



NEW YORK  
CITY BAR

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**REPORT ON LEGISLATION BY THE  
TORT LITIGATION COMMITTEE**

**A.10784  
S.7787**

**M. of A. Morelle  
Sen. Seward**

*Status: 6/21/12 – Passed both houses;  
returned to Assembly*

AN ACT to amend the insurance law, in relation to limits on certain supplementary insurance; and in relation to payments to durable medical equipment providers

**THIS BILL IS APPROVED**

The New York City Bar Association's Tort Litigation Committee supports A.10784/S.7787, a bill that would amend the insurance law to provide all motor vehicle policy holders with SUM insurance coverage with the choice to opt out. The Committee addresses issues relating to personal injury and civil rights litigation, tort law and practice and the handling of civil litigation and trial in all New York courts.

Supplemental Uninsured/Underinsured Motorist coverage, known as "SUM" insurance, provides coverage when a person is involved in a motor vehicle accident with 1) a person who fails to have automobile coverage [uninsured driver], 2) an unidentified driver [hit and run], or 3) a vehicle that has lesser bodily injury coverage than the injured victim's motor vehicle coverage [underinsured].

Bodily injury coverage only protects a policyholder against being sued for negligence during the operation of a motor vehicle. Bodily injury coverage does not protect the policyholder if he or she is injured by a driver who left the scene, did not have insurance coverage, or only had minimal coverage.

Under current law, for example, a driver suffering serious injuries in an accident with a vehicle carrying only the statutory minimum coverage of \$25,000, would only be able to recover \$25,000 from the responsible party, even if the actual damages suffered were valued at \$100,000. With SUM coverage, injured drivers would be entitled to go back to their own insurance carrier to make up the difference, up to the limits of their SUM coverage.

Few consumers are aware of the existence or affordability of SUM coverage. Current law does not require insurance companies to advise policy holders of this type of coverage. Too often, those who pay higher premiums to increase their liability insurance - thereby protecting other road users - believe that they are covered even in accidents caused by other road users and do not protect themselves by increasing their SUM coverage. As a result, many drivers who have suffered devastating injuries, have come to learn only after the fact that their insurance was inadequate, even though they thought they had "full coverage."

This bill would address this all too common problem by amending Insurance Law § 3420 to require that a driver's SUM insurance limit matches his/her liability coverage by default, unless the driver expressly declines such additional coverage after being informed of the benefits of extra SUM coverage. As a result, drivers will be encouraged to select SUM coverage at an appropriate level based on their other insurance decisions, while retaining the right to select lower coverage if they so choose.

Thus, under the new law, whatever motor vehicle bodily injury coverage drivers buy to protect themselves if they negligently cause injury to a person will also provide them with the same amount of insurance protection if they are the ones injured by a negligent driver. For example, if a person takes out bodily injury coverage for \$100,000 and is injured when a negligent driver leaves the scene of the accident and cannot be identified, the injured policyholder will be able to make a claim against his/her own insurance policy for up to \$100,000. The injured person will still have to prove that there was negligence and injuries as in any other personal injury case. The same coverage will also apply for a policyholder if the negligent driver was identified but did not have any or had limited insurance coverage.

In addition to improving insurance protections for consumers and their families, this bill addresses the widely reported problem of no-fault fraud. Insurers are reporting increased fraud in the provision of durable medical equipment. This bill will empower the Department of Financial Services (DFS) to block such fraud by halting the reimbursement of providers who demonstrate a pattern of fraudulent billing. The DFS already has similar powers to prevent fraud by medical care providers; this bill takes the next logical step against fraudulent equipment providers.

This common-sense and bi-partisan legislation will ensure that New York's insurance consumers are better protected in the event of an accident, and will also empower insurance companies to reduce fraudulent billing.

For these reasons, the Committee urges the Governor to sign this bill into law.

October 2012