

## **THE "TOP TEN"/NO-FAULT UPDATE/INSOLVENCY & SUM COVERAGE**

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 2001, the latest year for which such data is available, ranks 51 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 2001, divided by their average 2000-2001 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 2001, the Department upheld just under 2,478 private passenger auto complaints, an 8.9% 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 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 2001 ranking also includes complaints regarding late payment of No-Fault arbitration awards. The number of upheld No-Fault arbitration late payment complaints was 242, nearly double the amount of the year before. A large portion of this increase is attributed to a rise in the number of No-Fault arbitration decisions over the year. Most auto insurers posted two or fewer upheld No-Fault arbitration late payment complaints in 2001. Three insurers -- Allstate, GEICO and Merchants & Business Men's Mutual -- posted more than twenty such complaints, accounting for nearly 30% of all upheld No-Fault late payment complaints.

The 2001 average complaint ratio for all companies or groups, including those with less than \$10,000,000 in premium, was 0.29 per \$1 million in premium, up from 0.28 in 2000. This average ratio was derived by dividing the number of complaints upheld against all those companies in 2001 (2,478) by the average premium for 2000-2001 for all companies (\$8,609.2 million).

Five relatively small insurers – which collectively account for only approximately 1.4% of New York’s private passenger automobile market – posted no upheld complaints. Of those five insurers, Erie Insurance Group was the largest, with \$34.5 million in average annual premiums. This is the second consecutive year that Erie, a perennial top ten finisher, posted no upheld complaints. The four other companies with no upheld complaints in 2001 were Farm Family Casualty Insurance Company, Eveready Insurance Company, the Atlantic Companies Group and Guide One Specialty Mutual Insurance Company. Another perennial top ten finisher, Amica Mutual Insurance Company, finished sixth in the ranking, with just one upheld complaint.

Of the ten largest auto insurers in New York State, only three (Allstate, Progressive and Eagle) exceeded the 0.29 average for all insurers. Allstate, the State’s largest insurer, with 17.6% of the market, improved its ranking from 49<sup>th</sup> in 2000 to 40<sup>th</sup> in 2001, as its number of upheld complaints fell to 569 – a 20% decrease from the prior year.

New York’s second-largest writer, State Farm, with 12.2% of the market, also showed improvement in 2001, rising from 14<sup>th</sup> to 11<sup>th</sup> in the ranking. This was the fourth consecutive year that State Farm improved its standings and constituted State Farm’s highest finish in over a decade. Although the number of upheld State Farm complaints

actually rose by 10.2% in 2001, its \$100 million year-to-year increase in premium volume more than offset the increase in complaints.

GEICO (Berkshire Hathaway), the third largest New York insurer, with 12.0% of the market, also registered a sizable increase in premiums in 2001. Although GEICO's upheld complaints increased slightly over the prior year, its rank improved from 39<sup>th</sup> in 2000 to 22<sup>nd</sup> in 2001.

Citigroup (Travelers), the fourth largest New York insurer, with 6.6% of the market, ranked 13<sup>th</sup>, an improvement over its 18<sup>th</sup> place finish in 2000. It should be noted that Citigroup began to spin-off Travelers Property/Casualty Companies in early 2002.

### 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 six repeat performers from last year -- Erie, Amica, National Grange, Chubb, Interboro Mutual, USAA and New York Central Mutual. For purposes of comparison, these companies' rankings in 2000 and 1999 are also shown. Companies listed in boldface finished among the top 25 auto insurers in each of the past three years.

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 2000 and 1999 are also shown.

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' 2001 rankings, complaints ratios, and 2000-2001 premiums. As can be seen, approximately 70% of auto insurance consumers purchase their insurance from one of these ten 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](http://www.ins.state.ny.us).

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

	<u>Company or Group</u>	<u>2001 Complaint Ratio</u>	<u>2001 Ranking</u>	<u>2000 Ranking</u>	<u>1999 Ranking</u>
1.	<b>Erie</b>	0.00	1/51	1/54	6/52
2.	<b>Farm Family</b>	0.00	2/51	12/54	17/52
3.	Eveready	0.00	3/51	38/54	45/52
4.	<b>Atlantic Mutual</b>	0.00	4/51	20/54	7/52
5.	<b>Guide One Specialty Mutual</b>	0.00	5/51	11/54	2/52
6.	<b>Amica</b>	0.01	6/51	6/54	3/52
7.	<b>National Grange</b>	0.05	7/51	8/54	25/52

	<u>Company or Group</u>	<u>2001 Complaint Ratio</u>	<u>2001 Ranking</u>	<u>2000 Ranking</u>	<u>1999 Ranking</u>
8.	<b>Chubb</b>	0.07	8/51	5/54	10/52
9.	<b>USAA</b>	0.07	9/51	7/54	5/52
10.	Interboro Mutual	0.09	10/51	4/54	4/52

### **The 10 Worst Performers of 2000**

	<u>Company or Group</u>	<u>2001 Complaint Ratio</u>	<u>2001 Ranking</u>	<u>2000 Ranking</u>	<u>1999 Ranking</u>
1.	Merchant & Business Men's Mutual*	18.10	51/51	54/54	47/52
2.	Leucadia	4.82	50/51	52/54	51/52
3.	Clarendon	1.08	49/51	26/54	—
4.	Great American	1.00	48/51	31/54	28/52
5.	Safeco	0.87	47/51	36/54	11/52
6.	AIG	0.64	46/51	50/54	44/52
7.	Credit Suisse	0.59	45/51	41/54	43/52
8.	GE Global	0.51	44/51	47/54	34/52
9.	Allianz	0.44	43/51	42/54	33/52
10.	Tri-State Consumer	0.43	42/51	46/54	8/52

\*Listed as part of Liberty Mutual Group in 1999.

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

	<u>Company or Group</u>	<u>2001 Ranking</u>	<u>2001 Complaint Ratio</u>	<u>2000-2001 Average Premium (In Millions)</u>	<u>Market Share</u>
1.	Allstate	40/51	0.38	\$1,514.70	17.6%
2.	State Farm	11/51	0.09	\$1,049.50	12.2%
3.	Berkshire-Hathaway (GEICO)	22/51	0.19	\$1,033.60	12.0%
4.	Citigroup (f/k/a Travelers)	13/51	0.13	\$565.10	6.6%
5.	Progressive	34/51	0.31	\$451.00	5.2%
6.	Liberty Mutual	27/51	0.21	\$358.90	4.2%
7.	Nationwide	24/51	0.20	\$354.00	4.1%
8.	NY Central Mutual	12/51	0.10	\$277.80	3.2%
9.	Metropolitan	28/51	0.21	\$220.70	2.6%
10.	Eagle	36/51	0.33	\$218.10	2.5%
	The "Big Ten"			\$6,043.40	70.2%
	Total (all companies, including those with less than \$10,000,000.00 premiums)			\$8,609.20	100.0%

**No-Fault Update**

On February 25, 2003, the Court of Appeals accepted the Notice of Appeal filed by the New York State Trial Lawyers Association, and its co-Petitioners, the New York Public Interest Research Group, the Center for Justice and Democracy, the Medical Society of the State of New York and several other health professional organizations, the Suffolk County Bar Association, two small business, four individual health providers and an

individual policyholder, in their fight against the State Insurance Department's new No-Fault Regulations ("Regulation 68"). It is the Petitioners' contention that Regulation 68 is anti-consumer, and that the likely effect of its extremely shortened deadlines will be to trip up honest consumers and make it difficult for them to receive their No-Fault insurance benefits. For example, under these new Regulations (which remain in effect pending the outcome of the appeal), a consumer could lose all benefits for an accident simply by missing a 30-day deadline for submitting a notice of claim to the proper carrier. A broad coalition of consumer advocates, health providers and lawyers have urged that steps to eliminate the pervasive problem of insurance fraud not be so harsh as to hurt honest consumers.

In accepting the Petitioners' appeal "as of right," the Court of Appeals denied their simultaneously filed motion for leave to appeal as "unnecessary." This can be seen as an indication that the Court views the case as raising one or more constitutional issues. The two constitutional issues raised by the appellants are: (1) Regulation 68 so radically transforms the No-Fault system that it constitutes an act of legislation rather than regulation, and this is an impermissible incursion on the jurisdiction of the legislature; and (2) the State Insurance Department impermissibly delegated rule-making authority to private insurance companies when it allowed them to set standards for excusing late filings of notice of claim and proof of claim, as well as the standards for requiring examinations under oath.

We will, of course, continue to follow and keep our readers updated on the course of this significant appeal.

## Insurer Insolvency

In American Manufacturers Mut. Ins. Co. v. Morgan, 296 AD2d 491, 746 NYS2d 726 (2d Dept. 2002), the court held that, under Regulation 35-D, any situation wherein the tortfeasor's carrier has become insolvent (in liquidation) – whether covered by the Security Fund or not; whether the Fund has money or not – is an uninsured motorist situation and, in such an instance, the Claimant is entitled to pursue UM benefits under his or her policy.

In its decision, the court held that this issue was not governed by the Court of Appeals' decision in State-Wide v. Curry, 43 NY2d 298 (1977) – which had made the distinction between insolvencies that were covered by a Security Fund and those which were not so covered – and expressly rejected the holding in the only reported post-Regulation 35-D case on the issue to date – GEICO v. Silber, 178 Misc.2d 451 (Sup. Ct. Nassau Co. 1998).

Pursuant to Morgan, supra, in a Regulation 35-D case involving insurer insolvency, the Claimant can proceed to SUM arbitration. If the SUM carrier wishes to pursue a subrogation claim against the tortfeasor and the insolvent insurer, it would then have to pursue a claim from the Security Fund, with the attendant delays and risks of non-payment that are, at least at the present time, inherent therein. As stated by the court, quoting the Superintendent of Insurance, "The individual insured for supplementary uninsured motorists coverage should not be required to wait for a recovery from the Security Fund on behalf of the insolvent insurer. Since the SUM insurer has a subrogation right against the insolvent insurer, the Security Fund would still remain liable, but the insured would be provided a more prompt recovery from his or her own insurer."

It should be noted and kept in mind that certain language in the Morgan decision seems to distinguish the 35-D SUM rule from the rule applicable in cases involving basic, mandatory UM coverage under 3420(f)(1). In non-Regulation 35-D UM cases, the old rule, and the distinction between covered and non-covered insolvencies, still applies. See *Eagle Ins. Co. v. St. Julian*, 297 AD2d 737, 747 NYS2d 773 (2d Dept. 2002).