

October 8, 1992

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 17 (1992)

TO: ALL INSURERS LICENSED TO WRITE MOTOR VEHICLE LIABILITY INSURANCE IN NEW YORK STATE AND INSURANCE PRODUCER ORGANIZATIONS

RE: STATUS OF LITIGATION INVOLVING REGULATION NO. 35-D -- SUPPLEMENTARY UNINSURED MOTORISTS (SUM) INSURANCE

Insurance Department Regulation No. 35-D (11 NYCRR 60-2) became effective on July 8, 1992. This Regulation created a prescribed standard SUM endorsement in New York and required that the new SUM endorsement be provided to policyholders who purchase SUM coverage on or after October 1, 1992. The Regulation was intended to eliminate confusion and ambiguity about SUM coverage.

The Department's authority to promulgate the Regulation in, certain respects has been challenged in court by the National Association of Independent Insurers, Government Employees Insurance Company, United Services Automobile Association and State Farm Insurance Company (Petitioners). Petitioners argue that some provisions in the prescribed endorsement conflict with existing case law.

On September 9, 1992, Justice Eugene L. Nardelli upheld, the Department's authority to promulgate Regulation 35-D in Supreme Court, New York County. In so doing, Justice Nardelli vacated a temporary restraining order and denied a preliminary injunction. The Petitioners sought a stay of that decision pending an appeal to the Appellate Division, First Department. On September 29th, the Appellate Division issued an order that enjoins the Department from enforcing Regulation 35-D pending a hearing and determination of the appeal on the condition that the Petitioners perfect their appeal for the January 1993 term of the Court.

In accordance with the order staying enforcement of the Regulation, the Department cannot require insurers to issue the prescribed SUM endorsement. However, a number of insurers aware of the litigation have expressed a desire to file the prescribed endorsement for approval by the Department. In accordance with Section 2307(b) of the Insurance Law, any insurer that wishes to file the SUM endorsement specified in Regulation 35-D on a voluntary basis may do so. The Department will review and, where appropriate, approve such filings for use.

Some insurers currently have form filings pending that utilize the Regulation 35-D endorsement. If an insurer still wishes to issue that SUM endorsement, it should so advise the Department in writing and request that the filing be approved. The effective date(s) for the endorsement should be specified.

In submitting these filings or requesting approval of pending filings, insurers should also acknowledge this Circular Letter. Of, course, an appropriate rate filing, recognizing the offsetting and non-stacking provisions of the SUM endorsement, should accompany the policy form filing.

The insurer's senior underwriting officer should, no later than November 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 filings to Lawrence Wertel, Senior Examiner (212-602-0335) at the above address.

Once this litigation has been resolved, the Department anticipates allowing insurers a realistic opportunity to comply with the governing standards pertaining to SUM.

Very truly yours,

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE