COMMONWEALTH OF PUERTO RICO

OFFICE OF THE COMMISSIONER OF INSURANCE

Ruling No. N-AC-I-12-73-95

October 29, 1996

TO ALL INSURERS, GENERAL AGENTS, MANAGERS AND BROKERS AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN PUERTO RICO

Re: To broaden the scope of our Circular Letter No. Q-I-5-1088-87 of June 10, 1987; placement of business through insurance brokers

Ladies and Gentlemen:

Our Circular Letter No. Q-I-5-1088-87 of June 10, 1987, forbids the practice of some insurers and general agents of imposing certain minimum requirements concerning the business volume these brokers would have to place with such entities, in order that new insurance applications could continue being submitted to and accepted by the aforementioned insurers and general agents. Said practice includes the refusal to accept business from those brokers who do not satisfy the minimum requirements imposed by those insurers and general agents.

The aforesaid Circular Letter concluded that, requesting from brokers a significant increase in volume in the production of policies placed with certain insurers or general agents, was equivalent to requesting that the former place a larger part of their business with the latter. The aforementioned requirement, if complied by the brokers, would tend to eliminate the independence that the insurance broker figure should have, based on the definition contained in the provisions of Section 9.020 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 902.

Recent investigations conducted by this Office concerning the placement of insurance business through insurance brokers shows that certain insurers and managers do not accept insurance business because of the mere fact that these are transacted by insurance brokers. In fact, there are sales programs which do not contemplate the use of insurance brokers since they solely rely in exclusive agents.

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To this effect, we consider it necessary to emphasize that, by definition, an insurance broker is that person who, in any manner solicits, negotiates or procures insurance or the renewal thereof **in the name of insureds or prospective insureds, and not on behalf of an insurer or an agent**. That is, the insurance broker acts freely and with independent criteria in representing the insureds or prospective insureds who have elected an insurance broker to act on their behalf in the solicitation and procurement of any insurance business.

Regarding this matter, we inform you that Section 3.290(1) of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 329(1), provides that:

> "No insurer shall effectuate any direct insurance upon or relative to any person, property or other subject of insurance resident, located, or to be performed in Puerto Rico, except through a licensed agent of such insurer residing in Puerto Rico.
>
> If the insured is represented by a licensed broker resident in Puerto Rico, such insurance may be effectuated through the insurer's **manager, general agent, or licensed agent,** resident in Puerto Rico." (Emphasis provided)

Our official interpretation of this provision is that, in its first paragraph it establishes the general rule to the effect that no insurer can transact insurance business directly with an insured or prospective insured. Due to the fact that the insurance broker represents the exclusive interests of the insured or prospective insured, no insurer can transact insurance business directly with insurance brokers. Despite the above mentioned general rule, the second paragraph of said provision establishes the exception: when the insured has selected a broker to represent him, the insurer is legally authorized to transact the insurance business by means of such insurance broker, if said business **is effectuated through the manager, general agent or authorized agent of the insurer.**

The above interpretation does not imply a limitation or curtailment of the insurer's faculty to reject the business offered by the broker if, **from its underwriting point of view**, it does not wish to accept the same. Neither does it imply a limitation or curtailment of the insurer's faculty not to accept, **for any justified cause**, insurance business from any **particular** broker. However, it does imply that in accordance with said legal provision the insurer cannot reject the business merely because it came through an insurance broker, since the aforesaid Section 3.290(1) provides the mechanism for its placing through the insurer representatives: the manager, the general agent or the agent. Thus, it is not permissible that the insurer establish, as a condition to accept business from prospective insureds, that they must place the same through the insurer's representatives, without having the opportunity of using intermediaries who represent exclusively their interests, as brokers do.

Therefore, we conclude that the practice adopted by several insurers and general agents to the effect of not accepting insurance business just on account that it is being presented by insurance brokers, without any justified cause or without allowing the latter to place such

insurance through the managers, general agents and agents of the insurer, as well as to impose minimum requirements to the brokers regarding the volume of business they should place with such insurers, and to reject any business from such brokers which does not satisfy the minimum requirements imposed, are practices that tend to eliminate the independence of the insurance broker and are unfair to the insurance customers that wish to be represented by an insurance broker.

In light of the above, by means of this ruling we wish to inform you of our official interpretation concerning this matter and to request that you refrain from transacting any business which is contrary to this official interpretation. We advise insurers, general agents and managers that any infraction to the interpretation contained herein shall be considered as a violation to an order of the Commissioner of Insurance, and thus subject to the imposition of the applicable legal sanctions.

Cordially,

Juan Antonio García
Commissioner of Insurance