

July 31, 1992

SUBJECT: INSURANCE

WITHDRAWN

Supplement No. 3 to Circular Letter No. 16 (1991)

TO: MOTOR VEHICLE INSURERS, SELF-INSURERS, WORKERS' COMPENSATION INSURERS, AND INSURANCE PRODUCER ORGANIZATIONS

RE: 1992 LEGISLATIVE AMENDMENT TO CHAPTER 320 OF THE LAWS OF 1991, CLARIFYING THE EFFECTIVE DATE & SCOPE OF INCREASED NO-FAULT WAGE LOSS BENEFITS

Chapter 484 of the Laws of 1992 (Assembly Bill 11973-A), signed into law by Governor Cuomo on July 17, 1992, amends Chapter 320 of the Laws of 1991 in order to correct and clarify exactly when, and precisely to what wage loss claims, Chapter 320 is meant to apply. Chapter 320 increased the maximum monthly payment under No-Fault for lost earnings, payable to persons injured in a motor vehicle accident, from \$ 1,000 to \$ 2,000, effective November 12, 1991. Ambiguities in Chapter 320 are addressed and eliminated by Chapter 484. By its terms, Chapter 484 is deemed to have been in effect on and after November 12, 1991, the effective date of Chapter 320.

Chapter 484 makes it clear that the increased benefit for loss of earnings from work payable Under basic economic loss coverage applies to only those claims caused by accidents arising out of the use and operation of motor vehicles on and after November 12, 1991. Thus, with the enactment of Chapter 484, if there is a wage loss claim due to an accident taking place on or after November 12, 1991, all policies (including those previously issued or renewed) in force on and after that date should provide the increased lost earnings No-Fault benefit, subject, of course, to Article 51 limitations. This approach makes the No-Fault system work as it has since its inception -- based upon accidents as of a stated date, and thus yielding the same level of maximum mandatory No-Fault benefits to victims of motor vehicle accidents at the same point in time.

By clarifying the legislative intent and effect of Chapter 320, Chapter 484 removes from the scope of increased wage loss payments all pre-November 12, 1991 accident situations and all cases where the policy expired before that key date. Given Chapter 484, pursuant to joint stipulation, the lawsuit challenging Chapter 320 and the 22nd Amendment to Regulation 68 implementing it has been terminated. With the preliminary injunction vacated, the Department will move expeditiously to adjust the 22nd Amendment to accurately reflect Chapter 484.

As a result of Chapter 484, all insurers and self-insurers should now review their New York No-Fault claims arising from accidents which occurred on and after November 12, 1991 and make appropriate adjustments to assure that claimants are paid benefits for lost earnings in accordance with Chapter 320, as amended by Chapter 484. Some underpayments or, indeed, overpayments may have been made, depending upon how an insurer has implemented Chapter 320 to date.

Pending emergency promulgation of a modified 22nd Amendment, the following guidelines deal with most circumstances insurers are likely to encounter in efforts to comply with the law:

(1) An insurer that paid the increased lost earnings benefit on any claim, where the accident occurred prior to November

12, 1991, for wage loss incurred on and after November 12, 1991, should not offset the overpayments against future lost earnings benefit payments (but, in accordance with Bill Section 2 of Chapter 484, may account for them in an appropriate rate filing).

All future lost earnings paid on such a claim should be paid based on the maximum of \$ 1,000 per. month (unless higher limits for personal injury protection were purchased).

(2) Insurers that have paid lost earnings benefits based on a maximum of \$ 1,000 per month, upon policies issued or renewed prior to November 12, 1991, for accidents occurring on and after November 12, 1991, should recalculate the maximum lost earnings benefits to which claimants are entitled and, where appropriate, pay additional lost earnings to affected claimants.

In accordance with Bill Section 3 of Chapter 484, payments for such adjusted lost earnings benefits made within 120 days of July 17, 1992, or no later than November 14, 1992, will be deemed to have been made on a timely basis, and no interest or other penalties shall accrue pursuant to Article 51 of the Insurance Law and Regulation 68.

(3) Insurers that have already paid lost earnings benefits at the maximum rate of \$ 2,000 per month, for claims arising out of accidents occurring on and after November 12, 1991, irrespective of when the policy was issued or renewed and, further, applied such payments to Additional Personal Injury Protection (PIP) coverage, should make appropriate adjustments to their loss and expense records, in terms of whether or not the payment is subrogable.

Additional PIP benefits may be subject to liens or subrogation, while benefits paid pursuant to the mandatory Basic Economic Loss coverage are not.

In accordance with Bill Section 2 of Chapter 484, insurers may file rate adjustments for basic economic loss coverage (including optional additional basic economic loss coverage), in regard to those policies to be issued or renewed in the future, reflecting any loss experience (from the statutorily mandated increase in the lost earnings benefit on policies issued or renewed prior to July 17, 1992) that was unanticipated.

Receipt of this Circular Letter should be acknowledged in writing by the insurer's senior claim officer, no later than August 10, 1992, to the attention of: Joseph Smeragliuolo, Associate Examiner, Property & Casualty Insurance Bureau, New York State Insurance Department, 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