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THE NEW SUM LIMITS LAW

In my September 21, 2017 column in this space,¹ I noted that the Supplementary Uninsured/Underinsured Motorist (SUM) limits bills, S5644B (co-sponsored by State Senators Seward, Addabbo, Alcantara and Avella), and A8519A (sponsored by Assemblyman Morelle), had passed both Houses of the New York State Legislature in June 2017, and were awaiting Governor Cuomo's signature. I now take this opportunity to inform my readers that on December 18, 2017, the Governor did, in fact, sign those bills into law, as Chapter 490 of the Laws of New York, 2017, also known as the "Driver and Family Protection Act."²

Justification

This new law, in the form of an amendment to Insurance Law §3420(f) by the addition of new sub-paragraphs 2-a (A), (B), (C) and (D), offers a dramatic change with regard to the purchase of automobile insurance by New York policyholders. As set forth in the Bill Summary, the justification for this statutory amendment is as follows: "Supplementary insurance, also known as uninsured or underinsured motorist insurance, protects motorists who suffer severe and devastating injuries in accidents with drivers who carry inadequate or no insurance. Few drivers are aware of the value of supplementary insurance and insurance companies rarely offer supplementary insurance coverage above the statutory minimum. This bill will ensure that drivers are fully protected themselves by supplementary insurance equal to the bodily injury liability insurance coverage they select to protect others, unless they affirmatively elect lower coverage for themselves."

Comparison to Prior (Current) Law

Under the current law (still in effect), an auto insurance consumer is required to purchase the mandatory Uninsured Motorist ("UM") coverage (\$25,000/\$50,000), but may decide to purchase, or not purchase, the additional, voluntary Supplementary Uninsured or Underinsured Motorist ("SUM") coverage in amounts *up to* the limits of his or her bodily injury liability coverage (or less) at his or her own will and for his or her own reasons, and insurers are obligated to offer and to provide (upon request) SUM limits in an amount "*up to* the bodily injury liability limits under the policy, subject to a maximum of \$250,000 per person/\$500,000 per accident, or, in the alternative, \$100,000/\$300,000 plus an umbrella policy with SUM limits of at least \$500,000."³ Under the new law recently signed by the Governor, SUM coverage will be *automatically* included in automobile insurance policies in an amount *equal to* the bodily injury liability coverage purchased, with no mandated maximum *unless* the policyholder affirmatively signs a written waiver either rejecting the SUM coverage completely, or requesting/purchasing a lower SUM coverage limit.

Effective Date

Pursuant to the terms of the amended statute, this new change will apply to new policies "entered into" after June 18, 2018 (the effective date of the amendment), but *not* to policies entered into prior to June 18, 2018 and renewed after that date. The new law also has a "sunset provision" under which it will automatically expire on June 30, 2020 — unless, of course, the Legislature chooses to extend it.

Key Features

As noted, the amended statute maintains the optional nature of SUM coverage, as well as the ability of the policyholder to reject it entirely or purchase amounts of SUM coverage less than the bodily injury liability coverage under the policy. However, it provides that for new policies covered by the new law, if the policyholder does elect to reject the SUM coverage, or to purchase it in limits lower than the bodily injury liability limits, that decision and request must be made on a written or electronic waiver form provided by the insurer to the named insured. In addition, the insurer must provide the insureds a notice, in 12-point bold type, that shall state, as follows:

"SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE (SUM COVERAGE) PROVIDES INSURANCE PROTECTION FOR ANY PERSON INCLUDED AS INSURED UNDER YOUR POLICY IF HE OR SHE IS INJURED IN AN ACCIDENT INVOLVING ANOTHER MOTOR VEHICLE WHOSE OWNER OR OPERATOR WAS NEGLIGENT BUT WHO HAS EITHER NO BODILY INJURY OR LIABILITY INSURANCE, OR LESS THAN THE INSURANCE YOU CARRY. SUM COVERAGE SHALL BE EQUAL TO THE LEVEL OF BODILY INJURY LIABILITY COVERAGE OF YOUR MOTOR VEHICLE LIABILITY INSURANCE POLICY UNLESS YOU SIGN A WAIVER REQUESTING LOWER COVERAGE OR DECLINING THE COVERAGE. YOU ARE URGED TO CAREFULLY CONSIDER THIS DECISION."

Further, with respect to the written waiver, the new statute provides that it will apply to all subsequent renewals of coverage and to all modifications of coverage, unless changed in writing by any named insured, and that the selection of lower SUM coverage or the rejection of such coverage by any one named insured will be binding upon all insureds under the policy.

The new statute also provides that, at the insurer's option, the insured's SUM coverage limit may be required to equal the insured's bodily injury liability coverage limit.

And, finally, an insurer may provide the SUM coverage described in the statute in an umbrella or excess liability policy that expressly provides such coverage.

Conclusion

Consumers purchasing new insurance policies on June 19, 2018 should examine their policies carefully to make sure that the new beneficial SUM limits provisions are contained therein.

ENDNOTES

1. Dachs, J., "Recent Legislative, Regulatory Amendments Pertaining to Auto Insurance, Part II," N.Y.L.J., September 21, 2017, p. 3, col. 1.
2. It is interesting to note that the signing of this legislation pertaining to required SUM limits following shortly after Governor Cuomo and the State Legislature required Transportation Network Companies (such as Uber, Lyft, and other "rideshare" companies) to provide SUM insurance coverage for all their rideshare vehicles with limits of \$1.25 million, an amount equal to their required general auto liability coverage. See Dachs, J.
3. Insurers can, and frequently do, offer the Supplementary Uninsured or Underinsured Motorist coverage with higher limits, provided such limits do not exceed the bodily injury liability limits of the policy.