



COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING

Commissioner of Securities and Insurance, Montana State Auditor

Date: 01/26/2024

**Advisory Memorandum Regarding
§§ 33-18-201(6) and (13), MCA as interpreted by *Ridley* and *Dubray***

Background

The Montana Supreme Court has repeatedly held that sections 33-18-201(6) and (13), MCA, require an insurer to provide advanced payment (prior to final settlement) to a victim of an automobile accident for any damages for which liability under the policy is reasonably clear. See *Ridley v. Guaranty Nat'l Ins. Co.*, 286 Mont. 325, 951 P.2d 987 (1997) and *Dubray v. Farmers Ins. Exch.*, 2001 MT 251, 307 Mont. 134, 36 P.3d 897.

Since *Ridley* was decided in 1997, this office has received multiple requests for the position of the Commissioner of Securities and Insurance (CSI) as to whether the costs incurred by a victim of an automobile accident in acquiring medical records to support their claim to an insurer for medical expenses falls within *Ridley's* prepayment mandate upon insurers. On at least three occasions the CSI has confirmed that the costs of obtaining medical records would fall under *Ridley* if those costs are directly related to the insured's negligence or wrongful act. However, these prior opinions have been in the form of individual opinion letters.

Having recently received another request for clarity on this issue, the CSI now affirms this long-standing position with this Advisory Memorandum.

Guidance

CSI reads both sections 33-18-201(6) and (13) consistent with *Ridley* and *Dubray* to require an insurer to provide advanced payment to a victim of an automobile accident for any damages that are not reasonably in dispute. The scope of *Ridley* is not limited to medical expenses. *Dubray* at ¶ 15. The duty for advanced payment of damages under *Ridley* encompasses any expenses incurred by the victim of an automobile accident that have become reasonably clear, including but not limited to medical expenses and lost wages. *Id.* When determining whether an insurer's failure to pay expenses (such as costs of acquiring medical records) violates sections 33-18-201(6) and (13), MCA, the CSI will examine whether the damages at issue are "reasonably certain and directly related to an insured's negligence or wrongful act." *Dubray* at ¶ 15. The CSI will also consider, "Montana's public policy of protecting innocent victims of automobile accidents." *Id.* at ¶ 14.

This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.