



**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 June 4, 2002, representing the position of the New York State Insurance Department.

RE: Minimum and Deposit Premium

Question Presented:

May an insurer that issues a general liability policy, which is auditable based on the insured's annual sales, charge a minimum and deposit premium¹?

Conclusion:

Whether an authorized insurer that issues a commercial general liability policy may charge a 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.

An unauthorized insurer that issues a commercial general liability policy through a licensed excess line broker pursuant to N.Y. Ins. Law §§ 2105 and 2118 (McKinney 2001-2002 Interim Pocket Part) is not prohibited from issuing a minimum and deposit premium.

Facts:

A licensed insurance broker provided the following scenario with respect to his inquiry: a property/casualty insurer proposes to issue a commercial general liability policy that is auditable based on annual sales. The insurer proposes to charge the insured a deposit premium based on estimated sales for the policy year. If actual sales are higher than the estimated amount, the insured will owe additional premium. The insurer proposes, however, that if sales are lower than were estimated, the insurer will not provide a return premium to the insured because the deposit premium will also be the policy's minimum premium. The insurance broker made his inquiry with respect to both authorized and unauthorized insurers.

Analysis:

In accordance with N.Y. Ins. Law § 2303 (McKinney 2000) regarding the standard for property/casualty insurance rates, an authorized insurer may charge a minimum earned premium (which may include a minimum and deposit premium) where it has 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.

N.Y. Ins. Law § 2302(a) (McKinney 2000) states in relevant part: "This article shall apply to all kinds of insurance written on risks or operations in this state by an insurer **authorized** to do business in this state" (emphasis added.) Thus, unauthorized insurers² are not subject to Article 23 of the New York Insurance Law. In that regard, an unauthorized insurer that issues a commercial general liability policy through a licensed excess line broker pursuant to N.Y. Ins. Law §§ 2105 and 2118 (McKinney 2001-2002 Interim Pocket Part) is not prohibited from issuing a minimum and deposit premium.

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

¹ The Department understands a "minimum and deposit premium" to be the premium that an insured pays 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.

² Insurance policies may not be issued or delivered in New York by an unauthorized insurer except through a licensed excess line broker pursuant to N.Y. Ins. Law §§ 2105 and 2118 (McKinney 2001-2002 Interim Pocket Part), or through a licensed insurance broker pursuant to the exceptions contained in N.Y. Ins. Law § 2117(b) and (c) (McKinney 2001-2002 Interim Pocket Part).