



## Insurers, Trial Attorneys Split On Hit-And-Run Coverage Bill

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By: Pete Brush-

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Law360, New York (September 06, 2012, 6:29 PM ET) -- A looming decision by Gov. Andrew Cuomo on whether to sign legislation that would see many New Yorkers buy extra protection from hit-and-run car accidents has triggered a fight between an insurance group, which says the bill limits choice, and lawyers who say the real worry is profit-oriented.

Lawmakers in Albany voted in June to pass a measure that would force Empire State auto insurance policyholders to opt out, instead of opting in, when deciding to buy levels of supplementary uninsured/underinsured motorist coverage that go beyond the state's current required minimum of \$25,000.

Policyholders protecting themselves against liability toward others in amounts as high as \$1 million would have to opt out when deciding to buy that same level of coverage for themselves in the form of so-called SUM coverage. And, if the bill is signed, insurance agents would have to explicitly go over that option with car owners, explaining what SUM coverage is and how much the insured may purchase.

"It's one of the few insurance products that you actually buy for yourself. It is one of the few insurance products that actually benefits the consumer. I don't think there is a lot of auto insurance out there that works like that," [\*\*plaintiffs' attorney Dan Flanzig, managing partner of N.Y. based Flanzig & Flanzig LLP, said Thursday.\*\*](#)

Cuomo, who was attending the Democratic National Convention in North Carolina, hasn't indicated whether he will sign the bill, sponsored in the state Senate by James L. Seward, a Republican from Oneonta, and in the state Assembly by Rochester Democrat Joseph D. Morelle.

But the New York Insurance Association Inc., which represents the state's property and casualty insurers, has urged Cuomo to veto the bill, arguing among other things that the measure would make it harder for consumers to reduce their premiums and would limit their freedom of choice.

"We don't want our customers feeling forced into buying coverage they don't want and may not even need," NYIA spokeswoman Cassandra Anderson said. "Individuals should have the ability to decide what is the right coverage for them instead of being tricked into buying coverage that is intended to be optional."

**Flanzig, who has a large practice representing auto accident victims, expressed bafflement that the insurance industry would raise questions about consumer choice in rejecting legislation that on its face would appear to generate more premium dollars.**

"I don't see how this affects consumer choice," Flanzig said. "People can opt out of the coverage."

Flanzig suggested that 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.

"They may be thinking that if more people have this available, it's going to cost them a lot more," Flanzig said. "The number of incidents in which a consumer is involved in an accident where he or she might require the supplemental insurance might be higher than we know about."

**Policyholders don't have to be in a car to make use of SUM coverage when they suffer injury at the hands of a negligent driver, Flanzig said. Anyone holding such coverage is protected whether they are in a car, on a bicycle or on foot, according to Flanzig, who said he has such coverage primarily because he bikes in New York City.**

"If I'm hit by a taxicab that doesn't have insurance, I'm protected," Flanzig said.

New York City-based malpractice attorney Michael E. Jaffe of Pazer Epstein & Jaffe PC called the insurance industry's consumer-choice arguments "disingenuous" and noted that, currently, consumer 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 only time a customer's mandatory SUM minimum coverage becomes a risk for the insurer is in the relatively rare event that the driver at fault has no insurance at all, he said, adding the insurance industry may not want to change that.

Incidents where people are hurt by uninsured drivers, while rare, are not unheard of, trial lawyers say. 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, Jaffe said.

Coverage in the Staten Island Advance newspaper about the plight of that particular driver, Victor Rao, showed the risk people face when their SUM coverage is insufficient, Jaffe said.

"Look at the Rao story and what happened to him — I see that fairly often," he said. "At the end of the day, if someone has this coverage and we're able to get a better recovery, then we're able to get a better result for our clients. That's what they retain us to do."

Jaffe, the president of the New York State Trial Lawyers Association, calls the measure "one of the best consumer bills I've seen in a long time" and notes that it not only passed both houses of the New York Legislature with only one dissenting vote, but that 26 other states already have some version of the law on their books.

"For an insurance carrier group to say that 'this bill limits choice' — it doesn't ring true," Jaffe said.

--Editing by John Quinn and Katherine Rautenberg