

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
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Santurce, Puerto Rico

Circular Letter No. L-7-338-63
July 5, 1963

TO THE COMMISSIONERS OF INSURANCE OF THE UNITED STATES

Gentlemen:

This Office has been dealing lately with the interpretation and projections of Article 9.400 of the Insurance Code of Puerto Rico which reads as follows:

"9.400.- Commissions on Business Passing.

(1) If an insurance policy originally written through a particular agent or broker is cancelled and rewritten for the same insured through another agent or broker, whether or not written in the same insurer and whether or not written for the same term, the new agent or broker shall be liable to the originating agent or broker for the amount of any unearned commission charged against or refunded by such originating agent or broker on account of such cancellation.

(2) This section shall not apply as to life and disability insurances."

In connection with the above article, our attention has been called to situations like the following:

(a) A policy placed through a broker of record was cancelled by the insurer because of unfavorable loss experience. The insured knowing the market is tight for him, seeks the services of a second broker who succeeded in placing the policy with another insurer. Is the original broker entitled to the unearned portion of the commission on the cancelled policy?

(b) A five year policy was issued on which premiums are to be paid on annual installments. It was cancelled six months after inception date and placed through a second broker. Only the commission on the first installment has been paid to the original broker. How much unearned commission, if any, should the second broker return to the original broker? Is it the unearned commission for the first year or for the five year term

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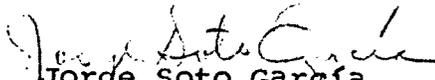
of the policy?

(c) The original broker had not correctly oriented the insured. A second broker came in, examined the insured's portfolio, and as a result of the intervention and correct advice of the second broker, the policy was cancelled and rewritten and the insured made a substantial saving on premiums. Is the original broker, in spite of his incompetence, entitled to be paid the unearned commission on the cancelled policy?

(d) Under example (c), above, should the amount of unearned commission accruable to the original broker be computed on the premium of the cancelled policy, or on the premium of the new policy?

We shall highly appreciate your furnishing us with any available information in your office as to court and administrative decisions, rulings, comments, etc., regarding the interpretation and projections of the above or similar provision of your insurance law.

Cordially yours,


Jorge Soto García
Acting Commissioner