



Cuomo Veto Of Hit-And-Run Insurance Bill Irks Trial Lawyers

By **Pete Brush**

Law360, New York (December 18, 2012, 6:58 PM ET) -- Gov. Andrew Cuomo's veto of legislation to have New York drivers buy more insurance for mishaps including hit-and-run accidents sparked consternation Tuesday from trial lawyers, who vowed to keep fighting for what they call a consumer-friendly measure.

The Democratic governor on Monday rejected the supplementary uninsured/underinsured motorist coverage bill, which passed both houses of the Legislature in Albany by wide margins in June.

The legislation would have forced millions of Empire State auto insurance policyholders to opt out, instead of opting in, when deciding to buy levels of extra coverage that go beyond the state's current required minimum of \$25,000.

The bill would have seen more New Yorkers match the coverage they hold to protect other drivers with higher levels of coverage — up to \$1 million and possibly more — to protect themselves.

But the opt-out provision was unpalatable to Cuomo, who is looking for ways to make New York seem more business and consumer friendly and doesn't want to impose additional costs.

"I will not add to the financial burdens already faced by New York's consumers," a copy of the governor's memo said. "I will not sign ... a law that places such an unacceptable choice on New Yorkers."

The governor's move drew a promise to fight for the bill in 2013 from New York City-based malpractice attorney Michael E. Jaffe of Pazer Epstein & Jaffe PC, the president of the New York State Trial Lawyers Association.

"Not a week goes by that an accident victim does not walk into a law office somewhere in this state believing they are 'fully covered,' only to learn that they did not purchase the one type of coverage that would have protected themselves and their families for losses caused by uninsured drivers or those with limited policies," Jaffe said.

A recent accident in which a Staten Island driver carrying the minimum \$25,000 in SUM

coverage — but now facing far higher medical and other costs after being stuck by a drunken, uninsured driver — has raised the profile of the dispute, lawyers in favor of the legislation say.

"We will work with our lobbying team and the legislature in the upcoming session to address the governor's objections and build an even broader coalition of support for this legislation," Jaffe said.

But another powerful voice in Albany, the New York Insurance Association Inc., which advocates for the property casualty insurers who write policies for more than 9 million vehicles registered in the state, praised Cuomo's veto.

"The New York Insurance Association opposes any type of measure that seeks to force consumers into purchasing insurance," said NYIA president Ellen Melchionni.

The NYIA also took trial lawyers to task.

"Policyholders were not advocating for this bill," Melchionni said. "Trial lawyers were advocating for this bill with the desire of increasing pain and suffering awards as these types of lawsuits are what they thrive on."

Trial lawyers freely admit that such coverage could assist their clients in winning recoveries but insist they are in favor of the bill because it protects drivers, not their own pocket books.

They call the insurance industry's stance disingenuous, suggesting insurers really are worried about writing policies that could cost them money in the long run.

Insurers could potentially be worried about facing an increase in the number — and value — of claims if policyholders have higher SUM limits at their disposal, according to Dan Flanzig, managing partner of New York - based Flanzig & Flanzig LLP.

Flanzig, who often represents injured cyclists, noted that auto insurance supplemental coverage can protect pedestrians or cyclists injured, for example, by an under-insured or hit-and-run taxi cab in New York City — even if they're not driving a car.

"Such insurance would give them a chance to make a recovery if they own a car and have the insurance," Flanzig said. "If you're hit by somebody with minimal coverage, you have a chance to make a claim on your own policy if you have the supplemental coverage."

Jaffe has also said that premiums tied to the mandatory minimum SUM coverage of \$25,000 amount to "free premiums" for insurers. That is because in the vast majority of cases, the minimum coverage required by law is offset by mandatory liability minimums typically held by the driver at fault in an accident, he said.

The plaintiffs lawyers said Tuesday they believe Cuomo's veto was based in the technical details of the legislation and say it can be fixed in 2013.

They took heart in the fact that Cuomo acknowledged the importance of educating drivers about their option to buy extra coverage, referring to the governor's comment that the Department of Financial Services "will be exploring ways to increase consumer education on the benefits of SUM coverage so consumers can make a more informed decision."

Lawmakers including state Sen. James L. Seward, a influential Oneonta, N.Y., Republican who shepherded the legislation through the Senate this year, believe the idea would likely come back up in Albany with a fix for the opt-out provision.

"We'll take a look at the governor's objections and see how they can be worked out," said Seward spokesman Jeff Bishop. "I don't think it's the end of this legislation."

--Editing by John Quinn and Lindsay Naylor.

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