

INSURANCE LAW

The Insurance 'Top 68' And SUM Legislation Update

It is our privilege once again to report upon the "Annual Ranking of Automobile Insurance Complaints," prepared by the New York State Department of Financial Services (formerly the New York State Department of Insurance). In addition, following up on our previous column ("SUM Legislation—Good News/Bad News," NYLJ, March 12, 2013), we report below on the most recent legislative activity involving Supplementary Uninsured/Underinsured Motorist (SUM) coverage.

2012 Ranking

The 2012 "Annual Ranking of Automobile Insurance Complaints," which is based upon data for the calendar years 2010-2011, ranks all 169 automobile insurance companies doing business in New York State. As was the case last year, this year's report ranks the individual companies themselves, rather than just the corporate groups of which those companies may be members. This change is intended to give consumers a more accurate picture of their insurers' performance. As in the past, insurers are ranked based upon a complaint ratio, which is determined by the number of private passenger automobile insurance complaints upheld against them and closed by the Department of Financial Services in 2010, as a percentage of their total private pas-



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senger automobile premium volume in New York State.

In 2011, the department's Consumer Assistance Unit received a total of 4,780 private passenger auto insurance complaints (down from 6,426 the year before), of which 484 (down from 621) were upheld. Neither commercial auto complaints nor complaints made directly to the insurer are included in determining the complaint ratios. Complaints not upheld by the Insurance Department or withdrawn by the consumer are also not included in the ratio.

An upheld complaint occurs when the department agrees with a consumer that an auto insurer made an inappropriate decision. Typical complaints are those involving such issues as delays in the payment of no-fault claims, and insurers that do not renew policies. Complaints about the value of monetary settlements are the most common, followed by complaints about policy terminations.

The 2011 average complaint ratio for all companies or groups was 0.0471 per \$1 million in premiums (down from 0.0619 the previous year). This average ratio was

derived by dividing the number of complaints upheld against all companies in 2011 (484) by the average premium for 2010-2011 for all companies (\$10.28 billion). The average number of upheld complaints per company was 2.9 (down from 3.5 the previous year).

Charts

The first chart below lists the "Top 68," i.e., the 68 companies with the fewest upheld complaints against them, or, the best performers of 2011—all of which achieved a complaint ratio of 0.00. Although these companies all have the same complaint ratio, they are ranked differently because of the differences in the average annual premiums paid or received.

The second chart reveals the opposite side of the spectrum; it lists the 25 auto insurers with the worst performance record for the calendar year 2011, i.e., the "Bottom 25." In this chart, the company with the highest (worst) ratio is ranked first; the company with the lowest ratio is ranked last.

Copies of the Department of Financial Services' annual Consumers Guide to Automobile Insurance and the annual 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: <http://www.dfs.ny.gov/insurance/cauto.htm>. Complaints against insurance companies may be filed online at <http://www.dfs.ny.gov>.

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The 68 Best Performers of 2011

	Company/Group	2011 Complaint Ratio	2011 Complaint Total	2011 Upheld	2010-11 Avg. Premium (Millions)
1.	Kemper Independence/Unltrn	0.00	14	0	55,999
2.	Progressive Northwestern/Progressive	0.00	7	0	43,555
3.	Great Northern/Chubb	0.00	2	0	28,317
4.	Merchants Preferred/Merchants Mutual	0.00	12	0	27,237
5.	Main Street America/Main Street America	0.00	8	0	27,202
6.	Unltrn Auto & Home/Unltrn	0.00	7	0	25,004
7.	Utica National/Utica National	0.00	9	0	23,915
8.	Old Dominion/Main Street America	0.00	2	0	23,072
9.	Encompass Indemnity/Allstate	0.00	6	0	20,229
10.	Unltrn Preferred/Unltrn	0.00	5	0	20,213
11.	Commerce & Industry/American Intl	0.00	3	0	19,840
12.	Encompass/Allstate	0.00	10	0	19,471
13.	Auto Ins. Co. of Hartford, Ct./N/A	0.00	4	0	19,342
14.	TravCo/Travelers	0.00	2	0	18,538
15.	Foremost/Zurich	0.00	7	0	18,442
16.	Economy Premier/Metropolitan	0.00	3	0	17,655
17.	Bankers Standard/ACE, Ltd.	0.00	0	0	17,625
18.	Travelers Indemnity/Travelers	0.00	8	0	15,475
19.	21st Century Indemnity/Zurich	0.00	4	0	12,988
20.	Nationwide Affinity/Nationwide	0.00	3	0	11,736
21.	Ameriprise/Ameriprise Auto & Home	0.00	3	0	10,949
22.	Charter Oak Fire/Travelers	0.00	2	0	10,614
23.	Encompass Home & Auto/Allstate	0.00	3	0	10,509
24.	Electric/N/A	0.00	2	0	10,422
25.	Nationwide Mut. Fire/Nationwide	0.00	9	0	10,358
26.	Republic-Franklin/Utica National	0.00	1	0	10,231
27.	Citizens/Hanover	0.00	0	0	8,296
28.	American Modern Home/Munich Reins.	0.00	0	0	7,334
29.	Hartford Accident & Indemnity/Hartford	0.00	6	0	6,994
30.	Encompass Prop. & Cas./Allstate	0.00	0	0	6,741
31.	21st Century Premier/Zurich	0.00	0	0	6,598
32.	Nationwide Prop. & Cas./Nationwide	0.00	0	0	6,512
33.	Massachusetts/Bay/Hanover	0.00	1	0	5,786
34.	Unltrn Advantage/Unltrn	0.00	2	0	5,696
35.	Central Mutual/Central Mutual	0.00	1	0	5,365
36.	Associated Indemnity/Allianz	0.00	0	0	5,254
37.	Response Worldwide/Unltrn	0.00	2	0	5,171
38.	American Bankers/Assurant	0.00	1	0	5,153
39.	National General/Am. Trust Financial	0.00	1	0	5,110
40.	Vigilant/Chubb	0.00	2	0	4,924
41.	Standard Fire/Travelers	0.00	0	0	4,623
42.	American Automobile/Allianz	0.00	2	0	4,481
43.	Privilege Underwriters Recip./Pure	0.00	0	0	4,467
44.	Response/Unltrn	0.00	0	0	4,301
45.	Blue Ridge Indem/OBE	0.00	2	0	3,840
46.	Foremost Signature/Zurich	0.00	2	0	3,531
47.	National Merit/Unltrn	0.00	2	0	3,401
48.	American Family/Home/Munich Reins.	0.00	0	0	3,124
49.	Harleysville/Harleysville	0.00	0	0	2,767
50.	Prop. & Cas. Ins. Co. of Hartford/NA	0.00	1	0	2,733

51.	Philadelphia Indem./Tokio Marine	0.00	3	0	2.573
52.	Dairyland/Sentry	0.00	2	0	2.445
53.	Integon/Am. Trust Financial	0.00	1	0	2.258
54.	Auto One Select/White Mountains	0.00	1	0	2.254
55.	Lincoln General/Javia	0.00	10	0	2.163
56.	Sterling/N/A	0.00	1	0	2.078
57.	GEICO Cas./Berkshire Hathaway	0.00	6	0	2.020
58.	Integon Preferred/Am. Trust & Financial	0.00	0	0	1.885
59.	National Surety/Allianz	0.00	0	0	1.879
60.	Fireman's Fund/Allianz	0.00	0	0	1.682
61.	21st Century Preferred/Zurich	0.00	0	0	1.617
62.	Trumbull/Hartford	0.00	2	0	1.611
63.	Graphic Arts Mut./Utica National	0.00	0	0	1.581
64.	Utica National/Utica National	0.00	0	0	1.430
65.	Nationwide Assurance/Nationwide	0.00	4	0	1.348
66.	Pacific Indemnity/Chubb	0.00	0	0	1.251
67.	American Reliable/Assurant	0.00	0	0	1.147
68.	Harleysville Worcester/Harleysville	0.00	0	0	1.004

SOURCE: New York State Department of Financial Services

The 25 Worst Performers of 2011

Company/Group	2011 Complaint Ratio	2011 Complaint Total	2011 Upheld	2010-11 Avg. Premium (Millions)
1. Sentry/Sentry	14.9651	1	1	.067
2. Metropolitan/Bank America	7.4144	8	2	0.270
3. Kingston/N/A	5.1043	5	1	0.196
4. Merastar/Unitrin	3.0792	1	1	0.325
5. Twin City Fire/Hartford	2.8216	4	4	1.418
6. 21st Century/Zurich	2.2174	12	1	0.451
7. Hermitage/Tower	1.4627	1	1	0.684
8. Ocean Harbor/Ocean Harbor	1.2977	38	4	3.082
9. Hanover/Hanover	1.2200	2	3	1.639
10. Infinity/Infinity	1.0487	2	1	0.954
11. SAFECO/Liberty Mutual	0.9778	6	3	3.068
12. Permanent General/N/A	0.8247	28	9	10.913
13. Unitrin Direct Prop. & Cas./Unitrin	0.6746	3	1	1.482
14. Drivers/N/A	0.6697	3	1	2.986
15. Federal/Chubb	0.5285	2	1	1.892
16. Travelers Indem./Travelers	0.4838	2	1	2.067
17. Country-Wide/N/A	0.4562	572	51	111.791
18. Travelers Prop. & Cas./Travelers	0.4477	14	2	2.233
19. Unitrin Direct/Unitrin	0.4448	14	2	4.496
20. Praetorian/QBE	0.3694	74	9	24.362
21. Titan Indemn./Nationwide	0.3221	3	1	3.105
22. Interboro/N/A	0.3217	10	3	9.325
23. National General/Nationwide	0.2954	6	2	6.770
24. Metropolitan Prop. & Cas.	0.2939	3	1	3.402
25. Allstate Indem./Allstate	0.2909	12	2	6.875

SOURCE: New York State Department of Financial Services

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In our last article, we discussed the status of two pieces of legislation dealing with SUM coverage—the SUM Limits Bill, which was vetoed by the governor, and the Firefighter/Ambulance Worker Bill, which the governor signed into law.

With respect to the Firefighter/Ambulance Worker law, as we reported, on the date our article was published, a “chapter amendment” to the initial law, which clarified the scope of who would be covered by that law, was still pending in the State Senate and had not yet reached the governor’s desk. As it turns out, three days later, on March 15, 2013, the chapter amendment was signed into law. Thus, A1832/S2757 became Chapter 11 of the Laws of 2013, effective April 16, 2013. The text of this new law, which is set forth as Ins. L. §3420(f)(5), is set forth below:

This paragraph shall apply to a policy that provides supplementary uninsured/underinsured motorist insurance coverage for bodily injury and is a policy: (A) issued or delivered in this state that insures against liability arising out of the ownership, maintenance, and use of a fire vehicle, as defined in section one hundred fifteen-a of the vehicle and traffic law, where the fire vehicle is principally garaged or used in this state; or (B) as specified in paragraph one of this subsection. Every such policy that insures a fire department, fire company, as defined in section one hundred of the general municipal law, an ambulance service, or a voluntary ambulance service, as defined in section three thousand one of the public health law, shall provide such supplementary uninsured/underinsured motorist insurance coverage to an individual employed by or who is a member of the fire department, fire company, ambulance service, or voluntary ambulance service and who is injured by an uninsured or underinsured motor vehicle while acting in the scope of the individual’s duties for the fire department, fire company, ambulance service, or voluntary ambulance service covered under the policy, except with respect to the use or operation by such an individual of a motor vehicle not covered under the policy.

It is anticipated that future legislative efforts will endeavor to expand the class of individuals covered by Ins. L. §3420(f)(5) to remove the exception at the end of that section and include coverage for those who are operating or occupying their own (personal) autos while acting in the course and scope of their employment with the insured entity—coverage that would be to the benefit of many volunteer firefighters, for example, who frequently are called upon to respond to emergencies in their own vehicles. We will continue to follow events on this legislative front and report any changes as they occur.

New Proposed Legislation

With respect to the SUM Limits Bill, in response to Governor Andrew Cuomo’s discomfort and dissatisfaction with the “opt out” provisions of that bill, which would have required insurers to provide SUM coverage in amounts that matched the bodily injury liability coverage purchased by the insured to protect others, unless the insured formally “opted out” by expressly rejecting such coverage or electing lower SUM limits, and his expressed desire “to increase consumer education on the benefits of SUM coverage so consumers can make a more informed decision about whether or not to purchase it;” Assemblyman Joseph Morelle has recently introduced a new version of the SUM Limits Bill.

Under this proposal, the stated purpose of which is “to provide auto insurance consumers with information necessary to make an informed decision regarding their SUM coverage,” current subdivision B of Ins. L. §3420(f)(2) would be replaced by the following provision:

(i) At the time such policy is sold, purchased and/or negotiated the insured shall be provided with a form that shall be in 12-point bold type and shall state: “SUM insurance protects any insured under the policy if they are injured in an accident caused by a driver who has no insurance or less insurance than you carry. SUM coverage may be purchased at limits up to the level of the

bodily injury liability coverage of the policy. Policyholders are urged to carefully consider this in determining the level of SUM coverage to purchase.” On the same page as the above paragraph the insured shall be given the option to either: (1) Purchase supplementary uninsured/underinsured motorists insurance in the same amount as the bodily injury liability insurance limits of coverage provided under such policy; (2) Purchase supplementary uninsured/underinsured motorists insurance in an amount less than the bodily injury liability insurance limits of coverage provided under such policy; or (3) Purchase mandatory minimum uninsured motorist insurance only. The insured shall also be provided with the applicable premium for each option. If the rejection or selection of supplementary uninsured/underinsured motorists insurance is made verbally, the insurer or their agent shall read the identical or substantially similar

language as is in the above selection or rejection form and confirm the client has heard and understood the same, and shall restate the above information as often as is necessary until the insured has verbally confirmed that they fully understand the same. The named insured’s rejection or selection of supplementary uninsured/underinsured motorists insurance must be memorialized by the insurer through a signed writing, audio recording, electronic signature or any other means evidencing the insured’s rejection or selection of such coverage. Unless the insurer has proof that the insured was presented with the above form and that such coverage was rejected or selected, at the time the insured makes a claim seeking supplementary uninsured/underinsured motorists insurance coverage the insured’s policy will be read to include supplementary uninsured/underinsured motorists insurance at limits equal to the bodily injury liability insurance coverage limits of the insured’s policy. (ii) The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this paragraph pursuant to regulations issued by the superintendent;

if any, at the time of or within sixty days prior to the renewal of the policy. The limits of supplementary uninsured/underinsured motorist insurance coverage selected by the insured shall remain effective upon policy amendment or renewal, unless the insured requests an amendment of such coverage by so noting on an identical form as set forth in clause (i) of this subparagraph and in accordance with the terms of this section. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage or indicate the selection of any amount of supplementary uninsured/underinsured motorists coverage where the insured has not signed a selection or rejection form. (iii) The superintendent may promulgate regulations pertaining to supplementary uninsured/underinsured motorists insurance coverage in accordance with the provisions of this section, regarding the form and content of the notices required by clauses (i) and (ii) of this subparagraph including a concise statement of the availability of coverage, and an explanation of the coverage, including specific examples of its usage."

We will track the path of this proposed legislation, which was referred to the Committee on Insurance on April 17, 2013, and will report on its progress (or lack thereof), as events dictate.