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AN HISTORIC ACT

As recently reported in these pages, Governor Pataki has signed into law a bill, which, effective January 1, 1996, increases the limits of liability required under the various motor vehicle insurance coverages in this State. Insofar as this law constitutes the first increase in the mandatory minimum limits for bodily injury coverage for personal injury (as opposed to death) in thirty-eight years, we felt that it would be appropriate and we hoped that it would be illuminating at this time to review the historical origins of the enactments which comprise New York's comprehensive motor vehicle insurance scheme -- a scheme that has been described as one of "progressively escalating protections." *State Farm Ins. Co. v. Ramirez*, NYLJ, June 10, 1993, p. 29, col. 3 (Sup. Ct. Nassau Co.). Thereafter, we will describe and analyze the provisions of the new law, with particular emphasis upon the potentially confusing effective date provision.

An excellent review of the historical perspective of New York's motor vehicle insurance scheme, dating back to the invention of the automobile, is contained in a well-written opinion by Justice Bruce Alpert of the Supreme Court, Nassau County in *State Farm Ins. Co. v. Ramirez*, *supra*. Therein, Justice Alpert stated, in pertinent part, as follows:

"In the early part of the automobile century little thought was given to comprehensive licensing procedures, either of the car or its driver . . . Clearly enough in those early days only the well-to-do man could afford such an 'infernal machine' . . . Henry Ford's five dollar a day wage helped make it possible for working men to own the automobiles they built. Millions of cars each year were now being built. Annual traffic deaths were being counted in the tens of thousands, the injured and maimed by the millions. This toll in human life soon exceeded the total of all of America's soldiers killed in all her wars. (Ward, New York's Motor Vehicle Accident Indemnification Corporation, 8 Buffalo L. Rev. 215, 216-217.)"

Early Acts

As noted by Justice Alpert, it was against this backdrop that the Motor Vehicle Safety Responsibility Act was adopted in 1929. Under that Act, "persons who had proven themselves financially irresponsible by failure to make recompense for injuries caused by their negligence in the operation of a motor vehicle, were deprived of their privilege to operate motor vehicles or to register the same in this State unless they made adequate provision to compensate those whom they had already injured and to provide security against the possibility of future injury to others." *General Accident Fire & Life Assur. Corp., Ltd. v. Martino*, 12 Misc.2d 935, 939 (Sup. Ct. Kings Co. 1958). In essence, this Act provided the negligent tortfeasor with "one free accident."

By 1946, it was clear that the Safety Responsibility Act "did not afford sufficient protection to its intended beneficiaries" (*State Farm v. Ramirez, supra*). Accordingly, in that year, the Legislature "faced the problem of making `automobile bodily injury and property damage liability insurance available to motorists unable to obtain coverage through normal channels' because of their status as `poor risks'." See Smith, "The New York Automobile Assigned Risk Plan," appearing in 4 *Examinations of Insurance Companies*, pp 453, 456 (NYS Ins. Dept. 1954). The solution it created was "an authorization to the Superintendent of Insurance to adopt, after consultation with insurers, a plan `for the equitable apportionment among . . . insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods,' and to make participation in such a plan compulsory for all New York insurers." *Aetna Cas. & Sur. Co. v. O'Connor*, 8 NY2d 359, 362 (1960).

The Legislature provided additional protection for victims of the negligent operation of motor vehicles in 1947 through the creation of the Motor Vehicle Liability Security Fund, which was designed to secure coverage "where the insolvency of a carrier doing business within this State precluded it from meeting its insurance obligation (see *State-Wide Ins. Co. v. Curry*, 43 NY2d 298, 301)." *State Farm v. Ramirez, supra*.

Compulsory Insurance

Ultimately, in 1956, after years of heated legislative debate, the Motor Vehicle Financial Security Act was enacted. This Act, which was effective February 1, 1957, provided, inter alia, for compulsory insurance of all motorists and required, as a condition

precedent to the registration of motor vehicles, the submission of proof of coverage to the registering authority. *Id.* The statutory purpose was stated to be consistent with the State's power to enact laws, within constitutional limits, "to promote the health, safety, moral or general welfare of its citizens." *Matter of Bookbinder v. Hults*, 19 Misc.2d 1062, 1063-64 (Sup. Ct. Kings Co. 1959).

As of 1957, the compulsory minimum limits for bodily injury liability coverage were \$10,000 due to injury to any one person in any one accident and \$20,000 due to injury to more than one person in any one accident. The compulsory minimum limit for property damage liability coverage was \$5,000 due to injury to, or destruction of, property of others in any one accident.

Uninsured Motorist Coverage

While the enactment of compulsory insurance was no doubt an improvement, it was immediately recognized that the Financial Security Act would not eliminate the presence of financially irresponsible motorists from our roadways. Accordingly, the Joint Legislative Committee on Insurance Rates and Regulation stated, "The last word on ousting the uninsured motorist has not been written. There are loopholes that must be plugged: the hit-and-run driver, out-of-state motorist, the stolen car involved in an accident, are some of the problems unresolved by the legislation adopted. Though injuries caused through these means constitute a relatively small percentage in the aggregate, it is of the utmost importance that the hapless victims of these unprotected encounters be safeguarded." 1956 New York Legis. Ann., p. 261 (emphasis supplied).

Accordingly, in 1958, effective January 1, 1959, the Legislature adopted the New York Automobile Accident Indemnification Act, and the Motor Vehicle Accident Indemnification Corporation Act, which, respectively, provided that automobile owners who suffered personal injuries as the result of accidents caused by uninsured motorists were to be covered by an uninsured motorist endorsement to be attached to their own insurance policy (which would also cover members of their family and others within the definition of the term "insured"), and established the MVAIC, to provide a fund from which all others

who were so injured and who came within the class of "qualified persons," as opposed to "insured persons," could seek compensation for their injuries and damages. See State Farm v. Ramirez, *supra*; see also Dachs, J., "Uninsured and Underinsured Motorist Protection," 4 N.Y. Insurance Law (Matthew Bender), §51.01[2]. The limits of liability for bodily injury under both of these Acts were \$10,000/\$20,000. There was no coverage for property damage.

No-Fault

On February 1, 1974, the No-Fault Law was enacted, under the title "Comprehensive Automobile Insurance Reparations Act." This law, which required the payment, without regard to fault, of economic losses (medical expenses, lost earnings, other reasonable and necessary expenses), subject to certain maximums, and which was intended "to reduce the cost of automobile liability insurance, as well as to provide a fair and speedy compensation" (Licari v. Elliot, 57 NY2d 230 (1982); Ohio Casualty Ins. Co. v. Continental Ins. Co., 101 Misc.2d 452 (Sup. Ct. Erie Co. 1979)), was widely recognized as yet "another step in a continuing series of measures to afford victims of motor vehicle accidents compensation for the injuries sustained." State Farm v. Ramirez, *supra*.

Supplementary Uninsured Motorist Coverage

In 1977, the Legislature realized that tortfeasors who carried no liability insurance were not the only motorists who were "financially irresponsible," and that in light of spiraling medical costs and the effects of inflation, even an insured tortfeasor's coverage may have been insufficient adequately to compensate a severely injured accident victim. Thus, effective December 1, 1977, the Legislature provided insureds an option to dramatically increase the sums recovered under the statutory uninsured motorist endorsement by purchasing "supplementary uninsured motorist" coverage, which simultaneously provided them with protection against underinsured motorists -- tortfeasors with inadequate coverage, *i.e.*, less coverage to protect them than they had purchased to protect others. (SUM coverage is now governed by the provisions of Regulation 35-D, 11 NYCRR § 60-2.3, *et seq.*) At the same time, the Legislature also provided that insureds could purchase additional No-Fault coverage above and beyond the statutory requirements.

Death Limits

In 1979, effective December 1, 1979 -- twenty-two years after the introduction of the compulsory 10/20 bodily injury liability limits -- the Legislature provided that in the case of a death caused by a motor vehicle accident, the minimum required limits would be increased to \$50,000 per person and \$100,000 for more than one person. Still, the limits for bodily injury and property damage liability remained unchanged (10/20/5).

OBEL

In 1991, effective November 12, 1991, the No-Fault Law was amended to increase the monthly income limit for lost earnings from \$1,000 to \$2,000, and a new option was introduced to purchase an additional \$25,000 of the No-Fault coverage ("OBEL"). That was the last change in the motor vehicle insurance scheme until last month.

The New 25/50//10 Law

After numerous legislative efforts to increase the minimum limits of bodily injury coverage were thwarted by vetoes during the Cuomo administration, Governor Pataki took the first opportunity to sign into law a bill increasing the compulsory limits for bodily injury for the first time in thirty-eight years. The "Statement in Support" contained in the Governor's Bill Memorandum notes that "existing 10/20 bodily injury liability limits are generally no longer adequate -- either to protect the insured motorists' assets, or, more important, to provide the injured victim proper recovery -- in the event that a motorist does cause the victim severe serious [sic] injury The existing \$5,000 minimum limit for third-party property damage no longer reflects contemporary auto repair or replacement costs. During the 1950's, when the existing \$5,000 minimum limit for property damage liability was established, the average cost of a new car was less than half the required limits. Today, the average cost of a new car is far more than double those limits." Clearly, there was a recognition in Albany that protection had eroded with the passage of time.

Accordingly, Section 1 of the new law amends the Insurance Law by requiring higher limits (\$25,000/\$50,000, rather than \$10,000/\$20,000) on the uninsured motorist coverage required for every motor vehicle principally garaged or principally used in the State (Ins. L. § 3420(f)(1)). Section 2 of the law amends the Insurance Law to require higher limits (\$25,000/\$50,000, rather than \$10,000/\$20,000) in the coverage provided by the MVAIC

to "qualified persons" injured by an uninsured motor vehicle (Ins. L. § 5210(a)). Sections 3 through 8 of the law amend the Vehicle & Traffic Law to reflect the higher mandatory insurance limits (\$25,000/\$50,000/\$10,000, rather than \$10,000/\$20,000/\$5,000) required for proof of financial security to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle, as evidenced by an owner's policy of liability insurance (VTL §§ 250(4)(a), 311(4)(a), 333, 335(a), 341, 345(b)(3)).

Section 9 of the law amends the VTL by increasing the amount required to be delivered to the Commissioner of Motor Vehicles in the case of a financial security deposit from \$25,000 to \$150,000 (VTL § 350(a)). Section 10 of the bill amends the VTL by increasing the amount of indemnity bonds or insurance policies required to be filed with the Commissioner by persons or entities engaged in the business of carrying or transporting passengers for hire, as follows: in the case of motorcycles and motor vehicles with a seating capacity of not more than 7 passengers, from a minimum liability of \$10,000 and a maximum liability of \$20,000 for bodily injury, to a minimum liability of \$25,000 and a maximum liability of \$50,000; in the case of motor vehicles with a seating capacity of 8-12 passengers, from a minimum of \$10,000 and a maximum of \$40,000 for bodily injury and a maximum of \$100,000 for death, to a minimum of \$25,000 and a maximum of \$80,000 for bodily injury and a maximum of \$150,000 for death; in the case of motor vehicles with a seating capacity of between 13 and 20 passengers, from a minimum of \$10,000 and a maximum of \$60,000 for bodily injury and \$100,000 for death, to a minimum of \$25,000 and a maximum of \$120,000 for bodily injury and a maximum of \$150,000 for death; in the case of motor vehicles with a seating capacity of between 21 and 30 passengers, from a minimum of \$10,000 and a maximum of \$80,000 for bodily injury, and a maximum of \$100,000 for death, to a minimum of \$25,000 and a maximum of \$160,000 for bodily injury and a maximum of \$200,000 for death; and, in the case of motor vehicles with a seating capacity of more than 30 passengers, from a minimum of \$10,000 and a maximum of \$100,000 for bodily injury and a maximum of \$100,000 for death, to a minimum of \$25,000 and a maximum of \$200,000 for bodily injury and a maximum of \$250,000 for death (VTL § 370(1)(a)).

And, finally, section 11 of the law amends the VTL by increasing the reference in the same section (VTL § 370(1)(a)) to property damage coverage from \$5,000 to \$10,000.

Effective Date

Section 12 of the law contains a cryptic, confusing, and, indeed, unusual effective date provision: "This act shall take effect immediately, except that sections one through eleven of this act shall take effect January 1, 1996 and shall apply to all accidents occurring on or after such date." Insofar as sections one through eleven constitute the entire law other than the effective date section, it appears that this is an instance where the exceptions swallow up the rule. In actuality, all of the provisions of the law are intended to take effect on January 1, 1996. In any event, and more importantly, the language that renders the law "applicable to all accidents occurring on or after January 1, 1996" immediately raises the question of what effect the law will have upon policies issued for 10/20/5 coverage prior to January 1, 1996 and which were scheduled to terminate after January 1, 1996? Are such policies to be deemed automatically "bumped up" to include the additional coverages notwithstanding the fact that the higher coverages were not paid for? Can the insurer in such a situation demand an additional premium to cover the increased risk for which it did not originally contract?

Once again, history may provide the guideline under which the answers to these questions may be divined. It appears that the 1979 amendment that established the 50/100 death limits in bodily injury, uninsured motorist and MVAIC coverage, and the 1991 amendment increasing the monthly wage loss limits in No-Fault cases, both of which imposed new and uncontracted for risks upon insurers, are the most analogous situations to the instant coverage limits increase, which has the same effect. Comparison to the effective date provisions of those laws and the interpretations given thereto may, therefore, once again prove enlightening.

1979 Amendment

The 1979 amendment specifically provided, in pertinent part, that it "shall take effect on the first day of December next succeeding the date on which it shall have become a law [July 11, 1979] and shall apply to any policy of motor vehicle insurance providing bodily injury property damage or physical damage coverages issued, modified, renewed or having an anniversary date after such effective date" This language clearly and explicitly established that the amendment would and could only be applicable to new and renewal

policies issued on or after December 1, 1979 and, logically, to accidents on or after that date; no question of retroactivity was raised.

1991 Amendment

By contrast, the 1991 amendment to the No-Fault law provided that it would become effective on November 12, 1991, and "shall apply to accidents arising out of the use and operation of motor vehicles on and after such date; and any policy of insurance, issued to satisfy the financial security requirements of article six or eight of the Vehicle & Traffic Law, which is in force on and after such date, and which does not contain provisions complying with the requirements of section 5102 of the insurance law, shall be construed as if such provisions were embodied therein." Thus, that law made clear that its effects were not limited to policies entered into on or after its effective date, but, rather, the increased benefits would, in effect, be applied retroactively to losses occasioned by accidents covered by policies pre-dating the amendment, whether or not the accident occurred prior to the effective date. The implementing regulations promulgated by the Superintendent of Insurance also explicitly stated that the increased benefits must be afforded for all claims existing as of November 12, 1991, not just for policies issued on or after that date. 11 NYCRR § 65.8(c). No provision was made for the insurers to recover additional premiums for the additional benefits they would be forced to pay. Reaction to that provision by the insurance industry was, predictably, a swift challenge to the constitutionality of the law. While the industry was successful in obtaining certain preliminary injunctions, eventually it was determined that because the increased premium associated with the increased benefits was so small, the best (least complicated) approach would be to wait until the following policy period and add the pertinent increase into that year's rate.

The New Law

In the case of the new law, it would appear that the only reasonable construction of the effective date language is that the increased limits will be deemed incorporated into pre-January 1, 1996 policies. Had the Legislature intended to make the increases applicable only to policies issued or renewed after January 1, 1996, it could easily have done so, as it did with respect to the 1979 amendment. Its failure to do so must be

considered knowing and intentional. See 1 McKinney's, Cons. Laws of N.Y., Statutes, §74. However, unlike the situation involving the increased No-Fault benefits in 1991, it appears that the premium increase involved in the increased minimum bodily injury limits will be significant. One recent estimate, for example, is that as a result of the new increases, rates for the approximately 1.2 million drivers in the Assigned Risk category will be raised by an average of \$240 per year. Because of the increased subsidy to Assigned Risk insureds that will eventually result from the increased minimum limits, all New York insured will be subject to an increase in their premiums regardless of the limits they currently carry. Thus, it is likely that carriers will seek and attempt to collect an increased premium on policies that were issued prior to January 1, 1996 to cover, pro rata, the increased risk for the remainder of that policy period. And, it would seem that they would constitutionally be entitled to such premiums. Of course, in the situation where the carrier, for whatever reason, does not seek an increased premium, the policy would be deemed to provide the additional coverage nonetheless.

Remaining Questions

Several questions still remain, which can only be asked, not answered, herein. For example, now that the limits for bodily injury have been increased as a result of a recognition that the coverage mandated so long ago has been rendered insufficient, will a similar increase, for the same reasons, be forthcoming with respect to the limits for death? Given the fact that the underinsured motorist coverage category of SUM coverage, as governed by Regulation 35-D, now contains an offset for the amounts recovered from the tortfeasor, and that as a result of the new law, the minimum offset in such cases will have been increased 2½ fold (i.e., from \$10,000 to \$25,000), will there be a concomitant decrease in SUM premiums? How will the increased minimum coverages affect the settlement attitudes and postures of insurers, who suddenly find themselves with a greater stake in "minimal" cases? The best we can say to all of these questions is, stay tuned.

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