

Insurer is ordered to reopen 17,000 cases

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A Boulder District Court judge has ordered one of Colorado's largest auto insurers to reopen as many as 17,000 medical and wage-loss cases — nine years' worth of claims that could be entitled to additional payouts of up to \$100,000.

Sam Livingston, the Denver attorney who sued American Family Mutual Insurance on behalf of Colorado policyholders, said the state's No. 5 insurer could be on the hook for \$200 million or more.

"It's going to be giant numbers," Livingston said, "and a real benefit to consumers who were covered under these policies when they were injured in accidents."

American Family discounted any projections of future payouts as "pure speculation."

"Those numbers are unsubstantiated," American Family's Denver counsel, Robert Harris, said about Livingston's liability estimate.

Judge Morris Sandstead ruled Wednesday that a "voluntary reformation" process initiated last year by American Family gave inadequate notice to Colorado policyholders.

In essence, he ordered American Family to start over a claims and notification process that already has resulted in \$3.5 million in additional payments to 530 Colorado policyholders.

American Family acknowledges that it goofed by failing to offer enhanced coverage for personal injury protection as an option to its auto insurance customers from 1992 to 2001.

Colorado's since-repealed no-fault law required optional PIP coverage, which for an additional premium provided extra medical benefits and wage-loss protection for accident victims. In mid-2004, American Family mailed 17,500 "notice" letters to any insured customer who had been paid wage-loss and medical benefits exceeding \$50,000. The notices advised that under Colorado law, old claimants could be entitled to additional benefits.

Livingston filed his consumer complaint a month later, seeking to have American Family's corrective action placed under court supervision.

Siding with Livingston, the judge's

written ruling Wednesday said even an American Family representative had acknowledged that the notice letters, some sent to 13-year-old addresses, may not have been adequate.

Of the 17,500 notices mailed out, American Family received just 1,350 responses, according to the company's assistant general counsel, Alice Kissling. More than 6,700 letters were returned by the post office, she said.

"They weren't making a real effort," Livingston said. "American Family knew the more replies it received, the bigger the claims. It was akin to the fox guarding the chicken house."

The judge gave Livingston and American Family 90 days to come up with a better system.

Rich Kaudy, a Denver plaintiff attorney who has followed the case, said interest penalties alone could boost some claims 40 percent.

"It's a nasty downside to American Family for violating a Colorado statute for almost a decade," he said.