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MORE NEW INSURANCE LAWS AFFECTING MOTORISTS

In our last column, we wrote about four new laws that impacted upon the practice of uninsured motorist, underinsured motorist and supplementary insured motorist law -- the elimination of the need for a court order preliminary to arbitration of an infant's UM/SUM claim; the elimination of the requirement to file proof of service; the requirement for disclosure of bodily injury limits; and the increase in SUM limits required to be offered. See Dachs, N. and Dachs, J., "Four New Laws for Motorists", NYLJ, 11/10/97, p. 3, col. 1. Following publication of that article, we discovered that we had missed one -- a fifth new law, effective January 8, 1998, which will no doubt bare heavily on the practice of this area of insurance law. This new law, discussed more fully below, deals with notices of cancellation -- specifically an increase in the civil penalty option to avoid a suspension of an automobile registration for non-maintenance of insurance coverage. We also wish to take note of another new law, effective January 1, 1998, which deals with insurance coverage for chiropractic care -- another issue that concerns motorists and those injured in automobile accidents.

Several recent articles in these pages have thoroughly discussed the requirements for a valid cancellation of an automobile liability insurance policy under the applicable governing statutes, rules and regulations -- including Vehicle and Traffic Law §§313, 318; Vehicle and Traffic Law §370 (governing "for hire vehicles"); Banking Law §576 (governing premium finance companies); the Rules of the New York Automobile Insurance Plan (governing Assigned Risk policies); and the Rules of the Commissioner of Motor Vehicles. See Mitchell S. Lustig, "Cancellation of Private Passenger Auto Insurance Under §313", NYLJ, March 14, 1997, p. 1, col. 1; "Cancellation of an Automobile Policy by a Premium Finance Company", NYLJ, October 3, 1997, p. 1, col. 1.

The one constant in this area is that strict, literal compliance with the statutes and the rules is an absolute prerequisite to a valid cancellation. See *Barile v. Kavanaugh*, 67 NY2d 398, 502 NYS2d 977 (1986).

The Rules of the Commissioner of Motor Vehicles, 15 NYCRR §34.6, and Vehicle and Traffic Law §313 and 318, provide, in pertinent part, that all notices and acknowledgments of termination sent to an insured by an insurance company upon termination or non-renewal must include, in no less than 12-point type, (1) a statement that proof of financial security is required to be maintained continuously throughout the registration period; (2) a notice indicating the punitive effects of the failure to maintain continuous proof of financial security – i.e., that “your registration will be subject to suspension. If your vehicle is still uninsured after 90 days, your driver’s license will be suspended”; and (3) a notice of the actions that may be taken by the insured to avoid those punitive effects – that if there is a lapse in insurance coverage of 90 days or less, the law permits the insured to avoid suspension of his or her registration by the payment of a per diem civil penalty, up to 90 days for which the insurance was not in effect. This grace provision applies only once during any 36-month period.

Prior Law

Until 1991, the applicable civil penalty prescribed by the statutes and rules was \$4.00 per day. By Chapter 166 of the Laws of 1991, the civil penalty was increased from \$4.00 per day to \$6.00 per day. Thereafter, demonstrating just how seriously the courts took the direction to strictly construe the statutes and rules governing notices of cancellation (as well as just how slowly insurers in this State are known to make necessary changes to their printed forms) numerous cases –up to and including 1997 --held that notices of cancellation which continued to refer to the old, outdated civil penalty amount were invalid and ineffective. See *Dunn v. Passmore*, 228 AD2d 472, 644 NYS2d 283 (2d Dept. 1996); *Allstate Ins. Co. v. Satchell*, 223 AD2d 374, 639 NYS2d 339 (1st Dept. 1996);

Liberty Mutual Ins. Co. v. Hartford Ins. Co., NYLJ, 12/22/94, p. 30, col. 5 (Sup. Ct. Queens Co.); *State Farm Mut. Auto Ins. Co. v. Fisher*, NYLJ, 7/13/93, p. 31, col. 5 (Sup. Ct. Queens Co.); see also *Foster v. Abram*, ___AD2d___, 662 NYS2d 899 (4th Dept. 1997).

New Law

Just when most, if not all, insurers have managed to get their acts, and their forms, together, the civil penalty amount has now been increased again. By Chapter 678 of the Laws of 1997, effective January 8, 1998, §318 of the Vehicle and Traffic Law has been amended to increase the civil penalty payable to avoid suspension from \$6.00 to \$8.00. As a result of this amendment, all insurers licensed to write automobile coverage in New York have been advised by letter from Richard E. Jackson, Sr., Commissioner of the Department of Motor Vehicles, dated December 19, 1997, that “as required by Part 34.6 (b) of the Commissioner’s Regulations, the notice or acknowledgment of termination which you send to insured persons must contain information on the civil penalty option. The dollar amount in your notice should conform with the new \$8.00 fee, effective January 8, 1998. Please make this fee change in any communication with insured persons about to be terminated.”

Given past experience, it is likely that this most recent amendment will provide a new frontier for litigation over the validity of cancellations for many years to come. Carriers have been forewarned to change their forms accordingly. Insureds and their attorneys, as well as uninsured motorists carriers to whom claims may be made, should similarly be alert to and on the lookout for notices of cancellation which are invalid and ineffective— simply by virtue a mere \$2.00 error.

Other Aspects of Amendment

The same statutory amendment that increases the civil penalty option, also contains several other interesting provisions. In recognition of the increasing concern about the

rising number of uninsured drivers that operate vehicles in this State, and the fact that although the DMV currently has a recording system to register vehicles and their insurance payment status, that system can be cumbersome and the information gathered thereby can be inaccurate and out-of-date for as long as 4-5 months, this new legislation gives the Superintendent of Insurance, the DMV Commissioner and the state and local police “the tools needed to ensure that the state has an up-to-date database to ensure that only insured motor vehicles are operated in this State.” See 1997 Session Laws of N.Y., Legis. Memo, Ch. 678 (McKinney’s). As more specifically stated elsewhere in the Legislative Memorandum, the purpose of the legislation is “to establish a pilot program to create and maintain an up-to-date insured motorist identification database to reduce the number of uninsured vehicles that are being operated in this state and ultimately establish an instant on-line registry of motor vehicle insurance to accurately identify uninsured motor vehicles, with particular attention directed to livery vehicles. This program shall also reduce the administrative costs that are currently being imposed on insurers, the Department of Motor Vehicles and the consumer to identify and track uninsured drivers.” The key provisions of the legislation are summarized below.

Section 2 of the new Act adds a new § 405 (11) of the Insurance Law, to require the Insurance Department, in preparing its annual insurance fraud report, to assess the activities of law enforcement and insurance companies, to detect and curtail the incidence of uninsured operation of a motor vehicle.

Section 3 amends § 313 (2) of the Vehicle and Traffic Law , to require all automobile insurers to transfer to the Department of Motor Vehicles (DMV) information on automobile insurance policies issued, within 30 days. The effective date for this requirement is no later than January 1, 2000, but can be as early as September 1, 1999.

Section 4 adds a new § 313 (4) to the Vehicle and Traffic Law, to direct the Commissioner of Motor Vehicles to establish a pilot program to create and maintain an up-

to-date insured motorist identification database. The program must include the following elements:

a. Auto insurers must submit within 30 days information on all cancelled, terminated or non-renewed insurance policies and all new policies issued, either electronically or by paper copy, and other pertinent information as required by the Commissioner.

b. The database is to be easily accessible to law enforcement officials to assist them in identifying and curtailing the operation of uninsured vehicles.

c. In developing the database, the Commissioner shall consult with insurers and the Insurance Department to find a cost efficient standardized system of organizing, recording and transferring such information to minimize insurer and agency costs. Further, the Commissioner shall utilize, to the maximum extent possible, nationally recognized systems such as those developed by the American National Standards Institute or the American Association of Motor Vehicle Administrators to minimize insurers' efforts to comply with § 313 (2) and § 313 (4) of the Vehicle and Traffic Law.

d. Either simultaneously or after the up-dated data base system is established, a computer bar code system shall be established to identify all insured vehicles. The bar code may be imprinted on a vehicle registration sticker or on a sticker to be affixed to the insured's license plate. Such bar code will enable authorized persons to access information that will help police easily identify and stop the operation of uninsured vehicles.

e. The program must give the Department of Motor Vehicles (DMV) the flexibility it needs to design an effective system by permitting DMV to initially limit the scope of the program to certain classes of vehicles or exempt other classifications of vehicles such as large commercial fleets.

f. It must also establish confidentiality protections to ensure that DMV cannot sell or release the information it collects, limits disclosure of such information to authorized personnel in the performance of their official duties, and ensure that motorists' privacy interests are respected.

g. The database bar code system is to be implemented within two years after the effective date of this bill, and gives DMV the ability to postpone such systems' implementation for a period of time not to exceed eighteen months, if such program is not ready.

h. DMV is required to forward to automobile insurers, at least one a year, a listing of all registrants it has on file as insureds of that company. The insurer will be obligated to review that information for accuracy within 30 days.

i. The Commissioner shall periodically report to the Legislature on the status of the pilot program. Also, after the program becomes operational, the Commissioner shall make recommendations on how to minimize or eliminate current paperwork burdens placed on insurers and the department to register and license vehicles in this state. The Commissioner shall look at eliminating or simplifying the issuance of insurance identification cards, proof of financial security and certificate of insurance paper work.

Section 5 amends § 317 (3) of the Vehicle and Traffic Law, to fund this program by utilizing increased penalties imposed on uninsured drivers, monies that may be obtained from the Motor Vehicle Theft and Insurance Fraud Prevention Fund, and assessing a pro rata fee on insurers subject to this section.

Section 6 amends § 318 1-a(b) of the Vehicle and Traffic Law, as stated above, to increase from \$6.00 to \$8.00 per day, the fine on drivers operating a motor vehicle without insurance. This increase in fines is to be used to support the bill's pilot program.

Section 7 establishes a temporary panel on registry of insurance to explore the feasibility of establishing an instant on-line registry that can accurately identify uninsured vehicles, so that law enforcement officials have the required information to remove uninsured vehicles from this State's roads. The panel must determine the feasibility of establishing, by January 1, 1999, a pilot program for instant on-line electronic data for insurers writing policies on livery vehicles.

Chiropractic Care Coverage

Many New Yorkers injured in automobile accidents elect to treat with chiropractors. However, as many unfortunately have come to learn, chiropractic treatments were frequently not covered under many health insurance contracts issued in this State.

By Chapter 426 of the Laws of 1997, effective January 1, 1998, and applicable for policies and contracts issued, renewed or modified on or after that date, Insurance Law §§3216(i); 3221; and 4303 have been amended to expand access to chiropractic care by requiring health insurers and HMOs to provide coverage by a licensed doctor of chiropractic. Specifically, under this new law, every policy which is a "managed care product"-- i. e., a policy which requires that medical or other health care services, other than emergency care services, be provided by, or pursuant to, a referral from a primary health care provider and that the services provided be rendered by a health care provider participating in the insurer's managed care health network -- must include coverage for chiropractic care provided by a licensed doctor of chiropractic "in connection with the detection or correction by manual or mechanical means of structural imbalance, distortion or subluxation in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column." Insurers and HMOs that offer contracts that are not "managed care products," which include coverage for physicians' services, must now provide coverage for at least 15 visits per year during calendar years

1998 and 1999. Additional visits during those years may also be covered, subject to review and approval by the insurer.

Insurance contracts that are not “managed care products” are prohibited from subjecting the first 15 chiropractic visits to prior review and approval requirements unless physicians' office visits are subjected to similar prior review and approval. Through December 31, 1999, after the first 15 visits (visit number 16 and up), non-managed care products may subject chiropractic care visits to prior review and approval requirements even if similar requirements are not imposed upon physicians' office visits. After December 31, 1999, neither managed care products nor non-managed care products may subject any chiropractic care visits to prior review and approval unless similar requirements are imposed upon physicians' office visits.

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