



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

George E. Pataki
Governor

Howard Mills
Acting Superintendent

The Office of General Counsel issued the following opinion on April 4, 2005, representing the position of the New York State Insurance Department.

Re: Applicability of N.Y. Ins. Law § 403 and Regulation 95 Requirement of Fraud Warning Statements in Applications and Claim Forms to Excess Line Insurers

Question Presented:

Do the fraud warning statements in N.Y. Comp. Codes R. & Regs. tit. 11, § 86.4(a) & (b) (2003) (Regulation 95) apply to excess line insurers?

Conclusion:

Yes. The fraud warning statements apply to excess line insurers.

Facts:

No facts were provided.

Analysis:

The question raised here was addressed in the Office of General Counsel's opinion dated May 5, 2003. This opinion concluded: "Unauthorized insurers are required to comply with the fraud notices requirement in N.Y. Ins. Law § 403(d) & (e) (McKinney 2000) and N.Y. Comp. Codes R. & Regs. tit. 11, § 86.4 (2002) (Regulation 95)." Note that Section 86.4(a) & (b) of Regulation 95, which currently provide the fraud warning statements, were amended effective November 1, 2003. This amendment changed the language of the Regulation 95 provisions after the May 5, 2003 opinion was written. The current language of the Regulation 95 fraud warning statements will be quoted in the analysis below. However, this change in language does not affect the conclusion and analysis of the May 5, 2003 opinion.

The current language of the fraud warning statements of Regulation 95 at Section 86.4(a) & (b) states:

(a) Except with respect to automobile insurance, all claim forms for insurance, and all applications for commercial insurance and accident and health insurance, provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

(b) All applications and claim forms for automobile insurance provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State shall contain the following statement::

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation."

For further information you may contact Senior Attorney Robert Freedman at the New York City Office.