

April 28, 1975

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 3 (1975)

TO: ALL SELF-INSURERS AND ALL INSURERS WRITING AUTOMOBILE INSURANCE IN THIS STATE

Subject: Requirement That First Party Benefits Continue to be Paid to Automobile Accident Victims Pending Conclusive Determination of No-Fault Constitutional Question

On April 21, 1975 Justice George H. Nicols declared Article XVIII of the New York Insurance Law (the No-Fault Law) "to be unconstitutional and invalid in its entirety." *Montgomery, et al v. Daniels, et al* (New York Law Journal, April 23, 1975, p. 4, cols. 3 - 6, Supreme Court, Kings, Special Term, Part I).

For your information, the Attorney General has informed the Department that, upon entry of a judgment and order, he will promptly appeal this decision. The Attorney General as Intervenor-Defendant is a party to the suit. His office points out that service of his notice of appeal will stay the enforcement of the judgment under § 5519(1)(a) of the Civil Practice Law and Rules, which operates to provide an immediate stay without court order where the appellant is "... the state ... or any officer or agency of the state ...."

Accordingly, all of the provisions of the no-fault law continue in full force and effect pending a final appellate determination. The contractual obligations of insurers under the Personal Injury Protection and the Additional Personal Injury Protection Endorsements and the statutory obligations of self-insurers and insurers must continue to be honored and observed. Delay in payment of no-fault benefits or introduction of dilatory procedures as a result of the Special Term decision would be viewed as unfair claims settlement practices under §§ 40-d and 675 of the Insurance Law and under Insurance Department Regulations 64 (11 NYCRR 216) and 68 (11 NYCRR 65). Such unfair claims settlement practices will be subject to immediate administrative action by this Department.

This letter should be promptly acknowledged by a responsible officer of the company, in writing, to the undersigned.

[SIGNATURE]

STANLEY DORF

Chief, Automobile & Compensation Bureau