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REGULATORY AND STATUTORY AMENDMENTS/"TOP 10"

In our column in July of last year, in discussing the interesting and significant Court of Appeals decision in *Mostow v. State Farm Ins. Co.*, 88 NY2d 321, 645 NYS2d 421 (1996), on the issue of the ambiguity in the "Limits of Liability" section of some policies wherein the "per accident" limits were not expressly made "subject to" the "per person" limits, we noted that the "Maximum Sum Limits" section of Regulation 35-D's SUM endorsement suffered from precisely the same defect as had been found in *Mostow*. We also noted that this ambiguity "creates a problem that can only be remedied by amending the provision," and commented that "There is, of course, no way to tell just how long it will take the Insurance Department and the insurers to make the appropriate changes" to the Regulation. See, Dachs, N. and Dachs, J., "Policy Limits: Taking Nothing For Granted:", NYLJ, July 29, 1996, p. 3, col. 1. We are pleased to announce that, in fact, the Insurance Department has acted both aggressively and promptly in amending the Regulation in response to *Mostow*.

By "Second Amendment to Regulation 35-D", promulgated by the Superintendent of Insurance as an emergency measure effective August 15, 1996, sections 60-2.1(e) and 60-2.3(e), Condition 6 of the Regulation were amended specifically to state that the "per accident" limits of the SUM coverage are "subject to" the limit for one person. Section 60-2.2(b) of the Regulation -- the section that sets forth the four examples illustrating the proper application of SUM coverage -- was amended to reflect the statutorily increased minimum limits from "10/20" to "25/50". Finally, sections 60-2.3(a) and (b) of the Regulation were amended by providing that although these changes were effective August 15, 1996, insurers were given until January 1, 1997 to actually amend their original SUM endorsements accordingly.

The emergency "Second Amendment to Regulation 35-D" became a proposed Amendment on November 6, 1996, but had not been adopted within the allotted 45-180 period because, inter alia, the required forms were not prepared. Thus, the "Second Amendment" was re-promulgated as a new emergency measure, on January 23, 1997, with an effective date of February 3, 1997. That Amendment was adopted on February 26, 1997.

It should be noted that the Second Amendment to Regulation 35-D is prospective only and only affects SUM cases and not liability policies, which may or may not be governed by the Mostow decision, depending upon the wording of the split limit provision of the policy. [ALWAYS READ THE POLICY!].

At least one SUM arbitrator has refused to apply Mostow to a pre-amendment Regulation 35-D case, on the theory that it would be unfair and inappropriate to apply the rule of resolving ambiguities against the insurer to the language in Regulation 35-D's SUM endorsement because all insurers were required to utilize the endorsement form promulgated by the Insurance Department and had no control over, or choice of, the words used therein. Olmstead v. State Farm Ins. Co., AAA Case No. 15 S 200 00092 96 (Thomas Bogen, Arbitrator).

New Laws

Recently enacted legislation (Chapter 488 of the Laws of 1996) amended the Insurance Law by adding a new section 340, which requires insurers to report "within a reasonable period of time" to a "central reporting organization" of their choosing all claims filed for bodily injury, wrongful death and death benefits under any policy that provides liability coverage for injury to persons. Claims for medical malpractice,

workers' compensation "or similar insurance required by law" and no-fault benefits are excluded from this requirement. Perhaps of greatest significance to practitioners in this area, the new law provides that "the central reporting organization shall in turn report this information to the Department of Social Services." A "central reporting organization" is defined as "any entity which receives from, assimilates or disseminates information to insurers or the department of social services regarding bodily injury, wrongful death and death benefits." This law became effective February 4, 1997.

Practitioners in the area of automobile insurance law may have noticed in recent years that two separate and distinct versions of Vehicle and Traffic Law §313, the section that deals with notices of cancellation, appeared in the statute books -- one which was effective until January 31, 1997 and one which was to become effective on January 31, 1997. Those anticipating a change in the law on January 31, 1997 should be advised, however, that by amendment effective July 13, 1996 (Chapter 309 of the Laws of 1996, §77), the effective date of the "old" section 313 was extended until January 31, 2002 and the effective date of the "new" version was changed January 31, 2002. Thus, at least for the next five years, §313 remains status quo.

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 1995, the latest year for which such data is available, ranks 57 insurance companies or groups of companies by the number of automobile insurance complaints upheld against them as a percentage of their average 1994-1995 auto premium.

Because many complaints closed in any given year are initiated the previous year, the complaint ratios are computed using an average of two years' premium data.

The ranking includes both voluntary and residual market (New York Automobile Insurance Plan or "Assigned Risk") experience. All companies or groups of companies with at least \$5,000,000 in average annual private passenger auto premiums in 1994 and 1995 are included in the ranking. Companies or groups with less than \$5,000,000 in premiums are not included unless they had ten or more complaints charged against them.

Thousands of complaints are handled by the Insurance Department's Consumer Services Bureau each year. In 1995, the Department closed 12,812 private passenger auto insurance complaints alone. Only complaints that are justified to some degree are counted against a company and measured as part of the rankings. Complaints made directly to the company, rather than through the Insurance Department are not counted. Complaints about money settlements are the most common complaints, followed by complaints about policy terminations. By listing the companies in terms of the ratio of complaints to average annual premiums, consumers are able easily to compare small companies with large companies. The Department does, however, also publish the total number of complaints for informational purposes.

The 1995 overall complaint ratio for all companies or groups, including those with less than \$5,000,000 in premium, was 0.21 per \$1,000,000 in premium. Stated another way, this means that the average auto insurer had roughly one upheld complaint for every \$5,000,000 in premium it wrote in New York State. The State's two largest auto writers fared better than average in the 1995 ranking, continuing a trend of more than a decade. Allstate, the largest writer, with an 0.17 ratio, is ranked 32, while State Farm, the second largest writer, is ranked 33 with 0.18.

The first chart below lists the ten auto insurers with the worst performance record for the calendar year 1995. As always, we sarcastically refer to this list as the "Top 10." 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. For purposes of comparison, these companies' ranking in 1994 and 1993 are also shown. It should be noted that six of the listed companies -- Country-Wide, Continental, Eagle, Winterthur Holdings, AIG and American Financial -- appeared in last year's "Top 10" as well.

The second chart represents the other side of the spectrum -- the real Top 10, i.e., the ten companies with the fewest complaints against them, or, the ten best performers of 1995. It should be noted that this list contains three repeat performers -- State-Wide, Amica Mutual and Chubb. It should also be noted that all of the top four best performers -- State-Wide, Netherlands, Tri-State Consumer and CIGNA -- had a 0.00 complaint ratio, i.e., they had no complaints upheld against them.

Finally, 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' rankings and complaints ratios.

A copy of the complete 1995 ranking is available from the Insurance Department upon request. The Department encourages any New Yorker unable to resolve a complaints against an insurance company, broker, agent or adjuster to contact its Consumer Services Bureau by writing or calling it at: 160 West Broadway, New York, New York 10013 (212) 602-0203; Agency Building One, Empire State Plaza, Albany, New York 12257 (518) 474-6600; or 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 10":
The 10 Worst Performers of 1995

	<u>Company or Group</u>	<u>1995 Complaint Ratio</u>	<u>1995 Ranking</u>	<u>1994 Ranking*</u>	<u>1993 Ranking*</u>
1.	Country-Wide	1.29	57	50	58
2.	Continental	0.56	56	49	26
3.	Eagle	0.56	55	58	43
4.	Winterthur Holdings	0.54	54	56	57
5.	AIG	0.49	53	55	34
6.	American Financial	0.49	52	57	23
7.	Interboro Mutual Indemnity	0.48	51	43	51
8.	Eveready	0.45	50	3	59
9.	Leucadia	0.40	48	38	49
10.	USF&G	0.38	48	23	30

*Rankings for 1994 and 1993 were revised to reflect a change in the methodology in 1995 from listing insurers with the most complaints first, to listing insurers with the best performance, i.e., the least complaints, first.

The Real "Top 10":
The 10 Best Performers of 1995

	<u>Company or Group</u>	<u>1995 Complaint Ratio</u>	<u>1995 Ranking</u>	<u>1994 Ranking*</u>	<u>1993 Ranking*</u>
1.	State-Wide	0.00	1	4	4
	Netherlands	0.00	2	41	53
	Tri-State Consumer	0.00	3	12	13
	Cigna	0.00	4	51	56
2.	Amica Mutual	0.03	5	7	7
3.	Electric	0.04	6	2	3
4.	Allianz Indemnity	0.05	7	40	5
5.	St. Paul	0.06	8	46	12
6.	America	0.06	9	36	46
7.	Chubb & Sons	0.06	10	6	8

*Rankings for 1994 and 1993 were revised to reflect a change in the methodology in 1995 from listing insurers with the most complaints first, to listing insurers with the best performance, i.e., the least complaints, first.

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

	<u>Company or Group</u>	<u>1995 Ranking</u>	<u>Number of "Upheld" Complaints</u>	<u>Complaint Ratio</u>	<u>1994-1995 Average Premium (In Millions)</u>
1.	Allstate	32	250	0.17	\$1,445.722

2.	State Farm	33	195	0.18	\$1,067.719
3.	Government Employees	14	41	0.08	\$532.299
4.	New York Central Mutual Fire	18	25	0.10	\$258.837
5.	Nationwide	15	20	0.08	\$256.535
6.	Leucadia	49	100	0.40	\$247.820
7.	General Accident	44	80	0.33	\$243.183
8.	Aetna Life & Casualty	37	50	0.22	\$236.117
9.	Travelers	17	21	0.09	\$229.731
10.	Liberty Mutual	16	18	0.08	\$229.481

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