



**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 December 9, 2004, representing the position of the New York State Insurance Department.

RE: Reg. 64 Disclosures As To Cost Of Automobile Repairs

Question Presented:

Does N.Y. Comp. Codes R. & Regs. tit. 11, § 216.7(b) (1995) (Reg. 64) require the use of specific language or font size when an insurer's repair estimate is based upon the use of non-original equipment manufacturer ("non-OEM") parts to repair damage to a motor vehicle suffering partial loss?

Conclusion:

No. The insurer must comply with the seven requirements of § 216.7(b)(5) when its repair estimate for a motor vehicle suffering a partial loss is based upon the use of any non-OEM crash part. Repair estimates are also addressed in § 216.7(b)(13).

Facts:

None were provided.

Analysis:

N.Y. Comp. Codes R. & Regs. tit. 11, § 216.7(b)(5) (1995) provides that there are seven requirements that must be met when the insurer's repair estimate is based upon the use of any non-original equipment manufacturer's crash part. These requirements are contained in the subparagraphs which provide as follows:

(i) the estimate shall specify the non-OEM or non-OEM supplier;

(ii) the insurer shall not, without the consent of the insured or the insured's designated representative,

specify non-OEM crash parts from more than three different suppliers for any one repair;

(iii) the crash part shall equal or exceed the comparable OEM crash part in terms of fit, form, finish, quality and performance.

(iv) the crash part must be warranted by the non-OEM at least to the extent and duration as the comparable OEM crash part;

(v) the insurer shall specify only certified crash parts, in regard to any part that has been certified by a qualified certifying entity acceptable to the superintendent;

(vi) if the crash part has not been certified by a qualified certifying entity acceptable to the superintendent, the non-OEM must issue a written warranty, for at least the period of the insured's ownership of the vehicle, that the crash part equals or exceeds the comparable OEM crash part in terms of fit, form, finish, quality and performance; and

(vii) the insurer shall cause the damaged vehicle to be restored to its preloss condition consistent with the non-OEM warranty, at no additional cost to the insured and within a reasonable time, if the non-OEM fails to honor its warranty required in subparagraph (iv) or (vi) of this paragraph.

The term "Non-original equipment manufacturer or non-OEM" is defined in § 216.7(a)(8) as follows:

... means a manufacturer or distributor (including any entity supplying the required warranty other than a manufacturer), that produces or markets, under its own name, crash parts for use in motor vehicles that it does not manufacture or distribute.

Although there is no requirement to use specific language or font size, § 216.7(b)(13) requires that certain information be contained in repair estimates as follows:

Estimates or repairs prepared by insurers or their representatives shall contain the following information at a minimum: identity of policyholder and/or owner/claimant; owner/claimant's address and telephone number; identity of insurer, including

name, address, license number and telephone number of adjuster; year, make, model, body style, mileage, VIN, license number, color and condition of the damaged vehicle. The estimate must also contain the claim number, the date of accident and the date the vehicle was inspected. Each item of damage must be detailed as to the paint, parts and labor hours it will require to repair that particular item. If the appraisal is made at a repair shop, the registration number of the shop must be included on the estimate form.

In addition to the Insurance Department Regulation, the New York State Department of Motor Vehicles ("DMV") should be contacted to obtain a copy of any other relevant regulation on this issue. The address of DMV is as follows: Office of General Counsel, NYS Dept. of Motor Vehicles, 6 Empire Plaza, Albany, NY 12228.

For further information you may contact Associate Attorney Jeffrey A. Stonehill at the New York City Office.