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Plaintiff lawyers cautious about auto rate cut

BY MICHAEL McKIERNAN
For Law Times

Personal injury lawyers have cautiously welcomed the provincial government's plan to force a 15-per-cent cut in auto insurance premiums by 2015 as they say it's time insurers started passing on their savings from the 2010 shakeup of the statutory accident benefits schedule.

Toronto's Michael Smitiuch, managing partner at Smitiuch Injury Law Professional Corp., says the planned cuts are modest compared with the reductions in available benefits since 2010.

"Fifteen per cent is certainly not too much. For Ontario consumers since 2010, benefits have been severely restricted, but the majority of claimants are still paying the same premiums. It's like they're still paying for a full tank of gas except now they only get it filled up halfway," he says.

The three-year-old amendments to the benefits schedule swept away the old $100,000 limit for medical and rehabilitation care in cases of non-catastrophic injuries and replaced it with a $50,000 cap. The changes also created a new category for minor injuries with a $3,500 limit that now catches about 80 per cent of claims.

The changes responded to insurers' claims of escalating costs and rampant abuse in the benefit system, but Charles Gluckstein, president of the Ontario Trial Lawyers Association, says the pendulum has now swung back too far in the insurers' direction.

"The average injured person had access to $100,000 but now gets only $3,500 in medical coverage. Add to that the fact that there are no more administrative or assessment costs for the minor injuries and you've got extreme savings. There's room to cut 15 per cent off premiums but there should also be room for more coverage to come back to policyholders who are victims of accidents."

In an ideal world, Gluckstein says the province's insurers would have voluntarily cut their own rates by now without government intervention. With the notable exception of the Co-operators Group Ltd., none have, he says. The Guelph, Ont.-based company recently announced a reduction to its insurance rates that brings its premiums to a level 12 per cent lower than at the beginning of 2012.

"Other insurers should follow their example. Most have essentially increased the price of their policy," says Gluckstein.

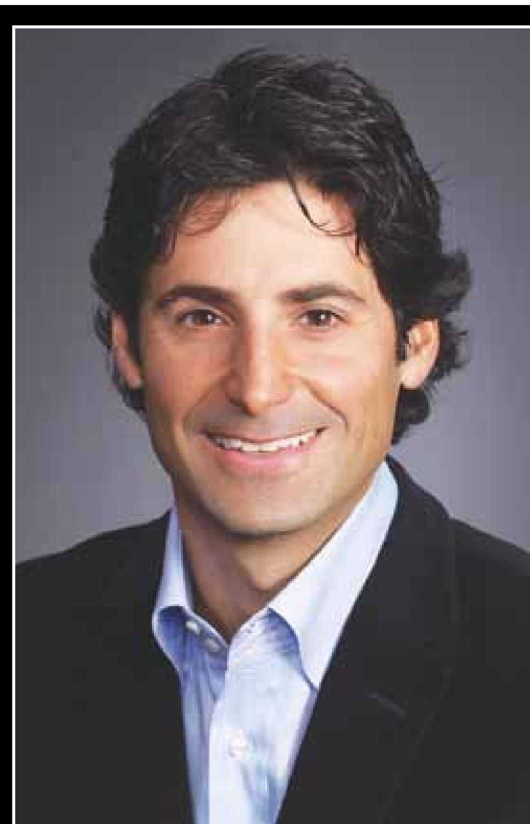
Finance Minister Charles Sousa unveiled his rate reduction strategy in late August with a six-point plan to bring rates down by seven per cent by August 2014 and a further eight per cent by August 2015. He plans to do so by providing the superintendent of financial services with authority to require insurers to refile rates; continuing to crack down on fraud, including through licensing health clinics that invoice auto insurance companies; reducing unexpected costs by making the superintendent's guidelines on accident benefits binding; exploring other cost reduction efforts, including provincial oversight of the towing industry and addressing collision repair practices; continuing to require insurers to offer discounts to consumers with safe driving records; and helping ensure that all regions of Ontario benefit fairly from cost savings.

The provincial NDP demanded action on auto insurance rates as a condition of its support for the minority Liberal government's budget and a number of its MPPs have criticized Premier Kathleen Wynne for moving too slowly on the issue. And they're not the only skeptics. The insurance industry was also swift to register its concerns.

In a statement, Insurance Brokers Association of Ontario chief executive officer Randy Carroll said he had hoped for more specific details on cost savings from the province and warned unreasonable cuts could force insurers out of the Ontario market.

"There is an inherent risk that the result of today's announcement could result in future availability and affordability concerns for consumers in this province. Regardless of the type of business that you are running, you cannot reduce revenue without implementing cost reduction measures and expect to succeed. It just doesn't work," said Carroll.

'When you see how much they took out of the system on the back of policyholders in 2010, to ask for more is just ludicrous,' says Charles Gluckstein.



Ralph Palumbo, Ontario vice president of the Insurance Bureau of Canada, said in a press release that he was concerned the government's announcement did little to help its members reduce costs.

"The solution is clear — premium reductions need to be commensurate with additional cost reduction measures — it is definitely a necessary next step," said Palumbo, who went on to suggest that a new definition for catastrophic impairment would be a good place to start to take unnecessary costs out of the system.

But Patrick Brown, a partner with Toronto's McLeish Orlando LLP, says catastrophically impaired accident victims are "the last place you want to go" for benefit cuts.

"These are the one to two per cent with the most serious injuries. They're often wheelchair-bound with traumatic brain injury and they need assistance round the clock. Anyone who has dealt with someone who is catastrophically impaired will say that the amount available to them represents a small fraction of what they really need. Any further change to the definition would just be a cash grab. The industry is doing OK and the government shouldn't be propping up poor performers by taking away benefits from those who need it most."

Gluckstein says there are practical problems with changing the definition since it would wipe out almost 20 years of jurisprudence on the term. In any case, he says insurers have shown no evidence there's a problem with the current definition and notes that catastrophically impaired claimants already face stringent checks to get additional benefits.

"Just because someone is entitled to extended coverage, it doesn't mean they get it all. Every time a new treatment plan is submitted, they have to prove that each treatment is reasonable and necessary to get the benefits," says Gluckstein.

"When you see how much they took out of the system on the back of policyholders in 2010, to ask for more is just ludicrous." LT