

ATTORNEY GENERAL

December 13, 1982

JOSEPH F. MURPHY,
Commissioner of Insurance
201 East State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 8—1982

Dear Commissioner Murphy:

You have inquired whether the extension of a regulation establishing procedures for the nonrenewal of "No-Fault" coverages to include physical damage coverages is authorized. For the following reasons, you are advised that the extension of the procedures concerning the nonrenewal of "No-Fault" coverages to include physical damage coverages in automobile insurance policies by N.J.A.C. 11:3-8.1(g) is a valid and enforceable exercise of the Commissioner's rule making power.

Effective January, 1973, the Commissioner adopted regulations which placed restrictions on insurance carriers seeking to nonrenew private passenger automobile policies containing "No-Fault" coverages. N.J.A.C. 11:3-8.1 *et seq.*¹ The regulation in part provides that a notice of nonrenewal is not valid unless it is mailed 60 to 90 days prior to the expiration of the current policy and sets forth the reason(s) for nonrenewal. Section (b). Additionally, the notice must include the text of the portion of the rule permitting the nonrenewal and specific facts which bring the insured under the rule. Section (b)(1). Reasons for nonrenewal deemed to have the Commissioner's approval are set forth at sections (e) and (f). These reasons include, among other things, an insured's involvement in prior accidents, his violation of motor vehicle laws, his use of the car in professional racing, his physical or mental impairment, and his refusal to submit to a medical examination. Additionally, N.J.A.C. 11:3-8.1(d) provides that "any refusal to renew an automobile insurance policy not based upon such reasons be submitted to the Commissioner of Insurance no later than 90 days prior to the expiration of the policy and shall only be issued to the insured with the consent of the Commissioner."

On October 18, 1976, the Department adopted N.J.A.C. 11:3-8.1(g) which provides that "this rule (N.J.A.C. 11:3-8.1 *et seq.*) shall apply to *all* private passenger automobile coverages when included in a policy providing for personal injury protection and liability coverage." In effect, the amendment prohibits auto insurers from nonrenewing physical damage coverages (i.e., collision, comprehensive, etc.) unless the nonrenewal is in compliance with the standards of the existing regulation.

The question presented is whether or not the Commissioner has the authority to regulate the nonrenewals of physical damage coverages. The requisite statutory support is amply supplied by N.J.S.A. 17:22-6.14a 1 and 2 which state in pertinent part:

1. The Commissioner's power to promulgate regulations relative to the nonrenewal of "No-Fault" coverages was confirmed by the Supreme Court in *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 159 N.J. Super. 417 (Ch. 1978), *aff'd* 163 N.J. Super. 40 (App. Div. 1978), *modified on other grounds*, 80 N.J. 548 (1979).

FORMAL OPINION

All property and casualty insurers doing business in New Jersey shall, upon request of the Commissioner of Insurance, file with the Department of Insurance a copy of their current underwriting guidelines, together with any amendments thereto or modification thereof. Such guidelines, amendments or modifications shall not be arbitrary, capricious or unfairly discriminatory. Where a policy of insurance is not renewed because of failure to meet the then current underwriting standards, the notice of nonrenewal shall identify the underwriting standard and specify in detail the factual basis upon said underwriting standard has not been met.

There is no ambiguity. N.J.S.A. 17:22-6.14a 1 requires that all property and casualty insurers maintain underwriting guidelines which are not arbitrary, capricious or unfairly discriminatory. Further, these guidelines must be made available to the Department of Insurance upon the request of the Commissioner. N.J.S.A. 17:22-6.14a 2 imposes an obligation on an insurer which intends to nonrenew a policy based on the insured's failure to meet company underwriting standards. Namely, the notice of nonrenewal delivered to the insured must identify the standard upon which the nonrenewal is premised and state the specific factual basis establishing the insured's failure to meet that standard. Given the straightforward terminology of the act there can be little question that it sufficiently authorizes the Commission to review the validity of a company's underwriting standards and to determine whether a nonrenewal is reasonably based on those standards.

N.J.A.C. 11:3-8.1 *et seq.* provides the mechanism by which the Commissioner has implemented the statute. N.J.A.C. 11:3-8.1(d) requires that, at least 90 days prior to the expiration of an automobile insurance policy, a carrier must provide the Commissioner of Insurance with a statement of the reasons for the nonrenewal. The "reasons" (for nonrenewal), as that term is used in this regulation, mean acceptable underwriting reasons relied upon by the insurer in deciding to nonrenew an insured's coverages.² After review, the Commissioner will consent to or disapprove the use of that reason. Obvious reasons for nonrenewal, listed at N.J.A.C. 11:3-8.1(e), are deemed to have the approval of the Commissioner and express consent based on any of these reasons is not required. In the event the Commissioner determines that the reasons underlying a proposed nonrenewal submitted to him are not either arbitrary, capricious or discriminatory, the insurer may notify the insured of the intent to nonrenew. It is clear that section (d) of the rule establishes a procedure by which the Commissioner may both request that certain underwriting guidelines be filed with the Department and determine whether those underwriting guidelines are consistent with the statutory standard.

In addition, it is appropriate to examine the statute in light of its surroundings and objectives in order to ascertain the statutory policy sought to be achieved. *In re Berardi*, 23 N.J. 485, 491 (1957); *Schierstead*

2. We are advised that the reasons deemed to have the Commissioner's prior consent, set forth at N.J.A.C. 11:3-8.1(e), are essentially underwriting standards.

ATTORNEY GENERAL

v. City of Brigantine, 20 N.J. 164, 169 (1955); *Ward v. Scott*, 11 N.J. 117, 123 (1952). In June, 1970, the Commissioner of Insurance declared a 90-day moratorium on all policy terminations. Effective October 13, 1970, N.J.S.A. 17:22-6.14a *et seq.*, entitled "An Act concerning insurance to improve the stability and availability of insurance protection for the public . . ." became the law in this State. Shortly thereafter, amendments to that act, N.J.S.A. 17:22-6.14a 1 and 2 required that a notice of nonrenewal must set forth a valid underwriting basis for the nonrenewal and particularized facts establishing that the insured has failed to meet the requirements of that guideline. The Commissioner of Insurance is specifically authorized to implement the act, to the extent he determines necessary, by rules and regulations to prevent the arbitrary nonrenewal of coverages vital to the interests of the insuring public.

The regulations set forth at N.J.A.C. 11:3-8.1 *et seq.* as amended, are entirely consistent with the legislative purpose. The regulations require that nonrenewals be limited to those instances where good cause for the nonrenewal can be established. The renewal provisions of that regulation are also totally consistent with the principle that a closely regulated business, having entered a given field of operation, may be required to continue to provide services essential to the public interest despite its preference to discontinue such services. See *Pennsylvania Railroad Co. v. Bd. of Public Utility Commissioners*, 11 N.J. 43 (1952); *DeCamp Bus Lines v. Transportation Department*, 182 N.J. Super. 42 (App. Div. 1981).

In conclusion, it is our opinion that the adoption of N.J.A.C. 11:3-8.1(g) is a permissible exercise of the Commissioner's authority to regulate the nonrenewal of auto property damage coverage by insurers in the State.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: PATRICK J. HUGHES
Deputy Attorney General
