INSURANCE COMPANY AGREEING TO ACCEPT ASSIGNMENT OF UNEARNED PREMIUM DUE FROM SOLVENT COMPANY CONSTITUTES DISCRIMINATION AND REBATING.

May 4, 1933

FILED
92

Insurance Department
Jefferson City, Missouri

Gentlemen:

This Department acknowledges receipt of your letter dated May 1, 1933, as follows:

"Enclosed is an advertisement which appeared in one of the St. Louis daily papers. You will note that the H. W. Eddy Insurance Agency is offering to accept as part payment for the premium on a policy which they might sell, claims for unearned premiums on policies originally issued by the Independence Indemnity Company and the International Reinsurance Corporation. This situation is caused from the failure of the Independence Indemnity Company and the International Reinsurance Corporation.

In view of the apparent discrimination between insurants, we would like your opinion as to whether or not this practice would constitute rebating under the provisions of Section 5868 R. S. Missouri, 1929. We offer only as a suggestion that the claim for unearned premium against the insolvent corporation, and which is accepted as part payment of a new policy, cannot in any sense of the word be considered as being worth one hundred cents on the dollar. In other words, these two corporations were dissolved because of their insolvency, and their inability to pay their claims in full. Therefore, it is a certainty that the claims if, as and when paid will not be paid in full".

379.315

Section 5860 Revised Statutes of Missouri, 1929, requires every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm to maintain a public rating record - that is a public record of its rates in force for such insurance - from which record the rate or premium applicable to each risk in the state, that has been or may be written, may be ascertained and in advance of the writing of such insurance.

Section 5866 of such Statutes provides that 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.

Section 5868 provides as follows:

379.350

> "No company or other insurer or agency 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 between risks of essentially the same hazard and substantially the same degree of protection."

Sections 7 and 9 of the rating act, Laws 1915, page 314, are the same as sections 5866 and 5868, Revised Statutes Missouri, 1929, respectively.

As to the two last named sections, as well as Section 5860 of the rating act, the Supreme Court of this state in State ex rel v. Clark, 204 S. W. 1090, 1092, said:

> "These records are to be kept open to the public, in order that the proposed insurer may readily ascertain in advance the rate to be charged him, and the components of charge and credit which go to make up that rate. Section 1, p. 314, Laws 1915. Upon the issuance of any policy the assured

> shall be furnished a schedule, or analysis, which shows the basis rate and the items of charge and credit which enter into and determine the whole rate charged. Section 7 of said Rating Act forbids any company or any rating bureau from fixing any rate which discriminates unfairly between risks by reason of the application of like charges and credits, or which discriminates unfairly between risks which have substantially the same hazards and the same protection against fire. Section 9 forbids the giving of any rebate by which the discrimination forbidden in section 7 of the act may be brought about by evasion or subterfuge. Its effect is in all respects similar to that of Section 7, supra."

The advertisement attached to your letter states in part that,

> "We will accept assignment of your Independence Indemnity Company policies in part payment for new policies".

You state in your letter that the latter company is insolvent and I take it is in course of liquidation and if the same result occurs, as usually does in similar liquidations, little or nothing will be paid on account of the unearned premiums on policies originally issued by the Independence Indemnity Company.

We think the spirit of the rating act is that risks of essentially the same hazards and having substantially the same degree of protection against fire, are entitled to pay the same rate for insurance protection. The intent of the Act evidently was to prevent discrimination, favoritism, gratuities or abatements in whatever form it might appear, as among the same class receiving the same prospective benefits. If the ultimate effect of the acceptance of the offer contained in the attached advertisement would be that one class of policy holder would pay a greater sum for a like protection than other policy holders, then such transaction would come within the condemnation of Section 5868 Revised Statutes Missouri, 1929. What we have said is upon the theory that the amount deducted from the premium of the

insured, who holds a policy in the insolvent company, on account of the unearned premium due from the Independence Indemnity Company, will not be collected from the latter company, and upon the further theory that the rates required to be kept of record will be paid in cash or its equivalent. Upon that assumption the advertised plan, having for its purpose and results discrimination as to rates among policy holders, the matter submitted to you would be in violation of Section 5868 above referred to.

It is true that under the ruling in Rogers v. Ramey, 248 S. W. 254, it is held that the fact that an agent who insures his own property and receives a commission on the premium paid is not rebating, but his commission represents the value of his services rendered to the company. The same rule is declared in Insurance Commissioner v. Guarantee Life Insurance Company,159 Ala. 533.

Some of the rules with reference to rebating, when prohibited by statute, are mentioned in 32 C. J. 1194, as follows:

> "Within the meaning of such prohibitory statutes rebating may consist in accepting as full payment of premiums sums less than the amounts stipulated in the policies or contracts of insurance, applying the whole or part of an agent's commissions to payment of premiums due from insured, dividing agent's commissions with insured, paying premiums for insured, or offering any special favor as to payment of premiums by insured, in order to induce insured to enter into a contract of insurance.".

We think the rule just quoted abundantly supports our conclusion as above expressed.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

_____
Attorney General.