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Robert K. Corbin

July 27, 1981

INTERAGENCY

Mr. J. Michael Low, Director
Department of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Re: I81 - 093 (R81-093)

Dear Mr. Low:

In your letter of June 22, 1981, you request an opinion from this office concerning the effect of the Legislature's recent amendment to A.R.S. § 20-413.B. The amendment becomes effective on July 25, 1981 and provides that:

As to foreign insurers other than title insurers, prior to placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and shall deliver to the director a current certificate in proper form of the public official or officials having supervision over insurers in any other state of the United States to the effect that the insurer possesses the same amount of capital and surplus as required of authorized insurers under Section 20-210 transacting the same kinds of insurance and maintains a deposit in the same amount in public custody in the state in trust for the purpose, among other purposes, of protecting all the insurer's policyholders or all its policyholders and creditors in this state.

You specifically inquire whether the foregoing provision requires that the deposit required of a foreign unauthorized insurer be equal to the amount of capital and surplus required of authorized insurers or equal only to the actual deposit amount required for authorized insurers. It is this office's opinion that A.R.S. § 20-413.B, as amended by H.B. 2189, requires that a foreign unauthorized insurer must maintain a deposit equal to the amount of capital and surplus required of authorized insurers.

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By way of background, it should be noted that A.R.S. § 20-210 sets forth the capital and surplus requirements for authorized insurers. The deposit requirements for authorized insurers are set forth in A.R.S. § 20-213 and are not equal to the capital and surplus requirements established in A.R.S. § 20-210. In fact, A.R.S. § 20-213.5 provides that no deposit requirement for an authorized insurer shall exceed \$500,000. Almost all the capital and surplus requirements contained in A.R.S. § 20-210.A exceed \$500,000 in the aggregate. Therefore, the effect of requiring unauthorized insurers to maintain a deposit in an amount equal to the capital and surplus required by A.R.S. § 20-210.A is to require a deposit from unauthorized insurers in excess of that required for authorized insurers. However, that situation also existed prior to the amendment of A.R.S. § 20-210 in 1977.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Mardian Constr. Co. v. Superior Court, 113 Ariz. 489, 557 P.2d 526 (1976). A.R.S. § 20-413.B, prior to its amendment, provided in pertinent part that unauthorized foreign insurers must possess:

. . . capital and surplus, or either, of \$350,000 and a deposit in the same amount in public custody in such state or states in trust for the purpose, among other purposes, of protecting all the insurer's policyholders, or all its policyholders and creditors, in the state of Arizona.

Under the prior statutory scheme, it is clear that the Legislature intended to require unauthorized foreign insurers to deposit an amount equal to the capital and surplus requirement of \$350,000. A.R.S. § 20-413.B as amended is phrased similarly to its predecessor except that the amended section substitutes a statutory reference for the capital and surplus requirement instead of a specific amount. Otherwise, the former section 20-413 and its amendment are identical. In the absence of any evidence of a legislative intent to the contrary, it must be concluded that the Legislature intended by the amendment that the deposit requirement for foreign unauthorized insurers remain equal to the capital plus surplus requirements for authorized users.

Therefore, the plain and unambiguous language of the statute will be given that meaning normally attributed to it.

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Balestrieri v. Hartford Accident & Indem. Ins. Co., 112 Ariz. 160, 540 P.2d 126 (1975). Application of that principle to A.R.S. § 20-413.B as amended yields the conclusion that foreign unauthorized insurers must maintain a deposit equal to the amount of capital and surplus such an insurer is required to maintain pursuant to A.R.S. § 20-210.

Sincerely,



BOB CORBIN
Attorney General

BC:clp