LEGISLATIVE AND CASE LAW DEVELOPMENTS IN UM/UIM/SUM LAW – 1997

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The areas of uninsured motorist (UM), underinsured motorist (UIM), and supplementary uninsured motorist (SUM) insurance coverage continued in 1997, as in prior years,[1] to be extremely active areas of litigation. The past year also saw an unusual amount of legislative activity in these complex and ever-changing areas of the law. Although space does not permit me to summarize or refer to all of the numerous UM, UIM, and SUM cases decided in 1997, the purpose of this article is to highlight selected significant decisions and statutory developments from that year.

LIMITS OF LIABILITY - SUM COVERAGE

Until recently, pursuant to Insurance Law section 3420(f)(2) and Regulation 35-D (11 NYCRR 60-2.3, et seq.), insurers were required to offer SUM coverage in an amount to match the insured's bodily injury liability limits, but only up to the amount of $100,000 per person/$300,000 per accident. [Insurers could, and often did, offer higher limits -- subject to the limits of the bodily injury liability coverage).

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Pursuant to a statutory amendment passed during the 1997 legislative session, and effective March 9, 1998, the limits of SUM coverage required to be offered up the bodily injury limits of the claimant's policy were increased to $250,000 per person and, subject to the limit for one person, $500,000 per accident, or a combined single limit of $500,000 per accident. The amended statute further provides that the insurer can still offer only a $100,000/$300,000 policy, but only if it also offers to the insured a personal umbrella policy that covers supplementary uninsured motorist coverage and has limits "up to at least $500,000." See, L. 1997, Ch. 568, eff. March 9, 1998, amending Ins. L. §3420(2)(A). [At the time of this writing, Regulation 35-D was not yet amended to reflect this statutory amendment.]

PURCHASE OF SUM COVERAGE

By statutory amendment in 1994, Insurance Law §3420(f)(2)(B) required auto insurers to notify their insureds, in writing, at least once each year, of the availability of SUM coverage and to explain the nature of the coverage and the amounts in which it could be purchased -- similar to the requirements of Regulation 35-D. Thus, the insurers' written explanatory notice requirement was now based upon both statute and regulation.

Pursuant to a statutory amendment passed during the 1997 legislative session, and effective March 9, 1998, Insurance Law §3420(f)(2)(B) now requires the SUM insurer to provide to the consumer at least once a year a notification of the availability of SUM coverage, which may be more simplified than the notice it must send to the consumer when he or she first purchases SUM coverage, but which must include: (1) "a concise statement that supplementary uninsured/underinsured motorist coverage is available"; (2)

"an explanation of such coverage" and (3) "the coverage limits that can be purchased from the insurer."

The rationale behind this amendment is that by providing the consumer with a more simplified notice, he or she will be more likely to read it and may, in turn, be more readily aware of the optional SUM coverages available. In addition, simplifying the notices will also have a benefit to the insurers by cutting down on unnecessary printing and mailing costs.

It should be noted that these statutory and regulatory provisions remove SUM coverage from the general common law rule that there is no common law duty of an insurance company or its agency to advise, guide or direct a client to coverage not already provided in his or her policy. See *Murphy v. Kuhn*, 90 NY2d 266, 660 NYS2d 371 (1997); *Brownstein v. Travelers Cos.*, 235 AD2d 811, 652 NYS2d 812 (3d Dept. 1997); *Jefferson v. Parker Brokerage Company, Inc.*, NYLJ, August 4, 1997, p. 29, col. 5 (Sup. Ct. Queens Co.).

In all cases, an agent or broker may be held liable for failing to procure insurance requested by the insured. In such cases, liability is measured by that which would have been borne by the insurer had the requested policy been in force. "A broker who negligently fails to procure a policy stands in the shoes of the insurer, and is liable to indemnify the plaintiff for any judgment which would have been covered by the policy." See *Gorgone v. Regency Agency*, 238 AD2d 308, 656 NYS2d 622 (1st Dept. 1997).

NOTICE OF CLAIM

UM, UIM and SUM endorsements - - including the new mandatory UM endorsement and Regulation 35-D's SUM endorsement -- require the claimant, as a condition precedent to the right to apply for benefits, to give timely notice to the insurer of an intention to make a claim. Although most endorsements, including the new mandatory UM endorsement, require such notice to be given "within 90 days or as soon as practicable", Regulation 35-D's SUM endorsement requires simply that notice be given "as soon as practicable". Under either approach, a claimant may forfeit coverage by failing promptly to notify the insurer of a potential claim.

Last year, I noted a discrepancy in the decisions of the First and Second Departments on the issue of whether an insurer's actual knowledge of the accident (and of the claimant's injuries) as a result of receipt of a No-Fault claim may constitute sufficient notice to satisfy the UM or SUM notice requirement. Cases in the First Department have held such notice to be sufficient, while cases in the Second Department have rejected such an argument,[2] while cases in the Second Department have rejected such an argument[3].

In 1997, the Third Department entered into this fray, weighing in on the side of the Second Department. In _Progressive Ins. Co. v. Morales_, 236 AD2d 672, 653 NYS2d 193 (3d Dept. 1997), the Third Department held that the fact that the insurer had actual notice of the accident within three days of its occurrence by virtue of its receipt of the insured's No-Fault claim, did not mean that the insured was excused from failing to comply with the notice requirement of his UM policy. Thus, notice of a UM claim made more than three years after the accident was untimely and vitiated the UM coverage.

And, in _Nationwide Insurance Co. v. De Rose_, 241 AD2d 607, 659 NYS2d 342 (3d Dept. 1997), the same court stated that "the requirement in an insurance policy to provide written notice `as soon as practicable' means that "[a]n insured must give notice to his insurance company within the time limit provided in the policy or within a reasonable time under all the circumstances" [citations omitted]. The reasonableness of the notice depends upon the circumstances of each case [citations], and the fact that the insurance company has notification of the accident `does not vitiate the breach of the policy requirement' [citing _Progressive v. Morales_, supra.]" See also, _Matan v. Nationwide Mutual Ins. Co._, 243 AD2d 978, 663 NYS2d 906 (3d Dept. 1997). In _De Rose_, supra, a delay of more than one year in serving written notice of claim was held to be unreasonable. But cf. _Allstate Ins. Co. v. Povol_, N.Y.L.J., October 7, 1997, p. 29, col. 5 (Sup. Ct. Orange Co.).

Several other cases decided in 1997 held delays in providing the required notice of various periods to be unreasonable as a matter of law. See _State Farm Mut. Auto Ins. Co. v. Grund_, 243 AD2d 557, 662 NYS2d 845 (2d Dept. 1997) (more than 2 years); _DeLeon v. MVAIC_, 243 AD2d 475, 662 NYS2d 820 (2d Dept. 1997) (almost 3 years); _Lukralle v. Durso Supermarkets, Inc._, 238 AD2d 318, 656 NYS2d 292 (2d Dept. 1997) (5 months); _Liberty Mut. Ins. Co. v. Dombroski_, 235 AD2d 606, 651 NYS2d 711 (3d Dept. 1997) (nearly 14 months).

New Law re: Disclosure of Bodily Injury Limits

Prior to January 8, 1998, neither the statutes nor the Regulation provided a means for the claimant to obtain the tortfeasor's policy information necessary to facilitate

compliance with the supplementary uninsured/underinsured motorist notice requirements. No mechanism existed for obtaining disclosure of the tortfeasor's policy limits other than through CPLR discovery mechanisms available after a lawsuit against the tortfeasor has been commenced -- mechanisms that were almost never prompt enough for the purpose for which they were required.

As a result of these difficulties, claimants often resorted to putting their SUM carriers on notice of a *potential* SUM claim even before they knew if such claim existed, thus requiring the carriers to open and process files and set up reserves even on cases where no claim might actually arise. Other claimants waited until all the facts were in and, by doing so, vitiated the coverage under their policies.

By amendment to Insurance Law §3420(f)(2)(A), passed during the 1997 legislative session, and effective January 8, 1998, these difficulties were ameliorated by mandating prompt disclosure of the tortfeasor's limits and thus facilitating and accelerating the trigger comparison, making it simpler and easier to make claims against the SUM insurer "as soon as practicable," restoring certainty to SUM claims from the standpoint of the insurer, and reducing the insurer's costs of file maintenance. This was accomplished by requiring the insurer of any owner/operator of a motor vehicle that may be liable for damages to an insured/SUM claimant, i.e., the tortfeasor, to disclose, within 45 days of a written request and of disclosure of the claimant's own bodily injury and SUM limits, the bodily injury insurance limits of the tortfeasor's coverage. The time for the SUM claimant to make a claim against his or her own carrier for SUM benefits is tolled while the tortfeasor's carrier fails to disclose this coverage. The failure by an insurer to comply with the provisions of

this new statute is deemed an unfair claim settlement practice under Insurance Law section 2601.

INSURER'S DUTY TO PROVIDE PROMPT WRITTEN NOTICE OF DENIAL OR DISCLAIMER

One of the definitions of an "uninsured" motor vehicle is one which was covered by a policy of insurance at the time of the accident, but the insurer subsequently disclaims or denies coverage. To protect injured parties who may be vitally affected by such a denial or disclaimer, the Legislature has provided that all liability insurers must "give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage to the insured and the injured person or any other claimant." See Ins. L. §3420(d). Failure by the insurer to give such reasonably timely and specific notice may result in the insurer being precluded from relying upon a breach of a policy condition or an exclusionary provision in the policy.

In *Nigro v. General Accident Ins. Co. of New York*, 239 AD2d 482, 658 NYS2d 963 (2d Dept. 1997), a delay of approximately six months was held to be unreasonable as a matter of law. See also *Taradena v. Nationwide Mut. Ins. Co.*, 239 AD2d 876, 659 NYS2d 646 (4th Dept. 1997) (10 month delay); *General Accident Ins. Co. v. Lobritto*, 240 AD2d 493, 658 NYS2d 438 (2d Dept. 1997) (9 months); *Aetna Life Ins. Co. v. Boucher*, 238 AD2d 414, 656 NYS2d 316 (2d Dept. 1997) (delay of "about one year"); *Aetna Life & Cas. Co. v. 57th Street Management Corp.*, 235 AD2d 379, 652 NYS2d 73 (2d Dept. 1997), mot. for leave to appeal denied, 90 NY2d 803, 661 NYS2d 179 (1997) (more than two

years); _Unigard Ins. Group v. Bothwell_, 237 AD2d 450, 655 NYS2d 77 (2d Dept. 1997) (over two years).

On the other hand, in _Liberty Mutual Ins. Co. v. Dombroski_, 235 AD2d 606, 651 NYS2d 711 (3d Dept. 1997), the court held that a delay in disclaiming of 3 ½ months was "by no means unreasonable" in view of the insureds' unexcused failure to complete and return the requested forms. Similarly, in _DeSantis Brothers v. Allstate Ins. Co._, ___AD2d __, 664 NYS2d 7 (1st Dept. 1997), lv. to appeal denied, 91 N.Y. 2d 808, 669 NYS2d 261 (1998), the court held that a 31-day delay necessitated by a review of a 500-page file and the conduct of legal research before sending notice of disclaimer was "not unreasonable for purposes of Insurance Law §3420(d)." See also _Murphy v. Hanover Ins. Co._, 239 AD2d 323, 657 NYS2d 740 (2d Dept. 1997) (delay of less than one month not unreasonable as a matter of law; not reasonable as a matter of law either -- issue of fact presented).

There is no set time limit for a denial or disclaimer based upon the fact that no coverage existed. See _Bailey v. Allstate Ins. Co._, 243 AD2d 520, 663 NYS2d 97 (2d Dept. 1997); _Empire Group Allcity Ins. Co. v. Cicciaro_, 240 AD2d 362, 658 NYS2d 112 (2d Dept. 1997); _Liberty Mutual Ins. Co. v. Allstate Ins. Co._, 237 AD2d 260, 654 NYS2d 403 (2d Dept. 1997).

CANCELLATION OF INSURANCE POLICIES

Another type of "uninsured" motor vehicle is where the policy of insurance had been canceled prior to the accident.

It is well–established that in order for a notice of cancellation to be effective, strict compliance with the statues and the rules and regulations of the Commissioner of Motor Vehicles is required, and the statutes, rules and regulations are strictly construed.

In *Makawi v. Commercial Union Insurance Company*, __ AD2d __, 664 NYS2d 470 (2d Dept. 1997), the court reiterated the well-established rule that an insurer may effectively cancel its policy "by mailing a notice of cancellation to the address shown on the policy, provided that it submits sufficient proof of mailing, regardless of whether the notice is actually received by the insured."

Last year, I noted that among the requirements for a notice of cancellation is a specification that suspension of the automobile registration for non-maintenance of insurance coverage can be avoided by the payment of a civil penalty of $6.00 per day for each day the coverage is not in effect. See VTL § 313; 15 NYCRR §34.6 (b). I also noted that this provision is so strictly construed that in several cases where the notice incorrectly stated the amount of the civil penalty, the cancellation was held to be invalid.

One case in which the Supreme Court held the error in the amount of the civil penalty was "inconsequential" was *Foster v. Abrams*, 167 Misc.2d 909, 640 NYS2d 417 (Sup. Ct. Erie Co. 1996), which involved a notice of cancellation issued by a premium financing company under Banking Law §576. In 1997, the Fourth Department modified *Foster v. Abrams*, at 242 AD2d 952, 662 NYS2d 899 (4th Dept. 1997), holding that a premium finance agency must comply with all of the requirements of Banking Law §576, including those incorporated by reference, and that the notice of cancellation in that case

was ineffective where it erroneously informed the insured that he could avoid suspension of his registration during the period of lapse by the payment of a daily fine that was less than the amount stated in the regulation ($4.00 instead of $6.00).

NOTE: By L. 1997, Ch. 678, effective January 8, 1998, the Vehicle and Traffic Law was amended by increasing the civil penalty option for an insurance lapse from $6.00 per day to $8.00 per day. See VTL §318. As required by Part 34.6 (b) of the Commissioner's Regulations, all notices of termination or cancellation effective January 8, 1998 must contain the reference to the $8.00 penalty.

In *Eagle Ins. Co. v. Gervais*, 242 AD2d 572, 662 NYS2d 524 (2d Dept. 1997), lv. to appeal denied 91 NY2d 804, 668 NYS2d 559 (1997), the court held that "In order to cancel a policy of insurance, an insurer must mail a final premium bill in accordance with the Rules of the New York Automobile Insurance Plan. A proper bill must be mailed at least 15 days prior to the date that payment is due and must state, inter alia, the amount of the premium being billed, the due date, and the balance due (NYAIP §14[E][2]). In addition, an insurer must send a notice of cancellation which complies with the Rules of the NYAIP §18(2) and Vehicle and Traffic Law §313. In order to effectuate a cancellation, a proper final premium bill must have been mailed [citations omitted]. There is, however, no requirement in either the Rules of the NYAIP or in the Vehicle & Traffic Law, that the notice of cancellation must be separate from the final bill, only that the actual cancellation be subsequent to the mailing of the final bill, since the premium does not become due and owing until the payment date stamped on the final bill."

See also *Allcity Ins. Co. v. Aslam*, NYLJ, September 6, 1997, p. 27, col. 6 (Supreme Ct. NY Co.) ("Although the better practice would be to send a final bill separately and then

a cancellation notice, nothing in the Vehicle & Traffic Law or the Rules of the NYAIP prohibits the combination of a final bill and cancellation notice into one document.)[4]

In *Eagle Insurance Company v. Lopez*, _ AD2d _, 667 NYS2d 64 (2d Dept. 1997), the court held that an effective cancellation had been demonstrated notwithstanding the fact that the notice of cancellation recited as unpaid an amount that included, inter alia, an installment that had come due after the mailing of the bill.

In *Preferred Mutual Ins. Co. v. Rollo*, 172 Misc.2d 631, 658 NYS2d 837 (Sup. Ct. Rockland Co. 1997), the court held that the failure of a premium finance company to state in its notice of cancellation that the insured had the right to review of the cancellation by a committee of the Assigned Risk Plan and the address to which a request for such review should be directed, as required by Section 19 of the New York Automobile Insurance Plan, rendered the notice ineffective to cancel the policy.

Another requirement for a valid cancellation is that the billing notice advise the insured that payment could be rendered "through his producer or directly to the company." See New York Automobile Insurance Plan, Rule 14[E] (2) (b). In several cases decided in 1997, the courts held that the failure to so advise the insured rendered purported cancellations for non-payment of premium invalid and ineffective. See *Eagle Ins. Co. v. Ahmed*, 241 AD2d 522, 663 NYS2d 988, (2d Dept. 1997); *Home Indemnify Co. v. DeMartinez*,, 240 AD2d 580, 659 NYS2d 890 (2d Dept. 1997) (even though billing notice actually showed addresses of both the insurer and the broker); *Allcity Ins. Co. v. Aslam*, supra.

In *Wilson v. MVAIC*, 242 AD2d 636, 662 NYS2d 561 (2d Dept. 1997), the insurer canceled a liability policy issued on a livery cab by filing a notice of termination with the Commissioner of Motor Vehicles in accordance with the provisions of Veh. & Traffic L. §370, applicable to vehicles for hire, livery cabs, but additionally elected to send a notice of cancellation to its insured in purported compliance with Veh. & Traffic L. §313. On those facts, the court held that the purported termination was ineffective because "the additional notice could have caused the insurer confusion over her duties and obligations under the financial security provisions of the Vehicle & Traffic Law."

ARBITRATION – Waiver of Right to Stay Arbitration

Last year, I noted numerous cases in which it was held that a party's participation in arbitration also operates as a forfeiture of the right to appellate review of a judgment or order denying a petition to stay arbitration. One such case was *Commerce and Industry Ins. Co. v. Nester*, 230 AD2d 795, 646 NYS2d 527 (2d Dept. 1996).

In 1997, the Court of Appeals affirmed *Commerce and Industry Ins. Co. v. Nester* at 90 NY2d 255, 660 NYS2d 366 (1997), holding that "a party forgoes its opportunity for appellate review of a denial of an application to stay arbitration when it proceeds to the arbitration without seeking temporary judicial relief pending the determination of the appeal, even if it believes that its request for such an interim stay will result in summary denial. ... [T]he application for a temporary stay pending appeal must be deemed a necessary and appropriate step and must be directed to a judicial tribunal competent to grant such relief, whether it has a stated or unstated policy or track record against granting such interim

relief...." Cf. *DeMartinez v. Home Indemnity Co.*, 240 AD2d 575, 659 NYS2d 892 (2d Dept. 1997) (insurer did not participate in arbitration and did not, therefore, waive its right to appeal the denial of its petition to stay arbitration.)

Petitions to Stay Arbitration

Pursuant to CPLR 7503(c), an application to stay arbitration must be made within 20 days after receipt of a demand for arbitration or notice of intention to arbitrate. Such an application may be commenced by the filing and service of a notice of petition or an order to show cause and petition, which may be served on the claimant individually, or on the claimant's attorney if the attorney's name appears on the demand or notice. Service must be made by regular methods of service available for service of a summons, or by registered or certified mail, return receipt requested.

In *National Union Fire Ins. Co. v. Hugee*, 173 Misc.2d 619, 661 NYS2d 744 (Sup. Ct. N.Y. County 1997), the petition was timely filed within 20 days after receipt of the Demand for Arbitration and proof of service of the Notice of Petition was timely filed within 15 days after the expiration of the 20-day period. However, service of the Notice of Petition and Petition was not accomplished within 20 days of receipt of the Demand. Respondent's contention that the Petition was, therefore, untimely was rejected by the court, which held that "In light of CPLR sections providing for the commencement - by - filing and for service by mail of applications to stay arbitration, the relevant sentences of CPLR 7503(c) should be read as follows: Mail service of an application to stay arbitration is timely if the application is posted within the 'prescribed period' for service under CPLR 306-b (a), i.e., within fifteen days after the 20-day period of limitations ends."

In *Progressive Ins. Co. v. Stoddard*, 235 AD2d 704, 651 NYS2d 763 (3d Dept. 1997), the petitioner attempted to serve by certified mail, but instead of affixing the return receipt card on the back of the envelope, enclosed it in the envelope. This error precluded the petitioner from obtaining a properly endorsed return receipt and thereby rendered the service to be by ordinary mail and, therefore, ineffective.

In *Adamba Imports International Inc. v. Poly Trade Int'l Inc.*, NYLJ, July 10, 1997, p. 26, col. 6 (Sup. Ct., N.Y. Co.), the court held that a Notice of Petition or Order to Show Cause must contain a proper return date; the failure to do so, such as specifying a Saturday return date, is a jurisdictional defect.

New Law Eliminating Requirement of Filing of Proof of Service

Pursuant to CPLR 306-b, proof of service must be filed within 15 days of the expiration of the 20-day period.

Effective January 1, 1998, and applicable to all proceedings commenced on or after that date, CPLR §306-b was repealed and an entirely new §306-b was added. The new §306-b, inter alia, completely eliminated he requirement of filing proof of service. The new statute also eliminated the "deemed dismissed" provisions of the former law, for cases in which proof of service had not been timely filed, and introduced and allowed for court discretion to extend the time for service under certain circumstances.

Burden of Proof

In New York Central Mutual Fire Ins. Co. v. Marchesi, 238 AD2d 135, 655 NYS2d 515 (1st Dept. 1997), mot. for leave to appeal denied, 90 NY2d 806, 663 NYS2d 511 (1997), the court noted that the burden is on the party seeking a stay of arbitration to make a record justifying that relief, which must include a copy of the arbitration agreement (unless, of course, the ground for the stay is the non-existence of an agreement to arbitrate.)

In State Farm Mut. Auto Ins. Co. v. Roman, 239 AD2d 590, 658 NYS2d 991 (2d Dept. 1997), the court reiterated the well-established rule that "in a proceeding to stay arbitration of an uninsured motorist claim, the petitioner bears the initial burden of proving that the offending vehicle was insured at the time of the accident. If the petitioner meets this burden, the burden shifts to the party seeking to disclaim coverage to prove that the vehicle was not insured by it at the time of the accident by demonstrating that it had canceled the policy prior to the accident. See also Interboro Mut. Indem Ins. Co. v. Quichiz, 238 AD2d 421, 657 NYS2d 352 (2d Dept. 1997); Eagle Ins. Co. v. Viera, 236 AD2d 612, 654 NYS 678 (2d Dept. 1997).

Trial de Novo

Last year, I noted that Regulation 35-D eliminated the right to a trial de novo following an arbitration award that exceeded the statutory minimum coverage amounts. Yet, many pre-Regulation 35-D are still winding their way through the courts.

In *Aetna Life and Cas. Co. v. Catalano*, 236 AD2d 342, 654 NYS2d 574 (2d Dept. 1997), the court held that under a policy provision permitting either party to demand a trial de novo where the amount of the arbitration award exceeds the limit specified by the applicable financial responsibility law, the right to make such a demand does not depend upon whether two or three arbitrators concur in the award.

In *Povinelli v. Royal Ins. Co.*, 171 Misc.2d 826, 656 NYS2d 140 (Sup. Ct. Erie Co. 1997), the court held that the right to a trial de novo under a UIM policy is not the right to a jury trial.

Arbitration of Infants' Claims

Effective August 5, 1997, CPLR §1209 (`Arbitration of controversy involving infant, judicially declared incompetent or conservatee') was amended to eliminate the need to seek a court order when submitting an infant's personal injury claim to arbitration where the claim is brought pursuant to Insurance Law §§3420(f)(1) or (2) – the sections governing UM/UIM/SUM coverage. See L. 1997, Ch. 365.

Toll

In Bright v. Pagan, 236 AD2d 350, 653 NYS2d 645 (2d Dept. 1997) the court held that the statute of limitations for commencing a personal injury action against the tortfeasor is not tolled during the time in which an uninsured motorist issue is being arbitrated. CPLR 204(b).

WORKERS' COMPENSATION LIEN

In Shutter v. Philips Display Components Co., 235 AD2d 904, 652 NYS2d 427 (3d Dept. 1997), *rev'd.* 90 NY2d 703, 665 NYS2d 379 (1997), the Court of Appeals held that a Workers' Compensation insurance carrier was not entitled to an offset of a claimant's net recovery from an uninsured motorist policy against the claimant's future Workers' Compensation benefits under Workers' Compensation lien and offset provisions for employees injured by the negligence or wrong of another who pursues a remedy against such other, where the claimant had obtained Workers' Compensation benefits arising out of single car accident, which occurred during the course of her employment, in which she was injured while riding as passenger, and she subsequently sought and obtained uninsured motorist insurance benefits from her automobile insurance company. The Court specifically rejected the insurer's contention that the lien and offset provisions of the Workers' Compensation Law were not limited to actions against third-party tortfeasors.

As stated by the Court, "Where the claim is made against the injured worker's uninsured motorist coverage, the recovery is predicated on that insurer's contractual obligation to assume the risk of loss associated with an uninsured motorist on the insured's behalf in exchange for the payment of premiums. Although liability will be measured by the

damages caused by the tortfeasor, the insurer's obligation to pay is not derived from any relationship with or duty owed to the tortfeasor [citations omitted]." See Robert Grey "Outside Counsel" article annexed hereto.

But see, *Gentile v. Liberty Mutual Ins. Co.*, NYLJ, Sep. 25, 1997, at 32, col. 5 (Sup. Ct. Nassau County) (decided before the Court of Appeals' reversal in *Shutter*, supra.)

CONCLUSION

As has been seen, lawyers, judges and legislators alike were quite busy last year in the areas of UM, UIM and SUM insurance law. Judging from the number of decisions that have already come down in 1998, this year promises to be an extremely active one as well. I look forward to once again reporting on significant developments in a future article.

ENDNOTES

1. See Dachs, Jonathan A., "Developments in Uninsured and Underinsured Motorist Coverage," 69 NYS Bar Journal 18 (September/October 1997).

2. See e.g., *Travelers Ins. Co. v. Dauria*, 24 AD2d 259, 637 NYS2d 697 (1st Dept. 1996); *Travelers Ins. Co. v. Morzello*, 221 AD2d 291, 623 NYS2d 111 (1st Dept. 1995); but see *Lumbermens Mutual Cas. Co. v. Fadeyeva*, 243 AD2d 668, 663 NYS2d 177 (1st Dept. 1997) ("Respondent's unsworn letter stating that they were applying for no-fault benefits is not compliance with the proof of claim requirement").

3. See e.g., *Nationwide Ins. Co. v. Bietsch*, 224 AD2d 623, 639 NYS2d 707 (2d Dept. 1996); *American Home Ins. Co. v. Ceballos*, 224 AD2d 612, 639 NYS2d 397 (2d Dept. 1996).

4. For an interesting discussion of the *Gervais* decision and its place in the jurisprudence of this State, see Lustig, Mitchell, "Cancellation of Assigned Risk Auto Policies: A New Era Under 'Colby Gervais" Decision?" NYLJ, January 8, 1998, p. 1, col. 1, and Letter to the Editor by Alan H. Krystal, NYLJ, January 12, 1998, p. 2, col. 6.