

# IIABNY, CIBGNY File Appeal of Producer Compensation Disclosure Regulation

September 2, 2011

The Independent Insurance Agents & Brokers of New York and the Council of Insurance Brokers of Greater New York have filed a formal appeal of a trial court ruling that upheld a controversial state regulation.

Attorneys from the law firm of Keidel, Weldon & Cunningham, LLP submitted a brief on the trade groups' behalf with the New York State Supreme Court Appellate Division, Third Department in Albany this morning, September 1.

The dispute centers around New York Insurance Regulation 194, which took effect on January first. It requires agents and brokers to tell clients how insurance companies pay them, whether the clients have asked or not.

The organization's bulletin points out that, "should a client have questions about the producer's compensation, the producer must provide, in addition to that information, many other details about the policy sold and policies the client rejected. This means the producer would have to disclose, among other things:

- Differences in types and amounts of coverage;
- Contrasts in policy terms; and
- The pay he would have received had the client chosen a different policy.

The IIABNY also noted that in 2004 – at the height of the contingent commission controversy - it had "called on insurance agents and brokers to voluntarily disclose to their clients the existence and nature of all their compensation." However it has opposed mandated disclosures as "burdensome for producers and of little benefit to consumers."

IIABNY and CIBGNY are the only producer trade groups to launch a legal challenge to the regulation. Their position is that "New York State insurance law does not give the Insurance Department the power to make these demands." They have also described the regulation as "arbitrary" and said that it "imposes large, needless compliance costs on producers."

However, the trial court upheld the regulation in November 2010; whereupon the groups filed a notice of appeal with the Third Department the next month, preserving their right to formally appeal. After months of gathering new information to strengthen the case, the IIABNY board of directors voted last May to file the appeal.

"We still believe that the Insurance Department exceeded its authority by issuing this burdensome, unnecessary regulation," explained IIABNY Chair of the Board Christopher A. Brassard. "Regulation 194 places unprecedented obligations on law-abiding insurance producers,

and it provides no additional benefit to consumers. We fully expect to prevail after the appellate court hears our arguments.”

State law permits the Insurance Department time to file a response with the court. IIABNY said that it expects the court will schedule oral arguments for sometime in the fall.

Source: IIABNY and CIBGNY