

1982 WL 189459 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1982

***1 RE: Opinion Request—Insurance—Termination of Agents**

The Honorable D. L. Aydlette, Jr.
Member
House of Representatives
608-B Harborview Road
Charleston, South Carolina 29412

Dear Representative Aydlette:

This is in regard to your recent letter to Mr. McLeod concerning the above-referenced matter. As I indicated to you on receipt of that letter, the Insurance Commission has inquired into the matter of termination of agents and I have enclosed a copy of the opinion which was prepared for them.

I sense, however, that your letter goes beyond that which was requested by the Insurance Commission. You have asked whether or not the recent Supreme Court decision of G-H Insurance Agency, Inc. v. Continental Insurance Company, Opinion Number 21765, Filed July 22, 1982, effects the compulsory insurance law in South Carolina. Specifically, you have expressed concern with the fact that this opinion appears to strike down [Section 38-37-940\(2\), CODE OF LAWS OF SOUTH CAROLINA, \(1976\)](#).

Your question will have to be answered in two parts. First, in regard to designated agents who write one hundred percent 'high-risk' business for designated carriers under the South Carolina Reinsurance Facility, the opinion which I prepared for the South Carolina Insurance Commission should suffice. Because the G-H case dealt with a voluntary agent, it would have no effect on the designated carriers. Also, the designated carriers write one hundred percent high-risk business, so it would not appear that they would be in jeopardy of termination because of this.

It appears that the real thrust of your question concerns voluntary agents and their exposure to termination for writing too much 'high-risk' business. It is important to note that the G-H case, although it appears to broadly strike down [Section 38-37-940](#), applies only to contracts which were in force prior to the passage of said statute. You will note that the opinion states: 'the insurance company concedes that insurance agreements such as that at issue entered into after the effected date of the act are subject to and controlled by the statute. The sole contention of the insurance company is that the statute cannot constitutionally impair those agency agreements which were in existence at the time the act was passed. The constitutional issue is, therefore, narrowed such that this court must determine whether the General Assembly may change the constitutional rights and thereby the property rights of the party acquired under the agreement of September 5, 1972.'

Therefore, although the G-H opinion ends in rather broad, sweeping language, it is the opinion of this office that the case applies only to contracts which were entered into prior to the passage of Act 1177 of 1974. Any contracts entered into before that date will not be subject to [Section 38-37-940](#) and any termination consistent with the terms of the contract and with other laws relative to the subject will be upheld.

***2** I trust this has sufficiently answered your question. If not, please feel free to contact me at your convenience.
Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

1982 WL 189459 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.