

April 20, 1987

SUBJECT: INSURANCE

Circular Letter No. 4 (1987)

DATE: April 20, 1987

TO: All Insurance Brokers and Agents

SUBJECT: Sale of Automobile Service Repair Contracts

The Insurance Department is aware of the fact that some insurance brokers and agents are offering for sale products called "automobile service repair contracts" ("Repair Contracts") as alternatives to automobile comprehensive and/or collision insurance. All such Repair Contracts reviewed by this Department indicate that the sponsors are engaged in the unlawful doing of an insurance business as such sponsors are without a license to do an insurance business. These matters were referred to the Attorney General's office. The Attorney General commenced injunctive actions against the companies and sponsors issuing such Repair Contracts and obtained decisions in all cases to date that such Repair Contracts were in fact insurance contracts and that same were issued in violation of the Insurance Law.

Several Repair Contract companies also offered theft only or comprehensive automobile physical damage insurance underwritten by New York licensed insurers as part of the Repair Contract. Other Repair Contract companies arranged for insurance with unauthorized insurers. As licensees of this Department, you should be aware that any person who sells Repair Contracts insured by unauthorized insurers or Repair Contracts which are later held to be illegal insurance contracts, may be subject to charges of having violated Section 2117 of the Insurance Law by having called attention to and or acted for or aided unlicensed or unauthorized insurers to do business in this State. The illegal nature of Repair Contracts is not cured by packaging such Repair Contracts with insurance coverage or purchasing insurance to guarantee the obligations of the Repair Contract company.

In addition, your attention is directed to Section 322 of the Insurance Law which states that no licensed insurance agent, licensed insurance broker, licensed adjuster, authorized insurer or representative of such insurer shall directly or indirectly request, procure or accept any payment from a motor vehicle repairer for referring any motor vehicle repair business to such repairer. In view of the fact that certain Repair Contracts require that the owner of the automobile have repairs made at a repair shop selected by the sponsors of the Repair Contract company and that said sponsors pay sales commissions to insurance agents and brokers, such commissions may be deemed to be indirect payments made for referring motor vehicle repair business in violation of Section 322 of the Insurance Law.

If an insurance agent or broker is approached to sell a Repair Contract and is unsure if the sale of such Repair Contract would violate the Insurance Law, the Repair Contract and sale materials, if any, may be submitted to the Insurance Department for review.

Insurance agents and brokers should also be aware that lenders often require that automobiles upon which loans have been made be insured for collision and comprehensive coverage with the lender named as a loss payee in the insurance policy. These requirements are usually set forth in the loan agreement between the automobile owner and the lender. Repair Contracts may not satisfy the insurance requirements usually set forth in loan agreements.

Receipt of this letter must be acknowledged in writing to,

Alan DiPiazza
Senior Insurance Examiner
New York State Insurance Department
Consumer Services Bureau
160 West Broadway
New York, New York 10013

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance