



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

Eliot Spitzer
Governor

Eric R. Dinallo
Superintendent

[Redacted]

May 8, 2007

RE: Definition of Initial Pretrial Hearing in Insurance Law § 2110(j)

[Redacted]

I write in response to your inquiry, which asks whether an arraignment constitutes an "initial pretrial hearing," as the term is used in N.Y. Ins. Law § 2110(j) (McKinney 2007).

QUESTION PRESENTED:

Does an arraignment constitute an "initial pretrial hearing" within the meaning of Insurance Law § 2110(j)?

CONCLUSION:

Yes. An arraignment constitutes an "initial pretrial hearing" under Insurance Law § 2110(j).

FACTS:

You report that you are counsel to an individual who is a licensee of this Department. The licensee was recently accused and arrested on felony larceny and other related charges. Although you were not certain whether the term "initial pretrial hearing," as used in the Insurance Law, refers to an arraignment, you advised your client to report the incident to the Department within 30 days of her arraignment. You ask the Department's Office of General Counsel to confirm your interpretation of the Insurance Law.

ANALYSIS:

Insurance Law § 2110 governs the revocation or suspension of the licenses of insurance producers, insurance consultants, and insurance adjusters. Specifically, Insurance Law § 2110(j) requires an insurance producer to report any criminal prosecution of the licensee in any jurisdiction. That provision states:

(j) Within thirty days of the initial pretrial hearing date, a licensee subject to this article shall report to the superintendent any criminal

prosecution of the licensee taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

Thus, within 30 days of an “initial pretrial hearing,” a licensee of the Department must report any criminal prosecution in any jurisdiction to the Department. However, nothing in the Insurance Law, nor any other law in the State of New York, defines or uses the term “initial pretrial hearing.”

Modeled on § 17 of the National Association of Insurance Commissioners’ (NAIC) Producer Licensing Model Act, Insurance Law § 2110(j) was enacted in 2003, and became effective in 2004. The Memorandum in Support of the bill provides:

[P]romoting uniformity in state licensing procedures remains a worthwhile goal. Codifying state reciprocal agreements and eliminating unimportant differences and terminology in agency licensing brings greater certainty and efficiency to the business of insurance and eases multi-state operations that are now commonplace. Formalizing information sharing among regulators and establishing protocols for interagency cooperation and prompt reporting of disciplinary actions will help maintain the integrity of the regulatory framework that now must protect consumers from disreputable producers who or which may be licensed in multiple states. 2003 N.Y. Laws 687.

It is clear, therefore, that in enacting Insurance Law § 2110(j), the legislature was less concerned with terminology than achieving uniformity with the licensing procedures of the other states. Viewed through this prism, the term “initial pretrial hearing,” while not defined in the New York Insurance Law specifically (or in any other New York statute), is plainly intended to encompass a defendant’s initial court appearance in a criminal action in any jurisdiction.

The New York Criminal Procedure Law (CPL) § 1.20 (McKinney Supp. 2007) defines an “arraignment” as follows:

9. "Arraignment" means the occasion upon which a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending for the purpose of having such court acquire and exercise control over his person with respect to such accusatory instrument and of setting the course of further proceedings in the action.

An arraignment is the first time that a defendant accused of a crime appears before a court. In fact, it is entirely possible for a criminal case to go to trial without any other hearing after an arraignment. For these reasons, the Department considers an arraignment to be an “initial pretrial hearing” that triggers the 30-day requirement under Insurance Law § 2110(j).

Very truly yours,

A handwritten signature in black ink, appearing to be 'S. Maloor', written in a cursive style.

Sapna S. Maloor
Assistant Attorney