

May 18, 1982

SUBJECT: INSURANCE

WITHDRAWN

CIRCULAR LETTER NO. 15 (1982)

DATED: MAY 18, 1982

TO: ALL INSURERS AND SELF-INSURERS LICENSED TO WRITE AUTOMOBILE INSURANCE IN NEW YORK

RE: KURCSICS V. MERCHANTS MUTUAL INSURANCE COMPANY; GURNEE V. AETNA LIFE AND CASUALTY CO. ET. AL. AND WEINREICH V. STATE-WIDE INSURANCE COMPANY

The seventeenth amendment to the no-fault regulation, Regulation 68 (11 NYCRR 65), was promulgated by me on April 29, 1982 and became effective May 3, 1982. The amendment recognizes the February 18, 1982 decision by the New York Court of Appeals (the State's highest court) in Gurnee and Weinreich which held that the prior Kurcsics decision of February 20, 1980 was to be given full retroactive effect to all claims not barred by the applicable six year statute of limitations. The motion to reargue Gurnee and Weinreich was denied on March 25, 1982. The seventeenth amendment removed the limitations on the jurisdiction of arbitrators and master arbitrators to render binding awards in excess of \$ 800 representing monthly lost earnings as reimbursement for basic economic loss. Arbitrators and master arbitrators are now directed to render awards consistent with Kurcsics, Gurnee and Weinreich, which held that the maximum amount payable as first-party no-fault benefits for loss of earnings from work is \$ 1,000 per month.

The 17th amendment also provides that "interest only" disputes on amounts in excess of \$ 800 monthly wage loss on accidents occurring prior to February 20, 1980 will no longer be resolved by the Insurance Department Arbitration forum; these disputes will be processed in the regular American Arbitration Association forum.

The Insurance Department has received a number of inquiries from insurers and self-insurers concerning the implementation of Kurcsics, Gurnee and Weinreich. While the Gurnee - Weinreich decision settled part of the retroactivity issue, a number of potentially serious questions remain unresolved and unanswered by the Court of Appeals. Specific request for answers to these questions was made by me as amicus in the motion for reargument and the Court did not reply.

1. Statute of Limitations - the Gurnee and Weinreich opinion notes that the "applicable six-year statute of limitations has also extinguished a portion of the insurers' potential liability (see CPLR 213)". Questions have arisen concerning the effect which purported class actions commenced in February, 1980 had upon the rights of claimants injured in 1974 and 1975, more than six years prior to the February, 1980 opinion but within six years of the filing of the purported class actions.

2. Interest on "overdue" claims - (Ins. Law. § 675) - Insurers who followed the directions of the Superintendent and lower court decisions by paying no-fault benefits at the \$ 800 monthly level have asked whether they are required to pay statutory interest at the rate of 2% per month (26.8% annually) Gurnee - Weinreich was silent on this issue.

3. Full retroactive effect - The Court of Appeals held that Kurcsics should be given "full retroactive effect". Kurcsics requested \$ 1,000 from the insurer from the outset while most claimants requested and received \$ 800. Is it intended that insurers pay the additional \$ 200 when a lesser sum or no specific amount was originally requested?

4. Arbitrated cases - Where monies were awarded in binding arbitrations conducted pursuant to Section 675 of the Insurance Law at the option of the claimant, are such awards subject to reopening and a supplemental award or payment? It should be noted that arbitrators in a number of pre-Kurcsics cases awarded no-fault benefits at the \$ 1,000 per month level and these awards were not disturbed by the courts.

5. Other no-fault coverages - Where a claimant collected \$ 800 under the statutory no-fault coverage limit previously held applicable and an additional \$ 200 or more under a optional personal injury protection coverage ("additional PIP"), is the statutory coverage extinguished, or does the decision direct insurers to make duplicate payment for the same elements of economic loss?

The silence of the Court of Appeals in these areas has effectively precluded the Insurance Department from rendering specific advice thereon. Thus, in implementing Kurcsics, Gurnee and Weinreich, until the foregoing issues are ultimately resolved by litigation, insurers and self-insurers will have to seek the advice of their own counsel and act in an appropriate manner to protect the interests of claimants, the interests of policyholders and their interests. The Insurance Department will endeavor to keep insurers and self-insurers apprised of significant developments.

Very truly yours,

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance