



**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 August 3, 2004, representing the position of the New York State Insurance Department.

RE: Broker Fees

Question Presented:

How much may an insurance broker charge its client as a service fee under N.Y. Ins. Law § 2119 (McKinney 2000)?

Conclusion:

An insurance broker who complies with all of the requirements of N.Y. Ins. Law § 2119 (c) and (d) (McKinney 2000) may charge a fee for its brokering services that is reasonable in relation to the services provided.

Facts:

The inquiry was general in nature and no specific facts were provided.

Analysis:

N.Y. Ins. Law § 2119 (c) and (d) (McKinney 2000) state:

(c) (1) No insurance broker may receive any compensation, other than commissions deductible from premiums on insurance policies or contracts, from any insured or prospective insured for or on account of the sale, solicitation or negotiation of, or other services in connection with, any contract of insurance made or negotiated in this state or for any other services on account of such insurance policies or contracts, including adjustment of claims arising therefrom, unless such compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation.

(2) A copy of every such memorandum shall be retained by the broker for not less than three years after such services have been fully performed.

(3) This subsection shall not affect the right of any such broker to recover from the insured the amount of any premium or premiums for insurance effectuated by or through such broker.

(4) This subsection shall not affect the requirements of subsection (a) or (b) hereof, subsection (g) of section two thousand one hundred one or section two thousand one hundred eight of this article.

(d) No insurance broker shall, in connection with the sale, solicitation or negotiation, issuance, delivery or transfer in this state of any contract of insurance made or negotiated in this state, directly or indirectly charge, or receive from, the insured or prospective insured therein any greater sum than the rate of premium fixed therefor by the insurer obligated as such therein, unless such broker has a right to compensation for services created in the manner specified in subsection (c) of this section.

Thus an insurance broker may charge its clients a fee for services where there is a written memorandum, signed by the insured, and specifying or clearly defining the amount or extent of the fee.

There is nothing in the Insurance Law or the regulations promulgated thereunder that limits the service fees charged by insurance brokers, *per se*.¹ However, it is the Department's position that any charge made should be reasonable in relation to the services provided. The Department may consider an insurance broker who charges an outlandish fee in comparison to the service provided to be untrustworthy, for which his license may be revoked, under N.Y. Ins. Law § 2110(a)(4) (McKinney 2000), as amended by the Laws of New York 2003, Chapter 687.

For further information you may contact Associate Attorney Sally Geisel at the New York City Office.

¹ Note, however, that there are limitations imposed on service fees charged by producers on policies that are placed with the New York Automobile Insurance Plan. See § 21(C) of the Plan Rules for details.