

June 20, 1990

SUBJECT: INSURANCE

First Supplement to Circular Letter No. 17 (1987)

June 20, 1990

To: ALL PROPERTY/CASUALTY INSURANCE COMPANIES AUTHORIZED TO WRITE GENERAL LIABILITY INSURANCE IN THIS STATE

RE: SCOPE, PRICING & RATING OF COMMERCIAL UMBRELLA POLICIES: WORKERS' COMPENSATION & EMPLOYERS' LIABILITY COVERAGES

Circular Letter No. 17 (1987), dated October 16, 1987, set forth the Department's position regarding the inclusion of underlying Workers' Compensation and Employers' Liability coverage in the rating of commercial umbrella policies. Essentially, the Circular Letter indicated that Workers' Compensation and Employers' Liability coverages should not be contemplated in the rating of umbrella policies, based on the fact that Workers' Compensation and Employers' Liability coverages in New York are generally unlimited in nature, resulting in no exposure to the umbrella carrier. However, it was not the intent of this Department to proscribe the inclusion of Workers' Compensation and Employers' Liability insurance coverage in the writing of umbrella policies for insureds with an identifiable exposure to losses that would fall outside the scope of the unlimited coverage provided by the New York Workers' Compensation policy.

The terms of the Unlimited Liability Endorsement, which is appended to all Workers' Compensation and Employers' Liability Policies, indicate that such unlimited coverage is applicable only in situations where an employee is subject to the New York Workers' Compensation Law and such employee's injuries are within the scope of such law. If an injured employee is not subject to the New York Workers' Compensation Law, or a covered employee's injuries are deemed to be outside the scope of the law (such as injuries to employees subject to a federal or another state's workers' compensation act), the provisions requiring that such coverage be unlimited would be inapplicable.

Accordingly, it is not inappropriate for an umbrella carrier to contemplate underlying Workers' Compensation and Employers' Liability insurance coverage in the writing and rating of commercial umbrella policies, but only to the extent that such underlying coverage might be limited, as described above. Where a premium effect is determined to be appropriate, filings with this Department should adequately identify the amount of such premium and the specific basis under which it was computed. The guidance set forth in this Supplement should be followed, insofar as inconsistent with the October 1987 Circular.

Very truly yours,

[SIGNATURE]

WENDY E. COOPER

ACTING SUPERINTENDENT OF INSURANCE