

August 30, 1988

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 20 (1988)

TO: INSURERS WRITING LIABILITY INSURANCE POLICIES IN THIS STATE, RATE SERVICE ORGANIZATIONS, INSURER & PRODUCER ORGANIZATIONS

RE: SUNSETTING PROVISIONS IN REGULATION 107 & REGULATION 121

This Circular Letter is a reminder that key provisions in Regulation 107 (11 NYCRR Part 71) on Legal Defense Cost Treatment and Regulation 121 (11 NYCRR Part 73) on Claims-Made. Policies "sunset" January 1, 1989. In order to provide sufficient transition and minimize market disruption, insurers were given until January 1, 1989 to adjust certain aspects of their policies and programs, at the time these Regulations were amended in 1987.

The First Amendment to Regulation 107 and the Second Amendment to Regulation 121 were promulgated on August 6, 1987, applying to new policies issued on and after October 1, 1987 and to existing policies renewed on and after December 1, 1987. A Second Amendment to Regulation 107 was promulgated ' on December 24, 1987, applying to policies in force on that date.

As amended, Regulation 107 is designed to prevent proliferation of legal, defense cost offset provisions in liability 'insurance policies, by prohibiting across-the-board use of such offsets and confining their usage only to specified types of policies with high liability limits.

In particular, Section 71.3(d)(2) enumerates the types of risks or coverages permitted to be written on a defense-inclusive basis, provided liability limits are no 'less than, \$ 1,000,000. However, this permission terminates for policies issued or renewed on or after January 1, 1989, in regard to the following types:

- ** Errors and Omissions Liability;
- ** Professional Liability, other than Medical Malpractice; and
- ** Hospital Medical Malpractice.

On and after 'January 1, 1989, under companion Section 71.3(d)(3), Errors and Omissions Liability, and Professional Liability other than Medical Malpractice, may continue to be written with a defense cost offset provision, only if liability limits' are at least \$ 10,000,000. Once the sunset date arrives, no new or renewal policies of this kind with lower liability limits can have such limits depleted by defense costs, and there can be no defense cost offset at all for Medical Malpractice, including for hospitals.

Designed to prevent proliferation of claims-made policies, Regulation 121 prohibits across-the-board use of the claims--made approach and confines. its usage only to specified types of policies. Amended Regulation 121 sets forth minimum standards, such as extended reporting period (or "tail") requirements, governing those specified coverages where claims-made policies are permitted

As a rule, claims-made policies are required to offer a three-year tail upon termination of coverage. Section 73.3(h) enumerates ten exceptions for which only a one-year tail is required. Of these, the following become subject to the general rule requiring a minimum three-year tail, for policies issued or renewed on or after January 1, 1989:

- ** Architects and Engineers Professional Liability;
- ** Directors and Officers Liability for Not-For-Profit Organizations;
- ** Insurance Agents and Brokers Errors and Omissions Liability; and
- ** Real Estate Agents, Brokers and Appraisers Errors and Omissions

Likewise, Section 73.3(g), under which the Superintendent may approve a tail shorter than three years for certain renewal policies, sunsets January 1, 1989.

Insurers writing in affected markets are reminded that:

(A) if policy forms and rates conforming to Regulation 107 and 121 requirements as of January 1, 1989 are not already on file with the Department, appropriate filings should be submitted with dispatch to the Property & Casualty Insurance Bureau; and

(B) under Section 3426 of the Insurance Law, insureds must be given at least sixty days notice of the insurer's intention to nonrenew or conditionally renew any covered policy. Please direct any questions concerning this Circular Letter to the attention of Fred Sharpe (212-602-0373), Senior Insurance Examiner, Property SC Casualty Insurance Bureau, at the above address.

Very Truly yours,

[SIGNATURE]

JAMES P. CORCORAN

SUPERINTENDENT OF INSURANCE