

INSURANCE: Combination policies filed under Section 379.017, V.A.M.S., should be disapproved for filing when the filing company's own public rating record discloses that the rate of premium applicable to commercial "fire and allied lines" risks (and forming only a component part of the ultimate indivisible premium rate authorized for the combination policy) differs from the commercial "fire and allied lines" risk rate published for the filing company by the Missouri Inspection Bureau.

August 16, 1960

Honorable C. Lawrence Leggett
Superintendent, Division of Insurance
Jefferson Building
Jefferson City, Missouri



Dear Mr. Leggett:

This opinion is in answer to your inquiry reading as follows:

"A certain foreign stock insurance company licensed in this state to write all the lines of insurance other than life has submitted for filing two multiple peril policies, both of which include, among other coverages, the perils of fire and allied lines. The said company has authorized an actuarial bureau to maintain its public rating record for fire, lightning, hail and windstorm on all classes of property under the Fire Rating Act, except dwelling. The said company maintains its own public rating record on the dwelling class. The policies in question do not fall within the dwelling class.

"As to the perils of fire and allied lines, the policies provide a rate different from the rate forming a part of the public rating record maintained by the company's authorized filing agent.

"May I lawfully approve such policies without requiring the said company to withdraw its membership from the actuarial bureau for this class?"

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In this instance we are dealing with a multiple line fire and casualty insurer authorized to write all three classes of insurance enumerated in Section 379.010, RSMo 1949. The two multiple peril policy forms referred to above have been submitted to you for approval pursuant to the directive found in Section 379.017, V.A.M.S., as supplemented, and reading as follows:

"1. Every insurance company licensed to do business in this state and authorized to make insurance on all three classes of insurance enumerated in section 379.010, RSMo, shall have authority to combine in single policies of insurance the perils of fire and allied lines with any one or more perils of casualty insurance which such company is authorized to make, and may charge therefor one indivisible premium or rate which may differ from the aggregate premium or rate applicable to separate policies covering the same property and risk or risks, and the difference in rates or premiums shall not be deemed to be unfairly discriminatory under the provisions of chapters 375 and 379, RSMo: provided, however, that any company issuing any policy combining coverages including protection against the peril of fire shall not discriminate unfairly between risks of essentially the same hazards and having substantially the same degree of protection.

"2. No company shall issue such a policy combining the perils of fire and allied lines with any one or more perils of casualty insurance until after it has submitted each combination of coverages to the division of insurance for the superintendent's approval or disapproval, and for establishing the public rating record to be maintained by each such company or insurer, or as may be similarly provided for, established and maintained by an actuarial bureau, and all combination of coverages approved by the

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superintendent shall be regulated by the provisions of sections 379.315 to 379.415, RSMo, which are not inconsistent with the authority herein granted. Laws 1959, H.B. No. 249, §§ 1, 2."

The language appearing on the face of Section 379.017, supra, discloses that the principal objective of the statute is to authorize issuance of an insurance policy combining the perils of fire and allied lines with any one or more perils of casualty insurance with such policy calling for an indivisible premium which may differ from the aggregate premium applicable to separate policies covering the same property and risk or risks. The statute, Section 379.017, supra, has an important proviso directed to the power to issue the combination policy and we quote the proviso as follows:

"* * *: provided, however, that any company issuing any policy combining coverages including protection against the peril of fire shall not discriminate unfairly between risks of essentially the same hazards and having substantially the same degree of protection."

Section 379.017, supra, directs that its application is to be made in the light of Missouri's Fire Rating Act, by employing the following language:

"* * * and all combination of coverages approved by the superintendent shall be regulated by the provisions of sections 379.315 to 379.415, RSMo, which are not inconsistent with the authority herein granted."

We turn now to the direct question posed in the request for this opinion, reading as follows:

"May I lawfully approve such policies without requiring the said company to withdraw its membership from the actuarial bureau for this class?"

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In the paragraph immediately preceding that in which you posed the foregoing question you have indicated a reason why you should condition your approval of the policies in question on the company's withdrawal of its membership from the actuarial bureau, and you have spoken as follows:

"As to the perils of fire and allied lines, the policies provide a different rate from the rate forming a part of the public rating record maintained by the company's authorized filing agent."

In your question you have referred to the fact that the company in question now has membership in the actuarial bureau for this "class." It is conceded that the actuarial bureau referred to is the Missouri Inspection Bureau, and that the word "class" refers to "mercantile" class of risks, one of the three major classifications of risks to which "fire and allied lines" insurance coverage is directed--the remaining two classes being "farm", and "dwelling" classes. Your inquiry discloses that the company in question maintains its own public rating record on the "dwelling" class.

The basic reason why the company in question is now maintaining a partial membership in the Missouri Inspection Bureau is to effect compliance with Missouri's Fire Rating Act found at Sections 379.315 to 379.415, RSMo 1949, as amended. This partial membership apparently has the approbation of the Missouri Inspection Bureau which serves as agent for the company in question in maintaining the company's public fire rating record touching its "mercantile" class of risks. Now the company in question, in the light of the provisions of Section 379.017, supra, proposes to maintain its own public rating record for its "mercantile" class in connection with the combination policies authorized by Section 379.017, supra.

In this type of situation your letter of inquiry discloses that you have determined that since the rate of premium to be applied to the "perils of fire and allied lines", when written in combination with any one or more casualty risk coverages, as authorized by Section 379.017, supra, is different from the rate for "fire and allied lines" when written separate and apart from the combination policy, a deviation from the public rating record maintained by the company in question has occurred, and that two different public rating records would result in relation to "fire and allied lines coverage."

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The rates now published by the Missouri Inspection Bureau for the company in question on its "mercantile" class are rates applicable only to "fire and allied lines" coverage. The new type of risk coverage authorized by Section 379.017, supra, is a combination of "fire and allied lines" risk coverage and "casualty risk" coverage. The language of the statute authorizing this comprehensive coverage does not indicate in any manner that the coverage is to be limited to classes of property described as "farm", "dwelling", or "commercial." It is for this new, comprehensive risk coverage that the company in question proposes to establish its own public rating record as required by the following language from Section 379.017, supra:

"* * * and all combinations of coverages approved by the superintendent shall be regulated by the provisions of sections 379.315 to 379.415, RSMo, which are not inconsistent with the authority herein granted."

The Missouri Inspection Bureau is a fire rating bureau, or organization, as distinguished from a casualty rating bureau. In this opinion we are not concerned as to whether the Missouri Inspection Bureau is in a position to publish a public rating record on behalf of any of its company membership touching the combination policy authorized by Section 379.017, supra. Companies writing "fire and allied lines" are granted authority to maintain their own rating record by the following language from Section 379.320, RSMo 1949:

"For this purpose each company or other insurer shall be permitted to maintain its own public rating record or to use a public rating record maintained by an actuarial bureau; provided, such record shows the true and correct rate charged by such company or insurer; and provided further, that no company or other insurer may directly or indirectly by any agreement, contract, understanding or otherwise agree with any other company, insurer, or actuarial bureau to continue to use the rating record of any actuarial bureau or to refrain from maintaining its own rating record, or to maintain the rates fixed by such actuarial bureau."

It is necessary to disclose the "purpose" of a public rating record mentioned in the statute just quoted, above. Such "purpose"

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is shown by the following language from Section 379.315, RSMo 1949, as amended:

"1. Every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm shall maintain a public rating record from which the rate of premium applicable to each risk in this state to be written by such company or other insurer may be ascertained in advance of the making of insurance thereon.

"2. Such rating record shall include, insofar as applicable, general basis schedule embodying basis rates, charges, terms, conditions, permits and standards, and such other data necessary to the computation or promulgation of equitable rates and rules of practice.

"3. Such records shall also show the forms and endorsements upon which each rate is predicated, and shall further show the changes of rate to be made on account of each and every change of form or endorsement.

"4. Such rating record shall be open to the inspection of the entire public and shall be maintained in such a form that the property owner can readily ascertain the rate charged on any class of property and the makeup of such rate.

"5. Every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm shall upon request furnish to the holder thereof a written or printed analysis of the rate of premium charged for such policy, showing the items of charge and credit which determine the rate."

In quoting Section 379.320, RSMo., supra, we have shown that a company may maintain its own public rating record for the purpose of rating "fire and allied lines" risks, and by quoting Section 379.315, RSMo 1949, as amended, supra, we have shown that one of

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the purposes for maintaining such public rating record is to enable us to determine from such public rating record "the rate of premium applicable to each risk in this state." Obviously the word "risk" refers to a "fire and allied lines" coverage as distinguished from a casualty risk which is not subject to the Fire Rating Act. In this connection we do find a prohibition in the Fire Rating Act against a company or insurer being a member of more than one rating bureau for the purpose of rating the same risks, such prohibition being found in the following language from Section 379.325, RSMo 1949:

"1. All rating and actuarial bureaus which consist of two or more members shall be open for membership to all authorized companies and insurers applying therefore, but no company or insurer shall be permitted to be a member of more than one rating bureau for the purpose of rating the same risks. * * * (Underscoring supplied.)

We interpret the word "risks" as used in the foregoing language from Section 379.325, RSMo 1949, to refer to the three basic classifications of risks, namely "farm", "dwelling", and "commercial", and to any subdivision of those classes, when they are made the subject of "fire and allied lines" risk coverage. The company in question is now a member of the Missouri Inspection Bureau for the purpose of authorizing such rating bureau to file its public rating record pertaining to "commercial" risks upon which "fire and allied lines" coverage is now being written, and failure to adhere to the bureau's published rate on "commercial" risks when only fire and allied lines coverage is being written would, admittedly, be a deviation from a published rate and not permissible under Sections 379.350 and 379.355, RSMo 1949, reading as follows:

(379.350 RSMo 1949)

"No company or other insurer or agents shall directly or indirectly, by any special rate, tariff, drawback, rebate, concession, device or subterfuge, charge, demand, collect or receive from any person, persons or corporation any compensation and premium different from the rate or premium properly applicable to the property so rated, as indicated by its public rating record, and no company or other insurer shall discriminate unfairly

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between risks of essentially the same hazard and substantially the same degree of protection."

(379.355 RSMo 1949)

"No fire insurance company or other insurer, nor any rating bureau shall fix and charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire."

The two statutes just quoted, Sections 379.350 and 379.355, RSMo 1949, were obviously in the mind of the legislature when it enacted Section 379.017, supra, reading, in part, as follows:

"1. Every insurance company * * * shall have authority to combine in single policies of insurance the perils of fire and allied lines with any one or more perils of casualty insurance which such company is authorized to make, and may charge therefor one indivisible premium or rate which may differ from the aggregate premium or rate applicable to separate policies covering the same property and risk or risks, and the difference in rates or premiums shall not be deemed to be unfairly discriminatory under the provisions of chapters 375 and 379, RSMo: provided, however, that any company issuing any policy combining coverages including protection against the peril of fire shall not discriminate unfairly between risks of essentially the same hazards and having substantially the same degree of protection.

"2. * * * and all combination of coverages approved by the superintendent shall be regulated by the provisions of sections 379.315 to 379.415, RSMo, which are not inconsistent with the authority herein granted." (Underscoring supplied.)

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In view of the language quoted above from Section 379.017, supra, and giving special consideration to the underscored portion thereof, we resolve the main question to be answered in this opinion in the following language:

May the Superintendent of Insurance approve combination policies filed under Section 379.017 when the subject company's own public rating record discloses that the rate, applicable to commercial "fire and allied lines" risks (and forming only a component part of the ultimate indivisible premium rate authorized for the combination policy) differs from the commercial "fire and allied lines" risk rate published by the Missouri Inspection Bureau for the company?

To answer the foregoing question in the negative we must find a prohibition expressed either in Section 379.017, supra, or in Missouri's Fire Rating Act embraced in Sections 379.315 to 379.415, RSMo 1949, as amended.

It must be conceded that the combination policy does offer protection against the "peril of fire" as such language is used in the proviso of Section 379.017, supra, reading as follows:

" * * * : provided, however, that any company issuing any policy combining coverages including protection against the peril of fire shall not discriminate unfairly between risks of essentially the same hazards and having substantially the same degree of protection." (Underscoring supplied.)

The foregoing proviso from Section 379.017 must be given its full force and effect, and must be considered as a limitation on the language immediately preceding it which provides that the company:

" * * * may charge therefor one indivisible premium or rate which may differ from the aggregate premium or rate applicable to separate policies covering the same property and risk or risks, and the difference in rates or premiums shall not be deemed to be unfairly discriminatory under the provisions of chapters 375 and 379, RSMo: * * *."

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The language just quoted from Section 379.017 demonstrates that one indivisible premium or rate for the combination policy differing from the aggregate premium or rate applicable to separate policies covering the same property may result in discriminatory rates, but such language decrees that such discrimination is not to be considered unfair discrimination under the provisions of chapters 375 and 379, RSMo. However, it must be kept in mind that this language in Section 379.017 is directed only to the difference between the indivisible premium or rate for the combination policy and the aggregate premium or rate which would be arrived at if separate "fire and allied lines" risks and casualty risks were written in separate policies. Such language does not lessen in any degree the force and effect of the language appearing in the proviso found in Section 379.017, quoted here again as follows:

"* * *; provided, however, that any company issuing any policy combining coverages including protection against the peril of fire shall not discriminate unfairly between risks of essentially the same hazards and having substantially the same degree of protection."

Any indivisible rate or premium for the combination policy will, of practical necessity, have its component parts made up of charges applicable to each fire and casualty risk embraced therein. Legislative authority found in Section 379.017 to write the combination policy at an "indivisible" rate or premium modifies Section 379.315, RSMo 1949, as amended, of Missouri's Fire Rating Act only to the extent that paragraph 5 of such statute is not applicable to the combination policy. Paragraph 5 of Section 379.315, RSMo 1949, as amended, provides:

"5. Every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm shall upon request furnish to the holder thereof a written or printed analysis of the rate of premium charged for such policy, showing the items of charge and credit which determines the rate."

Section 379.017, supra, is not inconsistent with, nor does it modify language found at Section 379.325, RSMo 1949, of Missouri's Fire Rating Act reading as follows:

"1. All rating and actuarial bureaus which consist of two or more members shall be open for membership to all authorized companies and insurers applying therefor, but no company or insurer shall be permitted to be a member

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of more than one rating bureau for the
purpose of rating the same risks. * * *
(Underscoring supplied.)

The word "risks", found in the underscoring portion of Section 379.325, supra, must necessarily refer to the three common classifications of risks to which "fire and allied lines" insurance coverage is directed, namely, "farm", "dwelling" and "mercantile." The question you have posed discloses that, as to the perils of "fire and allied lines", the combination policies to be issued by the subject company will have a rate of premium for that one component risk, contained in the combination policy, which will differ from the premium rate published by the Missouri Inspection Bureau for the company in question. In this we see a violation of that portion of Section 379.325, quoted supra, which prohibits a company from being a member of more than one rating bureau for the purpose of rating the same risks. When the subject company establishes its own public rating record from which you can ascertain what the premium rate is in relation to the "fire and allied lines" coverage going into the combination policy, and such premium rate differs from that filed by the Missouri Inspection Bureau on behalf of the subject company for its "mercantile" class of risks, the result is two public rating records for the purpose of rating the same risks.

In ruling the question we are fully cognizant of language found in Sections 379.350 and 379.355, RSMo 1949, of Missouri's Fire Rating Act, which prohibits discrimination in rates applicable to "fire and allied lines" insurance coverage, and the admonition found in Section 379.017, supra, deters us from predicating the answer to the question on a theory of discrimination in rates. The admonition found in Section 379.017, supra, just referred to is to be found in the underscoring language from the statute reading, in part, as follows:

"Every insurance company * * * shall have authority to combine in single policies of insurance the perils of fire and allied lines with any one or more perils of casualty insurance which such company is authorized to make, and may charge therefor one indivisible premium or rate which may differ from the aggregate premium or rate applicable to separate policies covering the same property and risk or risks, and the difference in rates or premiums shall not be deemed to be unfairly discriminatory under the

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provisions of chapters 375 and 379, RSMo:
provided, however, that any company
issuing any policy combining coverages
including protection against the peril
of fire shall not discriminate unfairly
between risks of essentially the same
hazards and having substantially the
same degree of protection. * * *

What has been said above discloses that a negative answer must be given to the question as restated in this opinion. Under Section 379.017, supra, as superintendent of insurance, you are directed to approve or disapprove the combination policies filed pursuant to such statute. Under the ruling here made, you are obligated to disapprove the submitted policies if circumstances surrounding issuance of the same are analogous to those outlined in the question, as restated in the opinion. Any order to the company in question to withdraw its membership from the Missouri Inspection Bureau for the purpose of rating its "mercantile" risks should be withheld pending action of the company upon your order of disapproval of the policies submitted.

CONCLUSION

It is the opinion of this office that the superintendent of insurance should disapprove for filing combination policies filed under Section 379.017, V.A.M.S., when the filing company's own public rating record discloses that the rate of premium, applicable to commercial "fire and allied lines" risks (and forming only a component part of the ultimate indivisible premium rate authorized for the combination policy) differs from the commercial "fire and allied lines" risk rate published for the filing company by the Missouri Inspection Bureau.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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