

1975 WL 29465 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 4, 1975

\*1 Honorable Howard B. Clark  
Chief Insurance Commissioner  
S. C. Department of Insurance  
P. O. Box 4067  
Columbia, South Carolina 29240

Dear Commissioner Clark:

You have asked this Office for an opinion as to whether or not you have a sufficient and reasonable basis for contending that the contingency reserve as provided for in Pilot Life Insurance Company group Policy No. 66 covering State employees should be paid as a refund as reasonably determined by Pilot Life.

You have stated in your letter that under the heading 'Non-participating Premium Refunds' the following language appears:

This policy does not share in the surplus earnings of Pilot Life, however, at each anniversary date, provided the policy is continued in force by payment of all premiums to such anniversary date, an experience premium refund may be made in such part of the premiums paid for the preceding year as Pilot Life shall determine.

There can be little doubt that Pilot Life does not have the discretion under Code Section 37-147 to arbitrarily refund premiums in one policy and not in another. It is without question that Pilot Life must treat all policyholders the same.

It would seem clear from the policy that it was the intention thereof that a refund be made where the experience of the preceding year indicated that the premium paid was in excess of that reasonable in light of the experiences of the preceding year. As pointed out, the policy offers very little guidelines by which either party may determine the ultimate rate to be paid on an experienced rating basis; this, however, does not alleviate Pilot Life from making a reasonable determination from the experience of the preceding year as to what amounts, if any, should be refunded under the terms of the contract.

It is further my opinion that the word 'may' in the above quote allows Pilot not to give a refund only in those cases where the experiences of the preceding year support that no refund is due. On the other hand, if the experiences of the preceding years are so favorable that the premiums paid were excessive than under the terms of the policy, Pilot Life must refund the excessive premiums.

I hope that this has answered your question.

Sincerely,

A. Camden Lewis  
Assistant Attorney General

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