

Reg 5062



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 27, 1995

The Honorable Elsie Rast Stuart
Member, House of Representatives
P. O. Box 38
Pelion, South Carolina 29123

Re: Informal Opinion

Dear Representative Stuart:

You have sought our advice as to whether S.C. Code Ann. Sec. 38-75-970 which relates to property, casualty and title insurance and contains certain definitions regarding the adequacy of premium rates would be applicable to automobile insurance. However, I am advised by the counsel for the South Carolina Department of Insurance that Section 38-73-450 et seq. would be the governing provision with respect to automobile insurance. That Section provides as follows:

(a) Every final rate or premium charge proposed to be used by an automobile insurer may not be used unless it has first been filed with the department and approved by the director or his designee as being adequate, not excessive, and not unfairly discriminatory. In connection with any hearing, action, suit, proceeding, or judicial review respecting the approval or disapproval of these rates or premium charges, the burden of persuasion falls upon the affected insurer or insurers to establish that the challenged rates are adequate, not excessive, and not unfairly discriminatory.

(b) In the approval of automobile rates and in determining whether the final rates or premium charges for automobile insurance are adequate, not excessive, and not unfairly discriminatory, the director or his designee shall take into account investment income from unearned premium and loss

reserves as well as profits from investment income. Every insurer writing automobile insurance in this State shall file with the department, in a form the director or his designee orders, complete financial records showing the amount of profit on every line of automobile insurance during the previous year and shall also file records showing profits or losses from such investment income, which records shall include investment income or profit on net realized and unrealized capital gains. However, unrealized capital gains or losses may not be considered in the rate-making process.

Section 38-73-455 requires that an automobile insurer "shall offer two different rates for automobile insurance, a base rate as defined in § 38-73-457 and an objective standards rate which is twenty-five percent above the basic rate. Both of these rates are subject to all surcharges or discounts, if any, applicable under any approved merit rating plan, credit or discount plan promulgated or approved by the Commissioner."

The general standards set by § 38-73-450, that the rates must be "adequate, not excessive and not unfairly discriminatory "are common and well-recognized in the regulation of the insurance industry. As is stated elsewhere,

[r]ates may not be unreasonable, excessive, inadequate or discriminatory, and should be responsive to competitive market conditions.

44 C.J.S., Insurance, § 66. Our Court of Appeals has further observed:

[a]n adequate premium is one that is sufficient to meet the anticipated losses. That is what rate setting is all about. The entire procedure of rate making contemplates a looking into the future, and an attempt to predict the future.

State Farm Mut. Auto. Ins. Co. v. Lindsay, 284 S.C. 472, 477, 328 S.E.2d 80, (S.C. App. 1984), revd. on other grounds, 288 S.C. 327, 342 S.E.2d 599 (1986). Furthermore, it is stated that

[a] rate is inadequate if it is insufficient to enable a company to earn a reasonable profit or is not actuarially sound and self supporting.

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44 C.J.S., Insurance § 66. Of course, such would largely turn upon the particular facts of a given case.

As noted above, by § 38-73-450 et seq., the director (or his designee) of the South Carolina Department of Insurance is given the statutory authority and responsibility to approve automobile insurance rates. Our Supreme Court has stated that where a statute imposes a duty upon the Insurance Commissioner to regulate rates, it also implicitly confers every particular power and every reasonable means necessary for the exercise or performance of that power. Hamm v. Central States Health and Life Co. of Omaha, 299 S.C. 500, 386 S.E.2d 250 (1989). The Court will set aside his determination only if it is unsupported by substantial evidence. Id.

I am advised by the Department of Insurance that the determination of whether a particular rate is "adequate" is largely based upon technical actuarial data. I am further advised that the Department actuarial staff would be happy to talk with you or your constituent to further explain the rate making process in terms of the statutory standards which the Director must follow. The Department's address is 1612 Marion Street, Columbia, South Carolina 29201 and telephone number is 737-6132. I would suggest that the person to be contacted is Ms. Gwen Fuller, counsel for the Department, who informs me would be more than willing to get either you or your constituent in touch with the appropriate actuarial experts for the Department.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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