



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

NOTE: WITHDRAWN EFFECTIVE DECEMBER 4, 2003

**Circular Letter No. 16 (2000)
May 10, 2000**

TO: All Motor Vehicle Self-insurers and Insurers Licensed to Write Motor Vehicle Physical Damage Insurance in New York State

RE: Application of Section 2610(b) of the Insurance Law

This is to advise all insurers licensed to write motor vehicle physical damage coverage in New York State of the decision issued by Judge Richard Conway Casey of the United States District Court (Southern District of New York) in the companion cases Allstate Insurance Co. v. Serio and GEICO v. Serio on May 4, 2000. These actions challenged the constitutionality of Section 2610(b) of the New York Insurance Law, which prohibited insurers from recommending or suggesting that repairs to a damaged vehicle be made in a particular place or shop unless expressly requested to do so by their insureds.

Judge Casey ruled that Section 2610(b), as applied to Allstate and GEICO, violated the First Amendment of the United States Constitution as an unjustifiable burden on commercial free speech. In both instances, the use of the programs by insureds was voluntary.

It is clear from the decision that the First Amendment protection of commercial speech would extend to recommendations made by insurers that were not parties to the above-referenced actions. It is equally clear that in the opinion of the court, attempts by the Department to enforce the provisions of Section 2610(b) run afoul of First Amendment protections. Insurers are, therefore, now free to recommend or suggest that repairs to a damaged vehicle be made in particular places or repair shops regardless of whether the insured expressly requested such recommendations. In all such instances, insurers are reminded that their insureds retain the right, pursuant to Section 2610(a) of the Insurance Law, to choose which shop will repair their damaged vehicle. Section 2610(a) remains in full force. In addition, any new programs implemented as a result of this decision remain subject to the requirements of Article 23 of the Insurance Law.

This Circular Letter repeals and supersedes Department Circular Letter No. 4, dated April 7, 1994.

Any questions regarding this Circular Letter should be directed to Lawrence Fuchsberg at (212) 480-5279.

Very truly yours,

Kevin M. Rampe
Senior Deputy Superintendent
and General Counsel