

May 13, 1992

SUBJECT: INSURANCE

WITHDRAWN

Supplement No. 5 to Circular Letter No. 9 (1988)

TO: TO ALL PROPERTY/CASUALTY INSURANCE COMPANIES; CO-OPERATIVE FIRE INSURANCE COMPANIES; LLOYDS UNDERWRITERS AND RECIPROCAL INSURERS; FINANCIAL. GUARANTY INSURANCE CORPORATIONS; AND THE MEDICAL MALPRACTICE INSURANCE ASSOCIATION

RE: PROPERTY/CASUALTY INSURANCE SECURITY FUND

Please be advised that determinations made on February 28, 1992, in accordance with the requirements of Sections 7603 and 7606 of the New York Insurance Law, indicate that the net value of the Property/Casualty Insurance Security Fund ("the Fund") as of December 31, 1991 continues to be less than \$ 150 million. Accordingly, contributions to the Fund will continue.

On April 2, 1991 the New York State Court of Appeals rendered its decision in *Alliance of American Insurers, et al. v. Chu, et al.*, finding that aspects of 1979 and 1982 legislation transferring certain earnings and assets of the Property/Casualty Insurance Security Fund to New York State's general fund were unconstitutional. The Court remitted the case to the Supreme Court, Albany County for further proceedings in accordance with the opinion.

The future disposition of the issues raised in *Alliance* will impact obligations of contributors to the Fund. Accordingly, although contributions to the Fund are required to continue this year, the Department will not view the payment of 1992 contributions as prejudicing the right of contributors to claim a refund or credit on such contributions in the course of further proceedings in the *Alliance* litigation.

The attached newly revised report form replaces the form dated 5/91. Insurers should continue to compute and submit contributions on a quarterly basis by multiplying the factors listed in the report form by the corresponding 1992 quarterly net direct written premiums. If no payment is due for a particular quarter, the report form must still be filed for informational purposes.

The assessment factors are based on a number of elements including estimated 1992 industry premiums and anticipated 1992 Fund award and expense payouts. The Department may adjust the assessment factors on an interim basis in order to more closely reflect the actual industry premiums. Fund, payouts Superintendent of and future developments in the *Alliance* case.

The first 1992 quarterly contribution is normally due on or before May 15, 1992 for the quarter ending March 31, 1992. Those insurers which have such 1992 first quarterly reports and made payment using 1991 factors have the report and payment returned because the 1992 factors are lower than those for 1991. All insurers should file a first report using the revised 1992 form, together with a check for the contribution due for the period, as computed in accordance with contained in the new form, net, of any credits.

Pursuant to regulations of the Federal Crop Insurance Corporation (7CFR Part 400, subpart 1), Multiple Peril. Crop

Insurance premiums on policies reinsured by the Federal Crop. Insurance Corporation under its Standard Reinsurance Agreement. continue to be exempt from contribution

In view of the issue date of this Circular Letter, the late payment penalty provisions of Section 7614 will not be imposed on an insurer if payment of the first 1992 quarterly contribution is received on or before June 30, 1992.

Further supplements to the Circular Letter will be issued as the need arises.

Please acknowledge receipt of this Supplement, and refer any questions relating to its contents to:

Mr. Frank M. D'Amico

Director of Taxes and Accounts

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Very truly yours,

[SIGNATURE]

Salvatore R. Curiale

Superintendent of Insurance