

December 27, 1976

SUBJECT: INSURANCE

Circular Letter No. 25 (1976)

TO ALL INSURANCE BROKERS

SUBJECT: IMPROPER PAYMENTS BY BODY REPAIR SHOPS TO INSURANCE BROKERS FOR REFERRING COMPREHENSIVE OR COLLISION LOSSES

This Department has reviewed the practice of brokers receiving commissions or other compensation from automobile body repair shops for the referral of comprehensive or collision losses.

The Department has determined that such practice constitutes a conflict of interest between the broker and the insured whom the broker is bound, by law, to represent. Acceptance of such commission or payment, whether with or without disclosure to the insured, will demonstrate untrustworthiness to act as an insurance broker within the meaning and intent of the Insurance Law.

Section 119 of the Insurance Law provides, inter alia, that brokers' licenses be issued only to individuals who are deemed trustworthy and competent to represent and safeguard the interest of the insured. Brokers acting contrary to the mandate of such section are subject to disciplinary action by the Department. It is basic that to protect the public, brokers must maintain standards of professional conduct and must not engage in activities which are subject to conflict between their interest and those of their clients.

It is the broker's duty to protect the insured's interests including the matter of referrals to automobile repair shops, whether he volunteers such referral or is asked to do so by the insured. It is in the insured's interest to have the best possible repairs made at the lowest cost obtainable. A broker who receives a commission or other compensation from an automobile body repair shop and thereby has a vested interest in making referrals to a particular shop might be recommending a repair shop which does inferior work. To the extent that a shop pays a commission to a broker, its cost must be reflected in the ultimate cost of repairs.

In addition, the conflict of interest between a broker and the insured would be manifest if the broker was the insured's designated representative pursuant to the Department's Regulation No. 64. In that case, the broker is actually adjusting the loss for the insured and his own interest in securing a commission on repairs to be done could override his duty to his insured.

This determination would not be affected by disclosure to the insured of the broker's receipt of a percentage of the repair bill for referring a particular shop. Most insureds with little experience in handling accident claims may not realize the full implication of the particular practice in question.

The present practice does not promote the most economic claims settlement procedures since the built-in costs will tend to result in greater payments for automobile repairs and ultimately insurance premium rates. In view of the present situation the automobile insurance field, this Department cannot encourage, by its silence, practices which tend to drive the cost of automobile insurance upwards.

The foregoing is effective immediately and hereby supercedes prior Department statements on this question.

Very truly yours,

[SIGNATURE]

THOMAS A. HARNETT

Superintendent of Insurance