

MORE ON NO-FAULT ASSIGNMENTS / THE “TOP TEN”

In a recent column (Dachs & Dachs, Insurance Law, N.Y.L.J., November 14, 2000), we alerted you to the developing conflict in judicial opinions pertaining to the validity of assignments to health service providers where the assignment reserves to the provider the right to seek reimbursement from the patient if the insurance claim is denied. We discussed a Civil Court decision that held that an assignment by a no-fault patient to a health service provider which contained a provision that “if the sum of not collected, I will remain personally liable therefore (sic)” was “not a complete transfer of all rights possessed by the assignor to the recovery of benefits from the defendant/insurer” and, thus, “the attempted assignment is voided” (emphasis in original). *Rehab. Medical Care of New York v. Travelers Ins. Co.*, 184 Misc.2d 140 (N.Y. City Civil Ct. 2000). Although *Rehab. Medical, supra*, was rejected by a number of other courts (see *Pain Resource Center v. Travelers*, 185 Misc.2d 409 (Civil Ct. Queens Co. 2000) (Goldstein, J.); *Craniofacial Pain Management v. NY Central Mutual*, 186 Misc.2d 309 (N.Y. City Civil Ct. 2000) (Kerrigan, J.); *Rombom v. Interboro Mut. Ins. Co.*, N.Y.L.J., October 19, 2000, p. 32, col. 3 (Dist. Ct. Nassau Co. 2000) (Kluewer, J.); *Health Value Medical, P.C. v. GEICO*, N.Y.L.J., November 9, 2000, p. 24, col. 5 (Civil Ct. Queens Co. 2000) (Kelly, J.)), the New York State Insurance Department came down on the side of the *Rehab. Medical* decision.

Most recently, two more courts have entered the fray. In *Sunrise Medical Imaging v. Liberty Mutual Ins. Co.*, N.Y.L.J., February 15, 2001, p. 1, col. 4, Nassau County District Court Judge Kenneth L. Gartner, after exhaustively reviewing *Rehab. Medical* and its recalcitrant progeny, including this column, concluded that “just as the courts which have rejected *Rehab. Medical* have concluded, this court concludes that the intention of the

assignor was to convey to the plaintiff assignee the right to in the assignor's stead pursue the claim at bar" and that, therefore, "the plaintiff has standing."

As soon as the ink was dry on Judge Gartner's decision, the Appellate Term dealt *Rehab. Medical* a crushing blow. In its order of reversal (N.Y.L.J. February 9, 2001, p. 30, col. 6), the court stated: "In our view, the fact that the assignment reserved the assignee's right to collect the debt from the assignor if not collected from the insurance company did not invalidate the assignment. Travelers Insurance had written instructions from the assignor . . . to pay her insurance benefits directly to the plaintiff and no claim is made and that she had in any manner revoked or intended to revoke those instructions. Therefore, the authorization to pay no-fault benefits constitutes an assignment enabling the plaintiff health care provider to sue to recover the insurance proceeds applicable to the medical services provided."

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 1999, the latest year for which such data is available, ranks 52 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 1999, divided by their average 1998-1999 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 1999, the Consumer Services Bureau closed 7,181 private passenger auto insurance complaints alone -- down from 9,400 the year before. (The Insurance Department also handles commercial auto complaints, which are not included in the ranking). The Department upheld more than 1,784 private passenger auto complaints in 1999, a 34.2% increase from the prior year. Only complaints that are justified to some degree, i.e., in which the company was "at fault," are counted against a company and measured as part of the rankings. If a company acted in a legally responsible manner, it is not penalized. The Department does, however, also publish the total number of complaints for informational purposes. Complaints made directly to the company, rather than through the Insurance Department are not counted. Complaints about monetary settlements were the most common, followed by complaints about policy terminations.

The 1999 ranking also includes complaints regarding late payment of no-fault arbitration awards. Total no-fault arbitration late payment complaints totaled 127 in 1999, of which 102 were upheld. This was a reduction from the 161 complaints (106 upheld) that were closed last year. The Department has noted that "such complaints have declined over the past few years as auto insurers become more accustomed to the arbitration process and the fact that the Department now routinely fines insurers \$250 for each late no-fault arbitration payment." Most auto insurers posted only one or two upheld no-fault arbitration late payment complaints in 1999, with only one insurer, CGU Insurance Group, posting more than ten such upheld complaints.

The 1999 overall complaint ratio for all companies or groups, including those with less than \$10,000,000 in premium, was 0.22 per \$1 million in premium. This average ratio was derived by dividing the number of complaints upheld against all those companies (1,784) by their average premium for 1998-1999 (\$8,192.4 million). Thirty-six (36) of the 52 insurers listed fared better than the 0.22 average on this year's ranking. The average complaint ratio rose from 0.16 in 1998 to 0.22 in 1999 primarily because complaints against Allstate, New York's largest writer, more than doubled over last year (upheld complaints increasing from 276 in 1998 to 590 in 1999). As a result, Allstate dropped from 30th to 48th place, that company's worst finish in the ranking since such date was first published in 1972. In contrast, State Farm, the state's second largest writer, showed improvement, rising from 29th to 23rd in the ranking, with 35 fewer upheld complaints over the year, marking the second straight year of improvement.

Two small insurers – Electric and Guide One Specialty Mutual Insurance Company – finished in the first and second positions in the 1999 ranking, with no upheld complaints. (Electric was ranked higher because it wrote more premiums than Guide One). A perennial top-ten finisher, Amica Mutual, finished third in 1999 with only one upheld complaint. Last year's top finisher, Aegon USA Inc., is now part of the American Financial Group, which ranked 28th in 1999, an improvement over the group's 46th finish in 1998.

With \$131.5 million in premium, CNA was the largest auto insurer to crack the top ten in 1999. CNA has shown steady improvement since 1997 and ranked 9th among all insurers in 1999. Likewise, Progressive (ranked 24th) has steadily improved since 1997, even though its upheld complaints rose slightly in 1999. A sizeable increase in average premium helped Progressive improve its position in the ranking despite an increase in

complaints. Progressive is now the fourth largest private passenger automobile insurer in New York, behind Allstate, State Farm and GEICO.

Of the largest ten auto insurers in New York, seven posted year-to-year increases in upheld complaints. Metropolitan posted the best ranking among the largest insurers, finishing 16th out of the 52 ranked insurers. Liberty Mutual, an honor roll member in 1998, finished 47th in 1999 due to a doubling of its upheld complaints. Among large insurers, only Allstate, at 48th, finished worse than Liberty Mutual. With the exception of Allstate, large insurers hovered around the middle of the pack. In fact, none of the next four largest insurers after Allstate finished lower than 22nd or higher than 27th on this year's ranking.

Of the ten insurers with the highest complaint ratios, four are carry-overs from the previous year, They are: Leucadia Group, Reliance, Zurich-American, and Eveready. With over \$1.5 billion in New York premium, Allstate was by far the largest insurer to appear in the bottom ten. The lowest ranked insurer, Legion Insurance Company, posted 18 upheld complaints. Legion wrote only \$3.4 million in private passenger auto premium (physical damage coverage), far less than the \$10 million required for inclusion in the rankings. However, any insurer that generates ten or more complaints is included in the ranking regardless of size. Two auto insurers – Leucadia and Eveready – have appeared among the bottom ten insurers in each of the past three years.

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 1999. It should be noted that this list contains six repeat performers from last year -- Erie, Amica Mutual, Atlantic, Tri-State Consumer, USAA and Chubb & Son. For purposes of comparison, these companies’ rankings in 1998 and 1997 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 1999. 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 1998 and 1997 are also shown. It should be noted that three of the listed companies -- Leucadia (#51), Zurich American (#46), and Reliance (#49) are repeat poor performers from 1998.

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' 1999 rankings, complaints ratios, and 1998-1999 premiums.

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 1998

	<u>Company or Group</u>	<u>1999 Complaint Ratio</u>	<u>1999 Ranking</u>	<u>1998 Ranking</u>	<u>1997 Ranking</u>
1.	Electric	0.00	1/52	15/51	21/51
2.	Guide One	0.00	2/52	—	—
3.	Amica Mutual	0.01	3/52	4/51	2/51
4.	Interboro	0.03	4/52	19/51	4/51
5.	USAA	0.05	5/52	9/51	3/51
6.	Erie	0.05	6/52	2/51	—
7.	Atlantic	0.05	7/52	6/51	10/51
8.	Tri-State Consumer	0.06	8/52	8/51	8/51
9.	CNA	0.07	9/52	17/51	33/51
10.	Chubb & Son	0.07	10/52	10/51	13/51

The 10 Worst Performers of 1998

	<u>Company or Group</u>	<u>1999 Complaint Ratio</u>	<u>1999 Ranking</u>	<u>1998 Ranking</u>	<u>1997 Ranking</u>
1.	Legion	5.22	52/52	—	—
2.	Leucadia*	1.71	51/52	51/51	50/51
3.	American Agents Ins. Co.	0.57	50/52	—	—
4.	Reliance	0.44	49/52	47/51	—
5.	Allstate	0.37	48/52	30/51	30/51
6.	Liberty Mutual	0.30	47/52	21/51	15/51
7.	Zurich American	0.29	46/52	49/51	38/51
8.	Eveready	0.29	45/52	50/51	44/51
9.	AIG	0.28	44/52	41/51	45/51

<u>Company or Group</u>	<u>1999 Complaint Ratio</u>	<u>1999 Ranking</u>	<u>1998 Ranking</u>	<u>1997 Ranking</u>
10. Credit Suisse**	0.28	43/52	35/51	50/51

*In 1997, Leucadia and General Electric comprised one group.

**In 1997, Credit Suisse was known as U.S. Winterthur Holdings Group.

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

<u>Company or Group</u>	<u>1999 Ranking</u>	<u>1999 Complaint Ratio</u>	<u>1998-1999 Average Premium (In Millions)</u>
1. Allstate	48/52	0.37	\$1,590.60
2. State Farm	23/52	0.14	\$979.20
3. Berkshire-Hathaway (GEICO)	27/52	0.15	\$865.50
4. Progressive	24/52	0.14	\$542.50
5. Citigroup*	22/52	0.14	\$537.30
6. Nationwide	40/52	0.26	\$373.50
7. Liberty Mutual	47/52	0.30	\$344.40
8. CGU	36/52	0.20	\$255.60
9. NY Central Mutual	20/52	0.12	\$243.50
10. Metropolitan	16/52	0.08	\$167.00

*In 1997 and 1998, Citigroup was known as the Travelers Group.