

November 20, 1991

SUBJECT: INSURANCE

WITHDRAWN

Supplement No. 1 to Circular Letter No. 16 (1991)

TO: MOTOR VEHICLE INSURERS AND SELF-INSURERS, WORKERS' COMPENSATION INSURERS, AND INSURANCE PRODUCER ORGANIZATIONS

RE: 1) STAY ON IMPLEMENTATION OR ENFORCEMENT OF CERTAIN ASPECTS INVOLVING THE STATUTORY INCREASE IN NO-FAULT WAGE LOSS BENEFITS PURSUANT TO CHAPTER 320 OF THE LAWS OF 1991 AND THE 22ND AMENDMENT TO REGULATION 68 (11 NYCRR 65)

2) AMENDMENT 22-A CORRECTION OF 22ND AMENDMENTS INADVERTENT OMISSION OF NO-FAULT GEOGRAPHICAL LIMITATION.

Recent judicial developments affect the status of parts of the 22nd Amendment to Regulation 68 (11 NYCRR 65), implementing Chapter 320 of the Laws of 1991 ("Chapter 320"), which became effective on November 12, 1991. The 22nd Amendment was promulgated on October 11, 1991 as an emergency measure and became effective on October 22, 1991. In addition, Amendment 22-A has been promulgated, correcting an inadvertent omission in the 22nd Amendment.

A. Temporary Restraining Order

A legal action was instituted against the Superintendent of Insurance in State Supreme Court, Albany County (Index No. 6972-91), challenging the constitutionality of applying that portion of Chapter 320 which increases the maximum monthly No-Fault benefit for loss of earnings from work from \$ 1,000 to \$ 2,000 for claims arising under policies issued prior to November 12, 1991 and policies which are "mandatorily renewed" on and after that date. On October 29, 1991, Justice Harold J. Hughes issued a Temporary Restraining Order (TRO), which is currently in effect. The TRO provides:

ORDERED that...Salvatore R. Curiale, as Superintendent of Insurance of the State of New York, be and he is hereby stayed, enjoined and restrained from further action to implement or enforce, with respect to policies of insurance issued prior to the effective date of Chapter 320 of the Laws of 1991 and mandatory renewals thereof, the provisions of said Chapter 320 of the Laws of 1991 insofar as it purports to amend paragraph 2 of sub-section (a) of section 5102 of the Insurance Law.

Neither the Court nor the plaintiffs in this action have elaborated on what is meant by "mandatory renewals" in this context, although the plaintiffs' papers refer to the nonrenewal provisions of Section 3425 of the Insurance Law. The Insurance Department is seeking clarifications, modifications or elimination of this TRO through the judicial process. The TRO does not apply, however, to:

1. Wage loss provisions of Chapter 320 in regard to policies issued on and after November 12, 1991 that are new or renewals that are not "mandatory renewals";

2. Optional Basic Economic Loss (OBEL) coverage; and

3. Provisions of the 22nd Amendment addressing other matters not contained in Chapter 320.

The Department will enforce and implement those provisions of Chapter 320 and Regulation 68 to which the Temporary Restraining Order does not apply.

As to those policies newly issued or which are renewed, but not "mandatorily renewed", on and after November 12, 1991, insurers must utilize the letter contained in section 65.8(f) of the regulation informing insureds and applicants of the nature of OBEL coverage and offering such coverage. As to those policies "mandatorily renewed" on and after November 12, 1991, insurers must also utilize the letter contained in section 65.8(0) to explain and offer OBEL coverage but, in light of the TRO, should exercise their own judgment as to whether to delete the references in the letter to the increase in wage loss benefits from \$ 1,000 to \$ 2,000 per month.

B. Amendment 22-A to Regulation 68

The Mandatory Personal Injury Protection Endorsement (New York), for use with policies issued or renewed on and after November 12, 1991, was added by the 22nd Amendment to Regulation 68 as new Section 65.12(d). Language that appeared in the previous endorsement regarding the geographical limitation of No-Fault coverage was inadvertently omitted. Accordingly, Amendment 22-A to Regulation 68 (copy attached) was promulgated on November 18, 1991 on an emergency basis to make it clear that the Mandatory Personal Injury Protection paragraph of Section I of the endorsement should properly read as follows:

The company will pay, first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions. or Canada.

C. Form Filings

To date, many insurers have not yet filed the policy forms prescribed in the 22nd Amendment. Insurers are reminded that, pursuant to Article 23 of the Insurance Law, all policy forms, even though prescribed in Amendment 22 or 22-A, must be filed with the Department before such forms can be issued.

D. Acknowledgement

A motor vehicle insurer's underwriting officer, and a workers' compensation insurer's claims officer, should acknowledge, in writing, receipt of this Supplement to Circular Letter No. 16 (1991) no later than Wednesday, December 11, 1991. The acknowledgement should be sent to Joseph Smeragliuolo, Associate Examiner, Property & Casualty Insurance Bureau, at the above address. All rate and form filings arising from Amendment 22 or 22-A to Regulation 68 should be directed to the Property & Casualty Insurance Bureau at the above address. Please direct any questions concerning this Supplementary Circular Letter to Mr. Smeragliuolo at (212) 602-0338.

Very truly yours, [SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE