

EMERGENCY AMENDMENT TO THE NO-FAULT REGULATIONS/THE "TOP TEN"

As we reported back on March 14, 2000¹, effective December 1, 1999, the State of New York Insurance Department contracted with the American Arbitration Association (AAA) to handle day to day responsibility for the conciliation function of the No-Fault arbitration system. One of the goals of that transfer was to improve of the efficiency of the process and allow improved oversight of the No-Fault reparations system by the Insurance Department to ensure that the overall purpose of the No-Fault Law – the provision of prompt compensation to the victims of motor vehicle accidents for their economic loss without regard to fault was served.

Unfortunately, however, in the two years since the transfer to the AAA, the efficiency of the process has not been improved and the beneficial purpose of the no-fault law has not been served. Indeed, the Insurance Department has witnessed a dramatic increase in the number of arbitrations requested to resolve disputes involving the payment of No-Fault benefits, which has caused a severe backlog of cases, with inevitable significant delays as a result. As recently noted by the Department, "Currently, there is an inventory of approximately 94,000 cases. Approximately 30,000 of those cases are pending at the AAA's Conciliation Center. The remainder have been transmitted to the AAA's Insurance Center for arbitration hearings. In the year 2000, the AAA accepted over 73,000 arbitration requests. It is anticipated that it will accept approximately 80,000 cases in 2001. Increases in the number of arbitration requests have outpaced the ability of the AAA to promptly schedule cases for arbitration. Delays of over two years have been reported in the scheduling of some cases."² The Department estimates that 97% of No-Fault arbitration requests are brought by health care providers.

In addition, the Insurance Department has noted that a large percentage of cases – as much as 60% – are closed due to withdrawal or consent awards, where the parties agree to resolve the dispute prior to the scheduled hearing. This suggests that many disputes can be resolved more efficiently; many cases can be closed without the need to schedule an arbitration hearing and many other cases have so little merit that they should not be brought in the first place. And, the Department has noted that “it has been the AAA’s experience that its conciliators have often been unable to contact knowledgeable claims personnel or that insurers have not designated responsible supervisory personnel to oversee whether their staff has expended the effort needed to review the merits of disputes in conciliation. Furthermore, too many disputes have proceeded to the arbitration stage without any meaningful communication occurring between the parties until the dates of the arbitration hearings.”³

Action By Superintendent of Insurance

Accordingly, in order to establish some controls that will deter applicants from filing unnecessary arbitration requests and to encourage dispute resolution prior to the filing of arbitration requests, and thus to halt the increase in arbitration filings and to assist the arbitration program to provide prompt resolution of disputes, on December 6, 2001, the Superintendent of Insurance announced several initiatives designed to decrease the current backlog of cases in the system. These include: (1) the appointment of an additional 40-50 new No-Fault arbitrators to handle more cases; (2) improved efficiency in the scheduling of arbitration hearings by batching cases that involve the same applicant and the same insurer, and linking cases that involve claims arising out of the same

accident; and (3) promulgating, as an emergency measure, a new amendment to the No-Fault regulations – separate from and independent of the proposed amendments that are presently under review by the courts.⁴ These new amendments, discussed below, are intended to be applicable to arbitrations filed on and after March 1, 2002.

The New Amendments

The Emergency Amendment will increase from 45 days to 60 days the period of time for the conciliation process to resolve disputes before transmitting a case to arbitration. (See amendment to §65.18[b][2][iv]). It is hoped by the Superintendent that this extended time period will assist the conciliation center to resolve more disputes prior to arbitration.

The Amendment will require the submission of all documents by the parties during the conciliation phase of the arbitration process. Specifically, the applicant will be required to submit “all documents supporting the applicant’s position along with their request for arbitration,” and “[f]ollowing this original submission of documents, no additional documents may be submitted by the applicant other than bills or claims for ongoing benefits.” See new §65.18(b)(3)(i). Within thirty days thereafter, the respondent must provide all documents supporting its position, whereupon the written record will be deemed closed. Any additional submission may be made only at the request or with the approval of the arbitrator. See new §65.18(b)(3)(ii), (iii). It is the Superintendent’s hope that the disclosure of the parties’ positions during the conciliation process will facilitate the resolution of disputes during that pre-arbitration process.

In order to expand the pool of qualified candidates for the position of No-Fault Arbitrator, the new Amendment reduces the experience requirement from ten years to five years. It is expected that this reduction will enable the Department to appoint qualified administrative law judges and others with significant experience in order to reduce the inventory of arbitrations being handled by the current No-Fault arbitrators. See amendment to §65.18(e)(2)(ii).

The new Amendment establishes a priority for those who desire a prompt resolution of their dispute and manifest that desire by not waiting for a long time after the claim is denied or becomes overdue before requesting arbitration. Thus, effective with arbitrations filed on or after March 1, 2002, “if the applicant requests arbitration within 90 days after the claim became overdue or within 90 days after receipt of the denial of claim, the arbitration shall be scheduled for a hearing within 45 days after transmittal from the conciliation center.” See new §65.18(e)(7)(ii).

Under the present No-Fault arbitration system, the cost of the process is borne almost entirely by the insurance industry – and that cost is passed along to consumers. In numerous recent cases, arbitrators have made findings that the applicant for arbitration has engaged in abusive and/or fraudulent conduct. In such cases, the applicant loses nothing but its \$40.00 arbitration filing fee. The new Amendment would permit the arbitrator to impose administrative costs upon the applicant, or apportion costs between the parties if the arbitrator concludes that the arbitration request “was frivolous, was without factual or legal merit or was filed for the purpose of harassing the respondent.” See new §65.18(e)(18)(i). This change is obviously intended to reduce the arbitration inventory by

detering the filing of arbitration requests by those who engage in frivolous or fraudulent behavior.

In addition, under the new Amendments, insurers will be able, subject to certain limitations, to offer a higher attorney's fee to settle cases in the conciliation phase of the arbitration process. This is another obvious incentive to expedite the resolution of disputes prior to arbitration. See new §65.18(f)(2)(iv).

Health Provider Assignments

The new Amendments also address several issues pertaining to the assignment of benefits to health care providers. These assignments allow the provider to seek payment directly from the No-Fault carrier and, if a dispute arises regarding payment, to initiate an arbitration proceeding or court action against the insurer. In the current system, the language of the assignments in use by many providers permit them to recover amounts from the patient that are not compensable under the No-Fault Law. These amounts could include services that are determined to be unnecessary or excessive, or billings that exceed permissible fee schedule charges. Often providers, as part of the assignment, also include a lien on any tort recovery – a practice that may encourage providers to engage in unnecessary diagnostic testing or treatment with the assurance that if they do not receive payment from the No-Fault carrier, they may recover directly from the patient by asserting a lien. The new Amendments eliminate this problem for patients by including new prescribed assignment forms, required and applicable to all claims arising from motor vehicle accidents that take place on and after March 1, 2002, which limit the direct payment by insurers to providers to amounts that are compensable under the No-Fault Law and

specifically state that the Assignee certifies that it has “not received any payment from or on behalf of the Assignor and shall not pursue payment directly from the Assignor for services provided for injuries sustained due to the motor vehicle accident....” This will protect consumers from those providers who have utilized assignment forms to recover improper and illegal charges directly from them. See new 65.15(j)(2).

Moreover, because in some cases assignments are signed by the injured person and then copied and passed from one provider to another, the authenticity of those assignments may be questionable insofar as it becomes unclear whether the injured person intended to assign the No-Fault benefits to the second and third producer down the line. The new Amendments resolve that problem by specifically authorizing the insurer to request, in writing, the original assignment or authorization to pay benefits form in order to establish or authenticate the claim. See new §65.15(j)(3).⁵

Finally, “[i]n order to improve communication between insurers, the AAA and the Department,” the Insurance Department has directed that each insurer and self-insurer submit, in writing, no later than January 21, 2002, “an action plan that will detail the manner in which it will respond to its pending caseload in both conciliation and arbitration.” That action plan “must designate a single individual who will be responsible for coordination of the insurer or self-insurer’s No-Fault arbitration program” and “will be responsible for addressing issues that may arise with either the AAA or the Department.” The plan “must include the measures that will be taken to assure adequate response to conciliation efforts and to arbitration proceedings,” including the measures that are already in place to assure that the goals of expedient response, effective communication and prompt dispute resolution will be attained.⁶

THE "TOP TEN"

It is once again that time of year when we have the privilege of reporting upon Insurance Department's "Annual Ranking of Automobile Insurance Complaints." The Annual Ranking for 2000, the latest year for which such data is available, ranks 54 insurance companies or groups of companies by the number of private passenger automobile insurance complaints upheld against them and closed by the Insurance Department in 2000, divided by their average 1999-2000 average private passenger automobile premium volume in New York State.

Thousands of complaints are handled by the Insurance Department's Consumer Services Bureau each year. In 2000, the Consumer Services Bureau closed 9,669 private passenger auto insurance complaints -- a 35% increase from 1999. (The Insurance Department also handles commercial auto complaints, which are not included in the ranking). In 2000, the Department upheld just under 2,300 private passenger auto complaints, a 28% increase from the prior year. An upheld complaint occurs when the Department agrees with a consumer that an auto insurer made an inappropriate decision. Typical complaints are those involving about monetary disputes, such as the value of a total loss. Complaints about failures to renew policies and failures to pay claims are also common.

The 2000 ranking also includes complaints regarding late payment of No-Fault arbitration awards. Total No-Fault arbitration late payment complaints totaled 173 in 2000, of which 122 were upheld. This was an increase from the 127 complaints (102 upheld) that were closed in 1999. Most auto insurers posted two or fewer upheld No-Fault

arbitration late payment complaints in 2000. Only two insurers -- Allstate and Progressive -- posted more than ten such complaints.

The 2000 overall complaint ratio for all companies or groups, including those with less than \$10,000,000 in premium, was 0.28 per \$1 million in premium. This average ratio was derived by dividing the number of complaints upheld against all those companies (2,276) by their average premium for 1999-2000 (\$8,194.3 million). Forty-five (45) of the insurers listed fared better than the 0.28 average on this year's ranking. The average complaint ratio rose from 0.22 in 1999 to 0.28 in 2000 primarily because Allstate, New York's largest writer, posted a relatively high 0.46 ratio in 2000 (its upheld complaints increasing from 590 in 1999 to 711 in 2000, while its premiums dropped slightly). As a result, Allstate dropped from 48th to 49th place in the rankings. In contrast, State Farm, the state's second largest writer, showed improvement, rising from 23rd to 14th in the ranking, with 47 fewer upheld complaints over the year, marking its third straight year of improvement. Of the ten largest auto insurers in New York, only Allstate's complaint ratio exceeded the 0.28 ratio for all insurers. Two other large insurers, Progressive and GEICO (Berkshire Hathaway) slipped in the 2000 rankings, to 32nd and 39th respectively, down from 24th and 27th, respectively, in 1999. For Progressive, this is the first year since 1997 that it has slipped below the top 25.

Three small insurers -- Erie, Harleysville and Amex -- which collectively account for less than one percent of New York's private automobile market -- finished in the first, second and third positions in the 2000 ranking, all with no upheld complaints. (These companies were ranked by the amount of premiums written).

Charts

The first chart below lists the “Top 10,” i.e., the ten companies with the fewest complaints against them, or, the ten best performers of 2000. It should be noted that this list contains five repeat performers from last year -- Erie, Interboro Mutual, Chubb, Amica and USAA. For purposes of comparison, these companies’ rankings in 1999 and 1998 are also shown.

The second chart reveals the opposite side of the spectrum; it lists the ten auto insurers with the worst performance record for the calendar year 2000. In this chart, the company with the highest ratio is ranked first; the company with the lowest ratio is ranked last. Thus, those ranked near the top of this list had the worst performance. These companies’ rankings in 1999 and 1998 are also shown. It should be noted that seven of the listed companies -- Allstate, AIG, Reliance, Leucadia, Legion, U.S. Agents Holding Corp. (listed last year as American Agents Insurance Co.), and Merchants & Business Men’s Mutual (a Liberty Mutual Company, listed separately), are repeat poor performers from 1999. Electric, which was ranked No. 1 in 1999, dropped all the way to No. 45 in 2000, and is in the bottom ten.

For those interested in the performance records of the ten largest auto insurers in New York State, we offer the third chart, which indicates those companies’ 2000 rankings, complaints ratios, and 1999-2000 premiums. As can be seen, approximately 7 out of every 10 auto insurance consumers purchase their insurance from one of these companies.

The Insurance Department notes that its rankings should not be the only factor considered when selecting an auto insurer. Price is also a major factor, as are recommendations from family and friends. The Department’s annual *Consumers Guide*

to Automobile Insurance contains representative price information for 25 New York auto insurers in addition to the Assigned Risk Plan. Copies of the guide and the ranking may be obtained free of charge by calling the Department's toll-free telephone number (800) 342-3736. In addition, both publications are accessible on the Internet at the Department's Web site address: www.ins.state.ny.us.

The "Top 10":
The 10 Best Performers of 2000

	<u>Company or Group</u>	<u>2000 Complaint Ratio</u>	<u>2000 Ranking</u>	<u>1999 Ranking</u>	<u>1998 Ranking</u>
1.	Erie	0.00	1/54	6/52	2/51
2.	Harleysville	0.00	2/54	18/52	36/51
3.	Amex Assurance	0.00	3/54	41/52	24/51
4.	Interboro Mutual	0.03	4/54	4/52	19/51
5.	Chubb & Son	0.03	5/54	10/52	10/51
6.	Amica	0.04	6/54	3/52	4/51
7.	USAA	0.04	7/54	5/52	9/51
8.	National Grange	0.07	8/54	25/52	39/51
9.	NY Central Mutual	0.08	9/54	20/52	14/51
10.	Preferred Mutual	0.08	10/54	15/52	31/51

The 10 Worst Performers of 2000

	<u>Company or Group</u>	<u>2000 Complaint Ratio</u>	<u>2000 Ranking</u>	<u>1999 Ranking</u>	<u>1998 Ranking</u>
1.	Merchant & Business Men's Mutual*	19.12	54/54	47/52	21/51
2.	Legion	7.16	53/54	52/52	—
3.	Leucadia	3.52	52/54	51/52	51/51
4.	U.S. Agents Holding Corp.**	1.34	51/54	50/52	—
5.	AIG	0.58	50/54	44/52	41/51
6.	Allstate	0.46	49/54	48/52	30/51
7.	Reliance***	0.45	48/54	49/52	47/51
8.	GE Global	0.35	47/54	34/52	48/51
9.	Tri-State****	0.32	46/54	8/52	8/51
10.	Electric	0.27	45/54	1/52	15/51

*Listed as part of Liberty Mutual Group in 1998 and 1999.

**Listed as American Agents Insurance Company in 1999. American Agents Insurance Company is in the process of liquidation.

***Reliance is in the process of liquidation by the Pennsylvania Insurance Department.

****Tri-State has disputed its upheld complaint total. The matter is currently under review by the Insurance Department.

The "Big 10"
The Largest Auto Insurers in New York

	<u>Company or Group</u>	<u>2000 Ranking</u>	<u>2000 Complaint Ratio</u>	<u>1999-2000 Average Premium (In Millions)</u>	<u>Market Share</u>
1.	Allstate	49/54	0.46	\$1,531.60	18.7%
2.	State Farm	14/54	0.09	\$949.50	11.6%
3.	Berkshire-Hathaway (GEICO)	39/54	0.21	\$932.30	11.4%
4.	Citigroup (f/k/a Travelers)	18/54	0.11	\$539.40	6.6%
5.	Progressive	32/54	0.18	\$486.90	5.9%
6.	Nationwide	44/54	0.26	\$350.80	4.3%
7.	Liberty Mutual	24/54	0.13	\$319.70	3.9%
8.	NY Central Mutual	9/54	0.07	\$246.10	3.0%
9.	CGU	28/54	0.16	\$218.10	2.7%
10.	Metropolitan	29/54	0.16	\$190.60	2.3%
	The "Big Ten"			\$5,765.00	70.4%
	Total (all companies, including those with less than \$10,000,000.00 premiums)			\$8,194.30	100.0%

1. See Dachs, N. and Dachs, J., “No-Fault Update and the Top Ten,” NYLJ, March 14, 2000, p. 3, col. 1.
2. See Regulatory Impact Statement for the Twenty-Fifth Amendment to 11 NYCRR 66 (Regulation 68).
3. See Circular Letter No. 36 (2001) (December 31, 2000).
4. See Dachs, N. and Dachs, J., “Proposed Changes to No-Fault Regulations,” NYLJ, p. 3, col. 1; “More on No-Fault,” July 11, 2000, p. 3, col. 1; “No-Fault Regulations Update,” NYLJ, September 12, 2000, p. 3, col. 1; “Court ‘86s’ Regulation 68 . . .,” NYLJ, May 8, 2001, p. 3, col.; “The ‘New’ No-Fault ‘Regulation 68,’” NYLJ, September 11, 2001, p. 3, col. 1.
5. For more on health provider assignments, see Dachs, N. and Dachs, J., “Health Provider Assignments/Derivative Claims,” NYLJ, November 14, 2000, p. 3, col. 1; “More on No-Fault Assignments: The ‘Top Ten,’” NYLJ, March 13, 2001, p. 3, col. 1.
6. See Circular Letter No. 36 (2001).