



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

The Office of General Counsel issued the following informal opinion on March 27, 2002, representing the position of the New York State Insurance Department.

RE: Minimum and Deposit Premium

Question Presented:

May an insurer of a commercial general liability policy, which is auditable based on the insured's annual sales, charge an annual minimum and deposit premium?

Conclusion:

Whether an insurer of a commercial general liability policy may charge an annual minimum and deposit premium is dependent upon the insurer's ability to prove that the minimum and deposit premium filed equals the cost associated with issuing the policy and to cover the expenses of writing the business.

Facts:

An insurance agent in New York stated that its client's commercial general liability policy, which was written by an authorized property/casualty insurer, contained an annual minimum and deposit premium endorsement. The agent stated that the policy was auditable based on sales and that the year-end sales had been lower than expected, which indicated a return of premium to the client. The agent stated that the insurer refused to provide a return premium because the policy was written with an annual minimum and deposit premium. The agent did not state the amount that was charged as the annual minimum and deposit premium.

Analysis:

Pursuant to N.Y. Ins. Law § 2307(b) (McKinney 2001-2002 Interim Pocket Part), except as otherwise provided in the Insurance Law and regulations promulgated thereunder, no property/casualty insurance policy form issued by an authorized insurer shall be delivered or issued for delivery until it is filed with the Superintendent and has been approved, or thirty days have elapsed and the policy form has not been disapproved. An endorsement, which is a form that amends the policy, is a policy form that is subject to the applicable filing requirements.

The Department has approved minimum earned premium endorsement filings (which may include an annual minimum and deposit premium endorsement) where the insurer has provided supportable evidence that the minimum earned premium equals the cost associated with issuing the policy. The purpose of allowing a minimum earned premium is to permit the insurer to recover the expenses of writing the business should the policy be canceled prior to expiration, or, in the case of an auditable policy, where the audit results in a premium lower than the amount needed to cover the cost of writing the policy.

We can not advise, without additional information, whether the endorsement that was referred to in the inquiry has actually been filed and approved, or not disapproved, as required by N.Y. Ins. Law § 2307(b) (McKinney 2001-2002 Interim Pocket Part).

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

¹ The Department understands an "annual minimum and deposit premium" to be the premium an insured has to pay as a deposit on the policy, which is also the minimum dollar amount that the insured will be charged as a premium regardless as to whether the policy is written on an auditable basis, or is canceled prior to the expiration date of the policy.