



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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

The Office of General Counsel issued the following opinion on October 6, 2004, representing the position of the New York State Insurance Department.

**Re: Attorney's Fees Reimbursable under No-Fault**

**QUESTION PRESENTED:**

Where an applicant's attorney has secured payment of a No-Fault insurance claim that has not been denied or paid within 30 days and is therefore overdue, before a lawsuit or arbitration request has been filed, and where a calculation of attorney's fees due is made in accordance with Section 65-3.10(a) of No-Fault Regulation 68 which results in an amount in excess of \$60, is the attorney's fee the insurer must pay subject to a maximum of \$60?

**CONCLUSION:**

Yes. Pursuant to Section 65-3.10(a), an attorney is entitled to a maximum attorney's fee of \$60 for services necessarily performed in connection with securing payment of a No-Fault claim that has not been denied and is therefore overdue, when 20 percent of said claim plus interest calculates to an amount in excess of \$60.

**FACTS:**

An applicant's attorney has secured payment of a \$1,000 automobile no-fault insurance claim that is overdue and has not been denied, plus \$100 in interest, and has not filed a lawsuit or arbitration request.

**ANALYSIS:**

The Insurance Department promulgated a revised No-Fault Regulation 68 that took effect on April 5,

2002. One of the changes adopted in the revised regulation was an increase in the fee an insurer is required to pay an applicant's attorney for securing payment of an overdue automobile no-fault claim before a lawsuit or arbitration request has been filed. That provision, N.Y. Comp. Codes. R. & Regs. § 65-3.10(a)(2002), states that:

"An applicant or an assignee shall be entitled to recover their attorney's fees, for services necessarily performed in connection with securing payment, if a valid claim or portion thereof was denied or overdue. If such a claim was initially denied and subsequently paid by the insurer, the attorney's fee shall be \$80. If such a claim was overdue but not denied, the attorney's fee shall be equal to 20 percent of the amount of the first-party benefits and any additional first-party benefits plus interest payable pursuant to section 65-3.10 of this subpart, subject to a maximum fee of \$60."

The prior rule under the former No-Fault regulation limited the amount of the attorney's fee solely to the amount of interest, subject to a maximum payment of \$60. The promulgation of 11 NYCRR 65-3.10(a) increased the amount of the attorney's fee to 20% of the amount of the overdue claim, plus any interest, subject to a maximum payment of \$60. The purpose of this change was to encourage attorneys to settle claims with insurers prior to initiating lawsuits and/or arbitration requests.

For further information you may contact Supervising Attorney Lawrence M. Fuchsberg at the New York City Office.