

June 8, 1981

SUBJECT: INSURANCE

WITHDRAWN

Dated: June 8, 1981

CIRCULAR LETTER NO. 13 (1981)

TO: ALL INSURERS LICENSED TO WRITE AUTOMOBILE PHYSICAL DAMAGE INSURANCE IN THIS STATE

SUBJECT: Automobile Theft Prevention Act of 1979 - Required Affidavit of Compliance

It has come to my attention that some insurers are not in compliance with the cost containment requirements of Section 167-e of the Insurance Law and 11NYCRR 216.10 of the Regulations (Fifth Amendment to Regulation 64).

Specifically some insurers are not in compliance with the following statutory requirements:

- 1) "Salvage. Insurers shall, except where the insured is permitted to retain the automobile as part of the claim settlement, take possession of the certificate of title, properly endorsed to them, and take possession of the salvage, if any, whenever a loss is determined by the insurer to be a total loss or a constructive total loss. Insurers, in disposing of the salvage, shall fully comply with the requirements of Section 429 of the Vehicle and Traffic Law." [11NYCRR 216.10(f)]
- 2) "Insurers shall not, directly or indirectly, transfer within or without this State any vehicle for salvage, except to an automobile dealer, a vehicle dismantler, or a scrap processor licensed, registered or certified in accordance with the provisions of the Vehicle and Traffic Law, or such person meeting licensing, registration or certification requirements of the State in which such person does business. An insurer or its agents shall not purchase salvage vehicles or used major component parts of motor vehicles except from a registered vehicle dismantler or an automobile dealer." [11NYCRR 216.10(f) (2)]
- 3) "The NATB and each insurer authorized to issue automobile comprehensive insurance policies covering losses incurred to private passenger vehicles, shall upon the request of any appropriate law enforcement agency or insurance organization engaged in automobile loss prevention, release information in its possession resulting from an investigation conducted by it pertaining to such comprehensive loss, including information as such agency or organization deems related to its investigation. Should the NATB or the insurer be of the opinion that the loss was caused by any criminal or fraudulent act of any person or organization, or that an improper action occurred in the disposition of an automobile subject to the provisions of this Section, the NATB or the insurer shall notify the appropriate law enforcement agency or insurance organization engaged in automobile loss prevention of that opinion and shall notify the Insurance Department or Department of Motor Vehicles of any improper action of their respective licensees or registrants. [11NYCRR 216.10 (h) (1)]

The primary responsibility for cost containment rests with insurers. Section 167-e provides insurers with the

necessary tools and immunity safeguards to deal with fraudulent theft claims. Non-aderence by an insurer to the foregoing provisions will be considered just as serious a violation as non-adherence to the Regulation 64 claim practice rules. If an insurer is actively pursuing a fraud investigation the time limitations of Regulation 64 are waived and your response to a complaint made to this Department by the alleged perpetrator of the fraud will be treated in a confidential manner.

All insurers must by September 1, 1981 file with the Property and Casualty Bureau of the Insurance Department a Plan of Operation detailing the methods and procedures utilized by them to insure compliance with all of the provisions of Section 167-e of the Insurance Law, and the Fifth Amendment to Regulation 64 [11NYCRR 216.10]. The Plan must also be accompanied by a sworn affidavit from an officer of the insurer that such insurer is currently in compliance with Section 167-e and 11NYCRR 216.10. Any changes in the Plan of Operation must be forwarded to the Insurance Department within 30 days of the effective date of the change.

The Plan of Operation must contain all relevant facts and must include at a minimum the following:

1) Methods and procedures employed in complying with the required National Automobile Theft Bureau verification of total theft claims and salvage reporting requirements.

2) Methods and procedures employed in obtaining title to and in disposing of salvage obtained in the loss settlement process. Insurers should indicate its predominate method of disposing of salvage and whether such salvage is disposed of within or without New York State.

3) Methods and procedures employed when notified by the NATB that a vehicle reported stolen has been recovered under the New York City Rotation Tow Program.

4) Methods and procedures in place for the investigation of suspected criminal or fraudulent acts involving theft losses and the extent to which claim personnel have been educated on the importance of reporting to and cooperating with law enforcement agencies and the NATB in the investigation and subsequent prosecution of the perpetrators of the fraud.

Effective with filings for rate changes for automobile physical damage insurance made on and after September 1, 1981, insurers as a condition of receiving such rate change must submit a sworn affidavit from an officer of the insurer, that such insurer is currently in compliance with its filed Plan of Operation made pursuant to this Circular Letter.

This letter must be acknowledged by a responsible officer of the company and forwarded to:

John D. Reiersen, Supervising Examiner
Property and Casualty Bureau
New York State Insurance Department
Two World Trade Center
New York, New York 10047

Very truly yours,

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance

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