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INSURANCE POTPOURRI

Update On Regulation 35-D

As we have repeatedly advised, Regulation 35-D, the State of New York Insurance Department's significant revision to SUM (Supplementary Uninsured Motorist) coverage and practice (11 NYCRR § 60-2, et seq.) became effective on October 1, 1993. Among other provisions, the Regulation required insurers to provide a notice to their insureds, containing the following information: (1) a statement that SUM coverage is available, including the SUM limits being offered for purchase; (2) the provisions set forth in subdivisions (a), (b) and (c) of [11 NYCRR] Section 60-2.1 regarding the basics of SUM coverage and an explanation of the differences between uninsured motorist coverage and supplementary uninsured motorist coverage; and (3) the examples about SUM coverage set forth in subdivision (b) of [11 NYCRR] Section 60-2.2. This requirement, however, by its terms, only applied to newly issued policies and to policies renewed between October 1, 1993 and September 30, 1994.

Chapter 425 of the Laws of 1994, signed into law on July 20, 1994, amended §3420(f)(2) of the Insurance Law by adding a new subdivision (B), requiring auto insurers to notify their insureds, in writing, at least once each year, of the availability of supplementary uninsured motorist coverage and to explain the nature of the coverage and the amounts in which it could be purchased -- similar to the requirements previously set forth in the Regulation. This statute became effective on the 90th day after it was enacted, i.e., October 18, 1994.

Shortly before the one-year period set forth in the Regulation expired, on September 16, 1994, Superintendent of Insurance

Salvatore R. Curiale promulgated, as an emergency measure, a "Second Amendment" to Regulation 35-D (§ 60-2.2(a)) -- to take effect immediately -- so as "to provide minimum standards that must be met by insurers to comply with the new law by its effective date." The Regulation now provides that "every insurer writing automobile liability insurance that satisfies the requirements of article 6 or 8 of the Vehicle and Traffic Law shall, with all new policies issued to become effective on and after October 1, 1993, and all policies renewed to become effective on and after October 18, 1994, provide a written notice" that includes the information previously set forth.

Thus, the insurer's written explanatory notice requirement is now based upon both statute and regulation.

New Statute -- Renewals

While on the subject of renewal policies, Chapter 339 of the Laws of 1994, also signed into law on July 20, 1994, but made effective on the sixtieth day after it was enacted, i.e., September 18, 1994, has amended the Insurance Law in relation to prohibiting insurers from refusing to renew an existing motor vehicle liability insurance policy solely upon the basis of the age of the insured. A new subdivision (b) has been added to Insurance Law § 3435-a, which provides as follows: "Insurers shall be prohibited from refusing to renew an existing motor vehicle liability insurance policy solely upon the basis of the named insured having reached sixty years of age and shall be prohibited for the purpose of policy renewal from requesting a physical examination or medical questionnaire solely on the basis of the named insured having reached sixty years of age unless such decision is based upon sound

underwriting and actuarial principles reasonably related to actual or anticipated loss experience."

Update On Excess/Umbrella Policies

In our last column ("SUM Coverage and Excess/Umbrella Policies," September 13, 1994), we noted, *inter alia*, that some excess or umbrella liability policies contain their own additional limits of uninsured or underinsured motorist coverage and that, therefore, as always, it is critical to obtain and read the specific policy language. In a recently decided case, *Progressive Casualty Ins. Co. v. Dursi*, NYLJ, July 22, 1994, p. 30, col. 4 (2d Dept. 1994), the insured apparently did just that and discovered, to her obvious pleasure, that her excess policy in fact provided additional underinsured motorist coverage. Her joy was short-lived, however, because a further reading of the language of the excess policy revealed that it contained a provision that required the maximum amount recoverable thereunder to be reduced by her primary underinsured motorist coverage. This reduction-in-coverage clause, which effectively wiped out the excess policy's underinsurance motorist coverage under the facts of that case, was upheld. See also *Berger v. Public Service Mut. Ins. Co.*, 177 AD2d 280 (1st Dept. 1991).

Annual Auto Insurer Rankings

It's time again (a little early this year) for the State of New York Insurance Department's "Annual Ranking of Automobile Insurance Complaints" for 1993, the latest year for which such data is available. With the cooperation of Superintendent of Insurance Curiale, we bring you statistical information on the claims-

handling ability of 59 auto insurance groups, representing 173 companies, which information can and should be taken as an indication of policyholder satisfaction. Thousands of complaints are handled by the Department's Consumer Services Bureau each year. Complaints that are upheld against an insurer, i.e., that are justified to some degree or that raise questions of fact beyond the jurisdiction of the Insurance Department, are used as the basis for the ranking.

As in the past, the complaint ratio was calculated by dividing the number of private passenger auto complaints charged against an insurer and closed by the Consumer Services Bureau in 1993 by the insurer's 1992-1993 average private passenger auto premium volume in New York State. All companies or groups of companies with at least \$5,000,000 in average private passenger auto premiums in 1992 and 1993 are included in the ranking. Companies or groups with less than \$5,000,000 in premiums are included only if they had ten or more complaints charged against them. The company with the highest ratio is ranked first in the report; the company with the lowest ratio is ranked last.

The "Top Ten"

Listed below in the first chart are the ten auto insurers with the worst performance record for the calendar year 1993. As always, we sarcastically refer to this list as the "Top Ten." It should be noted that six of these companies -- Eveready Insurance Company, Country-Wide, Cigna (Group), Lincoln National (Group), Interboro Mutual and Home Mutual of Binghamton -- appeared in last year's "Top Ten" as well and that Eveready placed in "first" for both 1992 and 1993. Winterthur U.S. Holdings appears in the

rankings for the first time because it finally meets the \$5,000,000 premium criterion discussed above.

The second chart represents the other side of the spectrum -- the real Top Ten, i.e., the ten companies with the fewest complaints against them, or the ten best performers of 1993. It should be noted that this list contains five repeat performers -- Executive Insurance Company, State-Wide Insurance Company, USAA Group, Amica Mutual, Chubb Group, and Electric Insurance Company -- and that as in 1992, Executive Insurance Company held the top rank. Although Executive is licensed to write all kinds of auto insurance, the company writes only collision and comprehensive (fire and theft) coverage.

For those interested in the specific performance records of the five largest auto insurance writers in New York State, we offer the third chart, which indicates those companies' 1993 rankings and complaint ratios.

A copy of the complete ranking is available from the Insurance Department upon request. The Insurance Department encourages any New Yorker unable to resolve a complaint against an insurance company, broker, agent or adjuster to contact its Consumer Services Bureau by writing or calling, in New York City: 160 West Broadway, New York, New York 10013, (212) 602-0203; in Albany: Agency Building One, Empire State Plaza, Albany, New York 121257, (518) 474-6600; in Buffalo: Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202, (716) 847-7618. The toll-free number is 1-800-342-3736.

The "Top Ten" - Worst Performers of 1993

<u>1993</u> <u>Rank</u>	<u>Company or Group</u>	<u>Complaint</u> <u>Ratio</u>	<u>1992</u> <u>Rank</u>	<u>1991</u> <u>Rank</u>
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1	Eveready	2.01	1	3
2	Country-Wide	1.17	7	2
3	Winterthur U.S. Holdings	1.11	N/A	N/A
4	CIGNA	0.94	6	5
5	Lincoln National	0.87	3	N/A
6	Home New York	0.81	11	44
7	Peerless	0.78	34	10
8	Merchants & Bus. Men's Mut.	0.72	38	N/A
9	Interboro Mutual	0.71	5	17
10	Home Mutual of Binghamton	0.64	8	15

The Real Top Ten - Best Performers of 1993

<u>1993 Rank</u>	<u>Company or Group</u>	<u>Complaint Ratio</u>	<u>1992 Rank</u>	<u>1991 Rank</u>
59	Executive	0.00	60	50
58	Public Service	0.00	37	9
57	Electric	0.05	52	31
56	State-Wide	0.06	58	45
55	Allianz	0.06	28	12
54	USAA	0.09	57	55
53	Amica Mutual	0.11	55	61
52	Chubb	0.12	53	47
51	Motors	0.12	46	27
50	U.S. Capital	0.14	51	4

The "Big Five" - Largest Auto Insurers in New York

<u>1993 Rank</u>	<u>Company or Group</u>	<u>Complaint Ratio</u>	<u>1992 Rank</u>	<u>1991 Rank</u>
39	Allstate	0.26	42	46
35	State Farm	0.27	36	40
49	Gov't Employees (GEICO)	0.15	49	49
22	Aetna Life & Casualty	0.41	31	29
21	General Accident	0.41	32	39

New Statistic

We have recently learned of another statistical compilation maintained by the Insurance Department, which we believe will also

be of interest to our readers -- this one involving Departmental fines for delayed payment of no-fault arbitration awards or conciliated disputes.

Under New York State law, claimants with denied or overdue claims against no-fault insurers can file for arbitration through the Insurance Department. A conciliated dispute is a settlement that has been reached between the insurer and the Insurance Department in order to avoid a formal arbitration proceeding. If a dispute, whether conciliated or arbitrated, is decided in favor of the claimant, the insurer has 30 days to pay the claim.

Unfortunately, many insurers have been negligent in paying no-fault awards and settlements. When the Insurance Department becomes aware of such instances, it orders the insurers to make immediate payments. The Department has also begun imposing a \$250.00 fine for each instance of late payment. In addition, the Department has been investigating company practices in this area during market conduct exams.

As stated by Superintendent Curiale in March of this year, "No-fault claims must be paid in a timely manner. Many doctors and consumers have already waited months -- sometimes years -- for money that is rightfully due them. It is unconscionable that these people are made to wait any longer than necessary for their payments." Superintendent Curiale then announced that, in a move he called "a strong message to the rest of the industry that delaying claim payments is a practice that will not be tolerated," he had fined 65 insurers and 6 self-insured plans a total of \$311,750 for failing to pay health care providers and consumers no-fault arbitration awards and conciliated disputes in a timely manner.

Submitted below is a list (in alphabetical order) of the insurance companies and self-insured plans that were fined, as of

January, 24, 1994, for untimely payments and the fines each was assessed. As can be seen, the two largest private automobile insurance writers in New York State -- Allstate Insurance Company and State Farm Insurance Company -- lead the list with the most violations. These companies were fined \$96,500 and \$57,500 respectively.

Violations And Fines For Delayed Payments

<u>COMPANY</u>	<u># OF VIOLATIONS</u>	<u>AMOUNT FINED</u>
Aetna Insurance Company	53	\$13,250
Agency Rent-A-Car	1	\$250
Agway Insurance Company	1	\$250
Allcity Insurance Company	36	\$9,000
Allstate Insurance Company	386	\$96,500
American Casualty Ins. Co.	1	\$250
American Casualty of Reading	4	\$1,000
American International Ins. Co.	2	\$500
American Motorists Ins. CO.	1	\$250
American Transit Ins. Co.	28	\$7,000
Atlantic Mutual Ins. Co.	6	\$1,500
Avis Rent-A-Car	4	\$1,000
Boston Old Colony Ins. Co.	2	\$500
Centennial Insurance Company	2	\$500
Chubb	1	\$250
CIGNA Insurance Company	12	\$3,000
Clarendon National Ins. Co.	3	\$750
CNA Insurance Company	8	\$2,000
Colonial Penn Ins. Co.	52	\$13,000
Commercial Union Ins. Co.	8	\$2,000
Continental Insurance Company	2	\$500
Country-Wide Insurance Company	41	\$10,250
Covenant Insurance Company	1	\$250
Eagle Insurance Company	30	\$7,500
Electric Insurance Company	2	\$500
Empire Insurance Company	16	\$4,000
Eveready Insurance Company	2	\$500
Excelsior Insurance Company	3	\$750
Federal Insurance Company	1	\$250
Fireman's Fund Insurance Company	5	\$1,250
Gallagher Basset of New York	1	\$250
GEICO	15	\$3,750
General Accident Insurance Company	84	\$21,000
Green Bus Lines	1	\$250
Greyhound Bus Lines	1	\$250
Hanover Insurance Company	17	\$4,250
Hartford Insurance Group	21	\$5,250
Home Indemnity Company	2	\$500
Home Mutual Insurance Company	2	\$500
John Hancock Prop. & Cas. Ins. Co.	1	\$250
Kemper Insurance Group	4	\$1,000
Lew Raye Service Corp.	1	\$250

Liberty Mutual Ins. Co.	26	\$6,500
Merchants Mutual Ins. CO.	22	\$5,500
Maryland Casualty Company	2	\$500
Motor Vehicle Accident Indemnification Corp. (MVAIC)	4	\$1,000
NY Central Mutual Fire Ins. Co.	22	\$5,500
National Surety Corporation	2	\$500
National Union Fire Ins. Co. of Pittsburgh, PA	6	\$1,500
Nationwide Insurance Company	6	\$1,500
National Grange Mutual Ins. Co.	7	\$1,750
National Interstate Ins. Co.	1	\$250
New Hampshire Ins. Co.	7	\$1,750
NJ Automobile Full Insurance Underwriting Association	6	\$1,500
North River Insurance Company	1	\$250
Paramount Insurance Company	1	\$250
Peerless Insurance Company	1	\$250
Prudential Property & Cas. Ins. Co.	7	\$1,750
Prudential Commercial Ins. Co.	1	\$250
Progressive Insurance Company	4	\$1,000
Providence Washington Ins. Co.	1	\$250
Reliance Insurance Company	6	\$1,500
State Farm Mut. Auto. Ins. Co.	230	\$57,500
Travelers Insurance Company	1	\$250
Transamerica Insurance Company	1	\$250
USAA	1	\$250
US Fidelity & Guaranty Company	4	\$1,000
Utica Mutual Insurance Company	5	\$1,250
United Community Insurance Co.	2	\$500
Wausau Underwriters Ins. Co.	2	\$500
Westchester Fire Ins. Co.	3	\$750
Worcester Insurance Company	1	\$250
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	1,247	\$311,750

The Lighter Side

Having endured all of the above statistics, you are probably ready for, and have certainly earned, a bit of comic relief. We submit for your perusal, therefore, the following compilation of genuine quotations recently brought to our attention which were culled from actual insurance company forms in which auto accident insureds/claimants were asked to describe the accident as succinctly as possible. We know these must be real, because no one could make them up. Grammarians pay particular attention!

"Coming home, I drove into the wrong house and collided with a tree I don't have."

"I collided with a stationary truck coming the other way."

"The guy was all over the road. I had to swerve a number of times before I hit him."

"I pulled away from the side of the road, glanced at my mother-in-law and headed over the embankment."

"In my attempt to kill a fly, I drove into a telephone pole."

"I had been driving my car for forty years when I fell asleep at the wheel and had an accident."

"I was on my way to the doctor's office with rear end trouble when my universal joint gave way causing me to have an accident."

"A car was legally parked as it backed into the other vehicle."

"I told the police that I was not injured, but on removing my hat, I found that I had a skull fracture."

"To avoid hitting the bumper of the car in front, I struck the pedestrian."

"I was sure the old fellow would never make it to the other side of the roadway when I struck him."

"The pedestrian had no idea which direction to go, so I ran him over."

"The indirect cause of the accident was a little guy in a small car with a big mouth."

"I was thrown from my car as it left the road. I was later found in a ditch by some stray cows."

"The telephone pole was approaching fast. I was attempting to swerve out of its path when it struck my front end."

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