

June 5, 1992

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 9 (1992)

TO: ALL INSURERS LICENSED TO WRITE MOTOR VEHICLE PHYSICAL DAMAGE INSURANCE IN NEW YORK STATE AND INSURANCE PRODUCER & ADJUSTER ORGANIZATIONS

RE: SCOPE OF REFERRALS TO MOTOR VEHICLE REPAIR SHOPS PERFORMING WINDOW GLASS REPLACEMENT OR REPAIRS

The Insurance Department has learned that some insurers may be violating Section 2610 of the Insurance Law, especially with the advent of so-called "networks" for glass repair and replacement. Section 2610 prohibits all insurers from requiring any consumer to use a particular place or specific shop for the necessary repairs or replacement -- including window glass. Under no circumstances -- whether or not involving window glass -- can an insurer, under collision or comprehensive coverage, so condition payment.

Pursuant to Section 2610(b), an insurer may refer consumers -- even when the consumer does not ask -- to specific shops, if the claim involves only window glass. Insurers may make referrals on repair work for all other types of physical damage to motor vehicles, only if and only after the consumer chooses to inquire. In those situations when a referral is permitted under governing law, an insurer may suggest or recommend consumers to use those shops preferred by that insurer. Coercion or compulsion, however, will not be tolerated.

Insurers should, therefore, take care to appreciate the crucial distinction between encouragement and imposition. Yet certain insurers appear to be advising their employees, agents or insureds that glass must be replaced or repaired only by shops that belong to specified glass networks. Any such requirement is at odds with Section 2610, subjecting such an insurer to penalties under Section 109 of the Insurance Law.

At the same time, cost containment must be an abiding concern on the part of every insurer. Properly applied, the network concept conceivably could yield meaningful economies of scale, volume discounts and cost savings. But these benefits can still be achieved through a policy of encouragement, where the insurer does not go beyond recommending consumers to use member shops of the preferred network.

In furtherance of window glass cost control, some insurers may also be establishing a stated proportion of repairs versus replacement to which shops must adhere. It appears these "quotas" are set by the insurer or the network in advance -- requiring adherence by the shop regardless of inspection conducted to determine actual damage sustained or to ascertain whether repair rather than replacement will ensure safety. This practice may not only violate Regulation 64, but also Department of Motor Vehicle (DMV) standards, which stress safety. If a consumer complaint alleges an improper repair, DMV will investigate and take appropriate action. Safety must not be compromised.

It should also be noted that, in addition to Insurance Department and DMV concerns (under DMV regulations, a detailed invoice of all replacement or repair *work performed must be presented to the consumer), the Department of Taxation & Finance (T&F) is also interested in the network concept and its application. From a T&F perspective, New

York State sales tax is payable for all motor vehicle repair or replacement work, including glass, actually performed in this State. An insurer cannot avoid responsibility to reimburse insureds for sales tax incurred on glass replacement or repair by utilization of glass networks supposedly based outside New York State. If payment for the repair or replacement is made directly to the glass network by the insured or, at the direction of the insured, by the insurer, it becomes the network's responsibility to collect and pay sales tax to New York State for all work in fact performed in this State.

The insurer's senior claims officer should, no later than July 1, 1992, acknowledge in writing receipt of this Circular Letter to: Joseph Smeragliuolo, Associate Examiner, Property & Casualty Insurance Bureau, 160 West Broadway, New York, New York 10013. Please direct any questions concerning this Circular Letter to Mr. Smeragliuolo (212-602-0338).

Very truly yours, [SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE