.536

This is only available when (1) the insurer is entitled by the terms of its policy; (2) the insurer has not elected to recover through interinsurer arbitration; and (3) the claim is elected in writing within 30 days of the receipt of notice or knowledge of the claim through personal service or registered or certified mail. ORS 742.536.

A “claim” is a written demand made and delivered for a specific amount of damages. The lien is against the cause of action up to the amount of the lien, but is reduced for the proportion of expenses, costs and attorney fees incurred in connection with

recovery of the lien. ORS 742.536. Unlike interinsurer arbitration, this is available even when making a claim against a party that is not legally liable.

3. Subrogation – ORS 742.538

This is only available when (1) the insurer is entitled by the terms of its policy; (2) the insurer has not elected to recover by lien under ORS 742.536; and (3) the interinsurer reimbursement is not available. ORS 742.538; see also *State Farm Mutual Auto Ins. Co. v. Hale*, 215 Or App 19 (2007) (discussing requirements).

Under subrogation, the insurer is entitled to proceeds from a settlement or judgment from the person legally responsible for the accident, but is reduced for the insurer’s share of expenses, costs and attorney fees. ORS 742.538(1). Calculating shares of expenses is done pursuant to ORS 742.538(5).

Limitations of Reimbursement

ORS 742.544 limits reimbursement so that it is permitted “only to the extent that the total amount of benefits paid exceeds the economic damages as defined in ORS 31.710.” ORS 742.544. Total amount of benefits is defined as including underinsured motorist benefits, liability insurance, personal injury protection payments, and any other payments by or on behalf of the party whose fault caused the damages. ORS 742.544(1).

This is different than a make whole provision, and is frequently called a “make half” provision because you only take into account economic damages, not the noneconomic damages. A make whole requirement would ensure that the insurance company providing benefits would not be reimbursed unless the injured person was fully compensated for his loss.

ORS 742.542 specifies that any PIP benefits paid for its own insured will reduce the amount of damages recoverable through underinsured or uninsured motorist protection benefits, but that it cannot be applied to reduce the policy limits. See *Farmers Insurance Company of Oregon v. Connor*, 219 Or. App. 337 (2008). In *Connor*, the total damages exceeded the underinsured motorist and PIP benefits. Farmers sought reimbursement of its PIP benefits based on the amount of economic damages as determined by the trial court. Based on the legislative history,

the court determined that Farmers was not permitted to recover its PIP benefits because it would serve to reduce the policy limits.

Election by Insurer

Election by the insurer of the ORS 742.536 lien must be made within 30 days of notice that injured party is making a claim. A claim is defined in ORS 742.536(4) as “written demand made

and delivered for a specific amount of damages.” This must be sent via certified or registered mail or personal service. ORS 742.536. If the insurance company fails to elect, the insurer must either pursue intercompany arbitration if it is “available,” or it must qualify for subrogation under ORS 742.538 (see above).

Practice Pointer: In some cases, it may make sense to force an election of a lien because then the attorney is entitled to an offset for fees and costs. However, if there is substantial UIM coverage, PIP benefits simply reduce the amount of damages.

g. Pleading considerations – Should PIP benefits be included in claims against the third party?

If PIP benefits are recovered through a judgment or settlement, PIP has a reimbursement claim for benefits paid to prevent a double recovery. See Above. It is up to Plaintiff whether they should be.

Practice Pointer: If it is disputed whether some medical bills are related, you may want to consider a special verdict form so that it is clear which bills are included in any verdict.

h. PIP Medical Examinations

Unlike in the uninsured/underinsured motorist statute, independent PIP medical exams are not specifically mentioned in the statute. PIP examinations are typically enforced by cooperation clauses in the insurance policy and refusing a PIP examination may impact your ability to pursue an underinsured or uninsured motorist claim later. You must review the policy to determine whether attendance may be required to preserve these claims.

i. New legislation

In the 2009 legislative session, there were some changes to the PIP statutes. The main change was the increase in wage loss benefits from a maximum of \$1,250/month to \$3,000/month. The increase may help injured individuals from financial hardship.

The Legislature attempted to pass “make whole” legislation with House Bill 2325 which would have required that a non-negligent injured party receive all his damages before the PIP carrier is eligible for reimbursement, but this measure failed. In addition, House Bill 2325 would have extended the medical coverage duration from one year to two years.

2. Underinsured Motorist/Underinsured Motorist Insurance

This is coverage that permits an insured to obtain all sums they “shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle” ORS 742.500(1). Uninsured motorist coverage is required for every policy in the state in amounts equal to the amount of liability coverage, unless the insured elects a lesser amount in writing. ORS 742.502(2)(a). Underinsured motorist coverage is in an amount equal to the uninsured motorist coverage less the amount recovered from other motor vehicle liability policies. ORS 742.502(2)(a).

a. Minimum Requirements - ORS 742.504

Each policy must provide coverage in the amount of liability coverage, which requires a minimum of \$25,000 per person and \$50,000 per accident. ORS 742.502(2)(a). If the insured elects lower limits, it must be in a signed statement within 60 days of making the election. ORS 742.502(2)(b). An insurer is permitted to offer one or more options of uninsured motorist coverage in larger amounts, but underinsurance coverage must be equal to uninsured motorist coverage less the amount recovered from other motor vehicle insurance policies. ORS 742.502(2)(c). Both types of coverage are required to provide coverage for bodily injury or death when the amount of liability coverage recovered is less than the limits for uninsured coverage of the insured. ORS 742.504(5). This allows for the situation when multiple injured parties exhaust the liability limits.

Uninsured and underinsured motorist coverage is required to be at least as favorable as ORS 742.504. But, it can also provide coverage that is more favorable, so you must examine the policy language.

b. Exclusions

Several circumstances will be excluded from underinsured or uninsured motorist coverage. It is important to examine the policy to determine the specifics. In order to have uninsured or underinsured motorist coverage be effective, you must comply with the terms of the policy. ORS 742.504(8). Therefore, it is very

important that you examine the policy. In addition, if the injured party fails to get written consent from the underinsured motorist carrier before proceeding with settlement or prosecution to judgment of an action against a party legally liable, the injured party may be precluded from making a UIM claim. ORS 742.504(4)(a). However, this exclusion is considered a “Condition of forfeiture” and only applies if the insurer can show it was prejudiced by the failure to obtain written consent and that the failure to obtain consent was unreasonable. See *Federated Service Ins. Co. v. Granados*, 133 Or App 5, rev den. 321 Or 512 (1995) (finding that consent provision was “condition of forfeiture,” not exclusion); *Armintrout v. Transportation Ins. Co.*, 137 Or App 86, rev. den. 322 Or 361 (1995). Failure to exhaust the available policy limits is prima facie evidence of prejudice. All this can be avoided by obtaining written consent in advance.

Practice Pointer: Obtain written consent to settle with adverse party from UM/UIM carrier to ensure no exclusion applies. In addition, there may be instances where settlement for the policy limits may not be reasonable (for instance, a recent inheritance by the defendant).

Underinsured and uninsured motorist protection also excludes coverage for other vehicles owned by the insured or furnished for the regular use of the insured (or members of his household). ORS 742.504(4)(b). You cannot extend your coverage to uninsured vehicles if you have opted not to insure them.

c. Offsets and Reductions from UM/UIM coverage

Amounts payable under UM or UIM coverage are reduced by: (1) sums paid on account of the bodily injury by or on behalf of the owner or operator of the uninsured vehicle or any other person jointly or severally liable, including amounts paid under bodily injury liability coverage; and (2) the amount paid and present value of all amounts payable under any workers' compensation law or disability benefits law. ORS 742.504(7)(c). These offsets apply to the insured's damages, not to the policy limits. *Bergmann v. Hutton*, 337 Or 596, 101 P3d 353 (2004) (offsetting damages by workers' compensation payments, but not reducing policy limits of UIM). But see *Vogelin v. American Family Mutual Ins. Co.*, 346 Or 490, 213 P3d 1216 (2009) (holding that ORS 742.504(7)(c)(A) requires payments made on behalf of a tortfeasor to be deducted from insured's total damages, but that ORS 742.502(2)(a) requires tortfeasor's motor vehicle liability payments to reduce UM/UIM policy limits).

PIP benefits paid to an insured are applied to reduce the amount of damages, but cannot reduce the UM/UIM policy limits. ORS 742.542 (see above).

d. Underinsured Motorist Coverage – Prerequisites to Coverage

In order to obtain underinsured motorist coverage, you must comply with ORS 742.504(4)(d). This requires that one of the following occurs:

1. The limits of liability have been exhausted by judgment or settlements to the injured person or other persons
2. The limits have been offered in settlement, and the insurer has refused consent and the insured protects the insurer's right of subrogation to the claim against the tortfeasor
3. The insured gives credit to the insurer for the unrealized portion of the limits as if the full limits had been received if less than the limits have been offered and the insurer has consented
4. The insured credits the insurer for the unrealized portion of the liability limits as if the full limits had been offered in settlement and the insurer has refused consent and the insured agrees to protect the insurer's right of subrogation to the claim against the tortfeasor

If none of these events occurs, an underinsured motorist claim does not yet exist.

Practice Pointer: Review the policy concerning exhaustion; if the policy is less favorable than the statute, it could be rendered invalid. See *Erickson v. Farmers Ins. Co. of Oregon*, 331 Or 681 (2001).

e. Two Year Limitation on UM/UIM claims

There is a legislative limitation (similar to statute of limitations) on a claim of two years from the date of the accident. ORS 742.504(12)(a). The two year period applies to minors and there is no tolling of the two years—even for minors. See *Wright v. State Farm Mutual Auto. Ins. Co.*, 223 Or App 357 (2008) (holding that two-year period was not tolled by child's minority; note that the

policy included the language from the statute). In order to comply, within two years the insured must do one of the following:

1. Agree to the amount due under the policy (settle the UM/UIM case)
2. Formally institute arbitration proceedings
3. File an action against the insurer or
4. File a suit for bodily injury against the uninsured motorist and within two years for the date of settlement or judgment against the uninsured motorist, formally instituted arbitration proceedings or filed an action against the insurer

“Formally” instituting arbitration proceedings has recently been determined to require the formality consistent with the arbitration act in ORS 36.635(1). This requires “giving notice in a record to the other parties . . . by certified mail, return receipt requested and obtained, or by service as authorized for summons under ORCP 7 D.” ORS 36.635(1). A letter from the insurer consenting to arbitration is no longer sufficient. *Bonds v. Farms Ins. Co. of Oregon*, 227 Or App 185, 205 P3d 45 (2009), review granted 347 Or 258 (2009). However, this case is currently being reviewed by the Oregon Supreme Court.

f. Arbitration or trial?

Practice Pointer: If attorney fees are available, consider a trial. Otherwise, arbitration will save the parties time and money.

Arbitration

Arbitration is to take place “as described in section 2, chapter 328, Oregon Laws 2007.” ORS 742.504(10). The costs of arbitration for the insured cannot exceed \$100. *Id.* The insurer is required to pay the remainder of arbitration fees. However, each party must pay for its own experts and preparation. The arbitration is to be held in the county of residence of the insured, where the action arose, or any other place upon which the parties agree, but it is up to the insured to decide. *Id.* The provisions in chapter 328, section 2 require that three arbitrators be used unless the parties agree otherwise.

Proof of Claim/Proof of Loss

Proof of Claim:

ORS 742.504(5)(a) requires that an insured or other person making a claim provide “proof of claim” as soon as practicable, including the “full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder.” ORS 742.504(5)(a). This is not the same as “proof of loss” that is required for attorneys fees. (See below). *Scott v. State Farm Mutual Ins. Co.*, 345 Or 146 (2008).

Proof of Loss:

A proof of loss is important because it starts the clock ticking for attorney fees. (See below). In *Scott v. State Farm Mutual Ins. Co.*, 345 Or 146 (2008), the court recently reiterated what is sufficient for a proof of loss. It is “Any event or submission that would permit an insurer to estimate its obligations.” *Id.* at 155. In *Scott*, the court determined that a PIP application for benefits that stated “the information provided will enable us to determine if you are entitled to benefits under the policyholder’s insurance contract,” and

included an authorization to collect health insurance information, was sufficient. *Id.* at 156. The form did not specify it was only for PIP benefits, and even though it was the insurance company’s policy to keep PIP and UM/UIM claims separate, it was deemed sufficient. In a more recent case concerning homeowner’s insurance, a phone call to the insurer’s agent concerning the damage was sufficient. *Parks v. Farmers Ins. Co. of Oregon*, 347 Or 374 (2009).

Practice Pointer: As a plaintiff, send information as soon as possible. As a defendant, it is best to assume that any correspondence is a proof of loss and to respond accordingly.

Attorney Fees

ORS 742.061 allows a plaintiff to collect attorney fees in a PIP claim or UM/UIM claim in specific circumstances. “If settlement is not made within six months from the date proof of loss is filed with an insurer and an action is brought in any court of this state up on any policy of insurance of any kind or nature, and the plaintiff’s recovery exceeds the amount of any tender,” the plaintiff is entitled to recover attorney fees unless the insurer satisfies specific conditions within six months of the date the proof of loss is filed with the insurer.

1. For PIP claims, the insurer must (a) accept coverage in writing and the only issue is the amount of benefits due the insured; and (b) consent to binding arbitration.
2. For UM/UIM claims, the insurer must (a) accept coverage in writing and the only issues are the liability of the uninsured or underinsured motorist and the damages due the insured; and (b) consent to binding arbitration. ORS 742.061(2).

However, an insurer must be careful when denying specific claims. In *Grisby v. Progressive Preferred Ins. Co.*, 343 Or 175, modified and adhered to on reconsideration, 343 Or 394 (2007), the PIP carrier denied payments for chiropractic treatment claiming it was not related to the motor vehicle collision. This was interpreted as a dispute of coverage, not just benefits, so he was entitled to attorney fees. Attorneys are using *Grisby* to say that any denial of PIP benefits is a dispute in coverage, entitling the claimant to attorney fees. Once a denial of benefits occurs, it is not necessary to wait the six month period from the proof of loss required pursuant to ORS 742.061.

Attorney fees under ORS 742.061 are permitted even if the insurer makes an ORCP 54 offer prior to trial, even if that offer is not beat. See *Wilson v. Tri-County Metropolitan Transportation District of Oregon*, 234 Or App 615 (2010) (allowing plaintiff to collect ORS 742.061 attorney

fees despite not beating ORCP 54 pre-trial offer because insurer had made no offers within six months of proof of loss as required by ORS 742.061).

Practice Pointer: In general, insurance companies send a form letter consenting to binding arbitration and including the proper language about accepting coverage. However, always double check when the letter was sent and whether it has all of the correct language.

Letters of Representation

When opening a claim, it is best to send separate letters of representation to the UIM/UM carrier and the PIP carrier. This gets the process started and may be sufficient to constitute a proof of loss, starting the clock on attorney fees.

See attached sample letters.

Bad Faith

Oregon does not have a law specifically against bad faith, but has a statute addressing unfair claims settlement practices, ORS 746.230. The Unfair Claim Settlement Practices Act prohibits the following practices:

- (1)(a) Misrepresenting facts or policy provisions in settling claims;
- (b) Failing to acknowledge and act promptly upon communications relating to claims;
- (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
- (d) Refusing to pay claims without conducting a reasonable investigation based on all available information;
- (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;
- (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;
- (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;
- (h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;
- (i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;

(j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

(k) Delaying investigation or payment of claims by requiring a claimant or the physician of the claimant to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require essentially the same information;

(l) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or

(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.

ORS 746.230(1).

There is no private right of action for violation of these prohibitions. However, these prohibitions can be used to set the standard of care for insurers in claims such as breach of contract, fraud, intentional infliction of emotional distress, and interference with contract.

Every contract, including insurance contract, implies a common law duty of good faith and fair dealing. An insurer can violate the duty of good faith without breaching any contract provisions. *Elliot v. Tektronix, Inc.*, 102 Or App 388 (1990). See *Ivanov v. Farmers Ins. Co. of Oregon*, 344 Or 421 (2008) (finding that the obligation of good faith performance and enforcement applies to insureds seeking contractual and statutory benefits and that failing to conduct a reasonable investigation as required by ORS 746.230(1)(d) was a component of the good faith obligation); *Eggiman v. Mid-Century Ins. Co.*, 134 Or App 381 (1995) (holding that requirement of good faith extends to PIP); *Goddard ex rel. Estate of Goddard v. Farmers Ins. Co. of Oregon*, 173 Or App 633 (2001) (finding an affirmative duty to seek settlement and imposing continuing duty to engage in reasonable settlement negotiations after trial); *McKenzie v. Pacific Health & Life Ins. Co.*, 118 Or App 377 (1993) (health insurer must determine in good faith whether a claim is covered instead of arbitrarily refusing to pre-authorize treatment).

Bad faith may exist for first party claims (against a person's own insurance company). A defendant's insurance company generally owes no fiduciary duty to a plaintiff. Specific allegations that may be permitted in a claim are a failure to investigate, failure to comply with the terms of the policy, and an unreasonable denial of claims.