



**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 November 15, 2004, representing the position of the New York State Insurance Department.

Re: Mandatory Photo Inspection

Question Presented:

In order to request and receive coverage for automobile physical damage insurance on a replacement vehicle, does an insured have three or five days to obtain the mandatory photo inspection required under N.Y. Comp. Codes R. & Reg. tit. 11, Section 67.4 (1997)?

Conclusion:

Pursuant to N.Y. Comp. Codes R. & Reg. tit.11, Section 67.4 (1997), the insured has a minimum of five days and, under certain circumstances, a maximum possibility of eight days to obtain a mandatory photo inspection.

Facts:

No facts are presented.

Analysis:

Section 67.4(a) provides:

Upon an insured's request for coverage for automobile physical damage insurance on an additional or replacement vehicle, the Insurer shall provide coverage immediately and shall defer the mandatory inspection for the five calendar days following the effective date of coverage, if the insurer is required, pursuant to section 3425 of the Insurance Law, to provide automobile physical

damage coverage on an additional or replacement automobile.

Section 67.4 (b) in pertinent part provides:

An insurer may defer the mandatory inspection under any of the following circumstances:

....

(2) On replacement vehicles, an insurer may provide the same type of level of physical damage coverage which covered the replaced automobile, without a request for coverage by the insured. Such automatic coverage prior to the insured's request for coverage shall be for a period of three days, including the day on which the automobile is acquired. The three-day period shall be extended by one day for each Saturday, Sunday or any New York State legal holiday falling within the period. The insurer's election shall apply only to automobiles replacing covered automobiles which were insured by the insurer for physical damage coverage for at least the 12-month period preceding the replacement date and must apply to all private passenger automobile insurance, including New York automobile insurance plan policies, written by such insurer. An insurer which makes an election pursuant to this clause shall file an appropriate policy endorsement with the superintendent and furnish a copy of such endorsement to all of its insureds who have physical damage coverage.

The question therefore is whether the three-day automatic coverage is in addition to the five-day period for inspection, or whether the three-day automatic coverage period is in lieu of the five-day period for inspection. If the latter were true, the insured would have automatic coverage that would lapse after three days, despite the fact that the inspection, by operation of regulation, must be deferred for five days. For continuous coverage, therefore, the insured would have to complete the inspection within three days. Read in this manner, the effect of Section 67.4(b)(2) would be to directly contradict the unambiguous words of Section 67.4(a).

Subdivision (b)(2) was promulgated subsequent to the initial promulgation of Section 67.4. In promulgating subdivision (b)(2), the Department did not intend to limit the rights of an insured with a replacement vehicle. As originally promulgated on an emergency basis, the Third Amendment to Part 67, (February 29, 1980) stated in relevant part:

In addition to the above mandatory deferral period, applicable to replacement vehicles only, an insurer

may file and election with the Superintendent to provide the same type and level of physical damage insurance which covered the replaced automobile. Such automatic coverage prior to the insured's request for coverage shall be for a period of three days, including the day on which the automobile was acquired.

In addition, in a February 29, 1980 Statement of Reason for Emergency Measure in promulgating the Third Amendment of Regulation 79 (N.Y. Comp. Codes R. & Reg. tit. 11, Section 67), the Superintendent stated the following:

The principle change effected by this Amendment is to permit insurers the right to give at least three days automatic physical damage coverage for a replacement automobile prior to the insured's notification of the insurer that a replacement vehicle had been obtained...Insureds currently face the risk of driving a replacement vehicle without physical damage coverage if they are unable to contact their insurer immediately. This has created the potential for hardship where an individual desires to purchase an automobile over a weekend and immediately use it.

When the amendment was adopted on a permanent basis with the present language, the Department had no intention to substantively change the intention of the provision.

It should be noted that the eight day maximum for acquiring an inspection applies only to insurers who, pursuant to N.Y. Ins. Law Section 3425 (McKinney 2000), must be required to provide automobile physical damage coverage on an additional or replacement vehicle and elected to provide the three-day deferral by filing a policy endorsement with the Superintendent. Furthermore, it only applies to automobiles insured by the insurer for at least 12 months prior to the replacement date.

If the insurer has met the requirements listed above, and makes an election to provide automobile physical damage coverage on an additional or replacement vehicle, an insured would be granted three days of automatic coverage during which time the insured must notify the insurer that a replacement vehicle has been obtained. Once the insured has notified the insurer, the five-day mandatory period begins to run. Theoretically, an insured may have a maximum of eight days from the date of acquisition of the vehicle within which a mandatory photo inspection must be made. At a minimum, the insured would have five.

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