

March 13, 1972

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 1 (1972)

TO ALL INSURERS LICENSED TO WRITE PROPERTY AND CASUALTY INSURANCE IN THE STATE OF NEW YORK AND TO ALL RATING ORGANIZATIONS

On June 4, 1970 the Insurance Department issued Circular Letter No. 10 (1970) prohibiting the use of a "Limited Coverage for Certain Insureds" endorsement to a garage liability policy. The Circular Letter pointed out that the endorsement was held by the Department to be in violation of the provisions of Insurance Department Regulation No. 35 A, but that such ruling was being contested in the Courts in two cases; *Mills v. Liberty Mutual Ins. Co.* 60 Misc. 2d 1085, 304 N.Y.S. 2d 801 (Sup. Ct. 1969), and *Davis v. DeFrank*, 33 App. Div. 2d 236, 306 N.Y.S. 2d 827 (4th Dep't. 1970).

On January 19, 1971 the Insurance Department issued Circular Letter No. 1 (1971) which stated that the Department ruling with regard to the endorsement was still in effect pending a final decision by the Court of Appeals in the Mills case. The Court of Appeals had held "without opinion" in the Davis case (27 N.Y. 2d 924) that the endorsement was not in violation of Regulation 35-A.

On February 10, 1972 the Court of Appeals decided the Mills case, ruling as in the Davis case, that the endorsement was not in violation of Regulation 35-A. In view of the final decision of the Court of Appeals in this matter, the "Limited Coverage for Certain Insureds" endorsement to a garage liability policy may now be used in New York.

[SIGNATURE]

Superintendent of Insurance