

January 14, 1991

SUBJECT: INSURANCE

Circular Letter No.2 (1991)

January 14, 1991

TO: All Licensed Property / Casualty Insurers and Insurance Producer Organizations

RE: Sale of Motor Vehicle Replacement Glass Etching "Warranties"

The Insurance Department has become aware of several motor vehicle replacement glass etching "warranty" programs being sold to motor vehicle purchasers, in violation of the New York Insurance Law.

Although details may vary slightly, these programs have common characteristics. The product is marketed by a program administrator, either directly or through its representatives (including licensed insurance agents and brokers), to motor vehicle dealers, who, in turn, sell the product to motor vehicle purchasers or lessees. The administrator is not licensed as an insurer in New York. The dealer etches an identification code on the vehicle's window glass. The window etching is intended to significantly reduce the chances that the vehicle will be stolen or, if stolen, significantly increase the chances of recovery.

The administrator issues a "warranty" under which it agrees that, if the etched vehicle is stolen and not recovered, it will replace the vehicle with a new vehicle of the same make and model equipped with the same features and options. To obtain the replacement vehicle, the consumer must first turn over to the administrator any motor vehicle physical damage insurance proceeds or, if there is no insurance covering the loss, the actual cash value of the stolen vehicle.

The administrator obtains insurance, typically from an unauthorized insurer, covering expenditures or expenses in meeting "warranty" obligations under the program. The motor vehicle dealers are named as additional insureds under the policy, with certificates of insurance delivered to them in this state. In addition to limiting the administrator's exposure under the program, this "warranty" insurance is intended to give comfort to the motor vehicle purchaser or lessee that there will be a source for payment, if the administrator fails to perform for whatever reason. New York licensed agents or brokers have been utilized in obtaining this insurance.

These programs involve numerous violations of the Insurance Law, summarized below:

1. The administrator is doing an insurance business without being licensed, in violation of Section 1102 of the Insurance Law. Whether the vehicle will be stolen remains to a substantial extent beyond the control of either the administrator or the consumer. By promising to replace the vehicle in the event of an unrecovered theft, the administrator is thereby providing to the consumer a benefit of pecuniary value upon the happening of a fortuitous event, which is defined in the Insurance Law as insurance.

A warranty relates to the nature or quality of the property or services rendered. A promise to replace a stolen motor vehicle after its windows have been etched is not a warranty. But even if the promise could be considered a warranty, under the Insurance Law the making of a contract of warranty constitutes the doing of an insurance business if it is done as a vocation, and not as merely incidental to any other legitimate business or activity. The promise in these instances is not incidental to the

administrator's vocation, but rather is the administrator's primary activity. Therefore, even if it were a warranty, it would constitute the doing of an insurance business.

2. An automobile dealer who aids in the sale of the program is acting as an agent or broker for, or otherwise aiding, an unauthorized insurer in violation of Section 2117 of the Insurance Law. Since the administrator is not an authorized insurer, this violation on the part of the dealer is not remedied even if the dealer is licensed as an insurance agent or broker.

3. The unauthorized insurers underwriting the insurance for the programs are in violation of Section 1102. Since these policies are issued on a group basis, even if the master policy were issued to the administrator out of state, the delivery of certificates to dealers in New York constitutes the doing of an insurance business in this State.

4. The insurers are issuing illegal group insurance policies. Group insurance for this kind of coverage is not authorized to be written in New York. Even if it were permitted, then there would have to be compliance with all excess line laws in regard to each certificate issued or delivered in New York by an unauthorized insurer.

5. New York licensed agents or brokers are in violation of Section 2117. Licensed agents and brokers have delivered certificates under illegal group policies issued by unauthorized insurers in this State. In some cases, they have been active in marketing the program to the dealers, thereby aiding the administrator in doing an illegal insurance business.

Two administrators and their insurance brokers have already been advised by the Department that their programs cannot be sold in New York and were advised to cease the programs. Both have voluntarily agreed to suspend further sale of their programs in New York.

Insurers and producers are also reminded that the Department has disapproved policy form filings providing for a new replacement vehicle (or the cost thereof) because of the moral hazard. The Department has been concerned that this coverage would increase the likelihood that owners would become less careful or even arrange to have their vehicles "stolen" in order to obtain a current model year vehicle, especially as the vehicle ages and depreciates. Therefore, even if coverage were to be offered by an authorized insurer directly to the consumer or lessee, it could not be written on a new replacement vehicle basis.

The Department recognizes that motor vehicle glass etching can be an effective anti-theft device. Therefore, insurers may offer an appropriate anti-theft discount on comprehensive coverage to insureds whose motor vehicles windows have been etched with identifying codes. An anti-theft discount must be filed with the Department for prior approval as a rating classification.

The Department will continue to take appropriate action to enforce compliance with relevant provisions of the Insurance Law. Anyone with information on the operations of a motor vehicle replacement glass etching "warranty" program or similar program in New York should contact Jack Stein, (212) 602-0268, in the Property and Casualty Insurance Bureau at the Insurance Department.

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE