THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. _____ November 23, 1988

SUBJECT: Insurance - Availability of Rate Increases By Insurance Companies After Joining A Rating Organization.

SYLLABI: (1) The South Carolina Chief Insurance Commissioner, John G. Richards, speaking for the State Insurance Commission, has in the past and does now interpret S.C. Code Ann. §38-73-1210 (1976, as amended) to require no approval by the Insurance Commissioner after the first twelve (12) months of a company's membership in a rating organization, the company being expressly permitted to adopt the rate filed and in effect for the rating organization at that time. Such interpretation is entitled to weight in a court's construction of the statute in question upon the rationale that the agency charged with enforcing a statute is assumed, through its expertise and experience, to be competent in rendering such interpretations.

(2) This Office has fully researched and analyzed §38-73-1210 and, independent of the Insurance Commissioner's interpretation, has reached the same conclusion that the General Assembly in enacting the statute intended to except (and did so clearly state) insurance company members of rating organizations from the Insurance Commissioner's approval of rate increases after twelve (12) months of membership and permit such companies to adopt the rates filed and in effect for the rating organization.

(3) To subject such member companies to the Insurance Commissioner's approval of rate increases, §38-73-1210 could be amended to so provide.

(4) If such amending legislation is sought, this Office, if requested, will cooperate with the

Office of the Governor and the State Insurance Commission in providing further legal advices.

TO: The Honorable Carroll A. Campbell, Jr.
Governor, State of South Carolina

FROM: Samuel L. Wilkins
Assistant Attorney General SLW

QUESTION: Pursuant to S.C. Code Ann. §38-73-1210 (1976), are insurance companies that joined a rating organization more than twelve (12) months earlier required to obtain the Insurance Commissioner's prior approval before they adopt that rating organization's higher rates?

APPLICABLE LAW: S.C. Code Ann. §§38-73-1210, 38-73-1310, 38-73-1290, 38-73-1300, 38-73-1320, and 38-73-920 (1976).

DISCUSSION:

By your letter dated October 6, 1988, you requested an opinion from this Office regarding the interpretation of two automobile insurance statutes: S.C. Code Ann. §§38-73-1210 and 38-73-1310 (1976). Your letter states:

> My question concerns the situation where a company joins a rating organization under Section 38-73-1210 more than 12 months prior to the rating organization's last rate hike, but does not adopt the rating organization's rate. In other words, it joins a rating organization, but continues to utilize its own separately filed rates. I would like an opinion from your office whether under these circumstances a company, under Section 38-73-1210 and 1310, can subsequently adopt the rating organization's rate without the prior approval of the Insurance Commissioner.

Of course, statutory construction is, ultimately, the province of the courts. --Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987).

In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). In construing a statute, it is proper to consider legislation dealing with the same subject matter. Fidelity and Casualty Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

In construing a statute, a court cannot read into the statute something not within the manifest intention of the legislature as gathered from the statute itself. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). In construction of a statute, that which is fairly implied is as effective as if expressed. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938).

Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

Section 38-73-1210 provides:

> An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization which makes filings and by authorizing the Commissioner to accept the filings on its behalf. However, notwithstanding any other provisions of this article, no member or subscriber may, within twelve months after its membership or subscribership, adopt any rate approved for use for the rating organization, if the rate is more than the rate in use by the member or subscriber prior to its membership or subscribership in the rating organization.

> Further, notwithstanding the provisions of §§38-73-1300, 38-73-1310, and 38-73-1320, no member or subscriber within twelve months after its membership or subscribership, may be granted an upward deviation from its rate in use when becoming a member or subscriber. However, if a rate increase for the rating organization is approved within twelve months after an insurer becomes a member or subscriber, the member or subscriber may increase its rates by the same percentage of increase granted the rating organization. Nothing contained in this chapter may be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

Although the initial reading of this statute, perhaps, renders its meaning overwhelming, the language parses to reveal the following five matters:

1. An insurer may satisfy its obligation to make required filings by doing two things:

   a. Becoming a member of, or a subscriber to, a licensed rating organization which makes filings and

   b. Authorizing the Insurance Commissioner to accept the filings on its behalf.[1]

2. During the first twelve (12) months[2] of membership or subscribership, the insurer may not adopt the rating organization's approved rate if that rate is higher than the insurer's rate prior to its membership or subscribership.

3. During the first twelve (12) months[3] of membership or subscribership, the insurer may not be granted an upward deviation[4] from its rate in use when becoming a member or subscriber.

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[1] S.C. Code Ann. §38-73-1290 (1976) provides: "Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by the organization, except as provided in §§38-73-1300 and 38-73-1310." S.C. Code Ann. §38-73-1300 (1976) governs application by a fire or inland marine insurer to the Insurance Commissioner for a deviation from specific filings of the rating organization by a member or

(Footnotes continue on next page.)

4. During the first twelve (12) months[5] of membership or subscribership, the insurer may increase its rate by the same percentage of any rate increase that may be approved for the rating organization during that same period of time.

5. An insurer is not required to become a member of or subscriber to any rating organization.

Upon application of the above rules of statutory construction, §38-73-1210 appears clearly to allow an insurer the option of joining a rating organization and accepting the filings of that rating organization; however, certain restrictions are placed upon such an insurer during the first twelve months of its membership or subscribership. During that first twelve months of its membership or subscribership, such an insurer is not allowed to increase its rates by either adopting the rating organization's higher rate or requesting an upward deviation; neverthe-

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subscriber to that rating organization. Similarly, S.C. Code Ann. §38-73-1310 (1976) governs application by a casualty or automobile insurer to the Insurance Commissioner for a deviation from specific filings of the rating organization by a member of or subscriber to that rating organization. S.C. Code Ann. §38-73-1320 (1976) provides the procedure for an application under either §38-73-1300 or §38-73-1310. I understand that an insurer may become a member of or subscriber to a rating organization for its form filings or its rate filings or both.

[2] S.C. Code Ann. §38-73-920 (1976) provides:

> No insurer may make or issue a contract or policy except in accordance with the filings which are in effect for the insurer as provided in this chapter or in accordance with §38-73-1060. Notwithstanding S [sic] 38-73-10, item (2) of §38-73-330, and item (4) of §38-73-430, filings for property and casualty rate increases may not be approved for any insurer or rating organization for any line, sub-line, or otherwise identifiable property and casualty insurance coverage for which a rate increase has previously been granted within the immediately preceding twelve months. However, if satisfactory evidence is presented to the Commissioner by an insurer or rating organization that the

(Footnotes continue on next page.)

less, such an insurer may increase its rates, even during that first twelve months of membership or subscribership, by the same percentage of any rate increase granted to the rating organization during that period of time. Such restrictions apparently would not apply after the insurer has been a member of or subscriber to the rating organization for twelve months. See Gaffney v. Mallory, supra. This twelve-month period is consistent with the proscription enunciated in S.C. Code Ann. §38-73-920 (1976).[6] Section 38-73-1210 places no restriction upon an insurer to obtain prior approval of the Insurance Commissioner. Instead, §38-73-1210 requires such an insurer to authorize the Insurance Commissioner to accept the filings of the licensed rating organization on the insurer's behalf.

Your inquiry concerns an insurer who has been a member of or subscriber to a licensed rating organization for more than twelve months. Therefore, the restrictions specified in §38-73-1210 would no longer apply. Consequently, such an insurer, after the first twelve months have passed, could adopt any rate approved for use for the rating organization, even if the rate is more than the rate in use by such insurer prior to its membership or subscribership in the rating organization. Moreover, §38-73-1210 does not appear to require prior approval of the Insurance Commissioner before such adoption.[7] Of course, after the first twelve months have passed, any application by such an insurer for a deviation from the rate approved for use for the rating organization would be governed by S.C. Code Ann. §§38-73-1300, 38-73-1310, & 38-73-1320 (1976).[8]

> continued use of the previously approved rates for the line, subline, or otherwise identifiable property and casualty insurance coverage may result in the insolvency of an insurer, more frequent rate increases may be approved. This section does not apply to contracts or policies for inland marine risks as to which filings are not required. [Emphasis added.]

3 See supra note 2.

4 See supra note 1.

5 See supra note 2.

6 See supra note 2.

(Footnotes continue on next page.)

Perhaps an argument could be made that, in light of the detailed provisions in §38-73-1310 (which require permission of the Insurance Commissioner for a deviation) and because §38-73-1210 is silent as to what express restrictions, if any, apply after twelve months of membership or subscribership have elapsed, prior approval of the Insurance Commissioner is required before an insurer, pursuant to §38-73-1210, adopts the rate approved for use for the rating organization after twelve months after the insurer's membership or subscribership when that rate is more than the rate in use by the member or subscriber prior to its membership or subscribership. Such an argument does not, however, appear to be compelling, especially considering the twelve-month proscription of §38-73-920 and the ability of such an insurer, pursuant to §38-73-1210, to obtain the percentage rate increase even within the first twelve months under certain conditions. Of course, resolution of such conflicting arguments is the province of the courts, perhaps in a declaratory judgment action. See Johnson v. Pratt, supra.

In your letter, you also seek the advice and cooperation of this Office with regards to courses of action to take regarding the interpretation of §§38-73-1210 and 38-73-1310. Apparently, Chief Insurance Commissioner John G. Richards has previously recommended that §38-73-1210 be amended to require insurers under that section to obtain his prior approval before adopting the approved rates for the rating organization. Letter from Chief Insurance Commissioner John G. Richards to Burnet R. Maybank, III, Assistant Counsel to the Governor's Office (Sep. 28, 1988)(discussing recommendations pertaining to automobile insurance). That approach would most expressly and clearly accomplish the requirement of prior approval in these situations.

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[7] The South Carolina Insurance Commissioner apparently also interprets S.C. Code Ann. §38-73-1210 (1976) as not requiring his prior approval before such an insurer, after the first twelve months of membership or subscribership, adopts a higher rate approved for use for the rating organization. See Letter from Chief Insurance Commissioner John G. Richards to Burnet R. Maybank, III, Assistant Counsel to the Governor's Office (Sep. 28, 1988)(discussing recommendations pertaining to automobile insurance). Such construction is entitled to the most respectful consideration and should not be overruled without cogent reasons. See Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

[8] See supra note 1.

CONCLUSION: Pursuant to S.C. Code Ann. §38-73-1210 (1976), an insurance company, after its first twelve months of membership or subscribership in the rating organization, could adopt any rate approved for use for that rating organization, without prior approval of the Insurance Commissioner before such adoption and even if that adopted rate is more than the rate in use by that insurance company prior to its membership or subscribership in the rating organization.