

# MAINE STATE LEGISLATURE

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February 13, 1976

Frank M. Hogerty, Jr., Superintendent

Insurance

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Attorney General

**Examination Expenses - Examiners from Other States**

This memorandum responds to your oral request for an opinion on the following question:

"Is a domestic insurer which has been examined pursuant to 24-A M.R.S.A. § 221, entitled to a credit for examination expenses incurred by an examiner from another State, against payment for examination expenses to the Bureau of Insurance?"

The answer to this question depends upon which of the optional payment methods set forth in 24-A M.R.S.A. § 228 the examined insurer has adopted.

An insurance company which is "domesticated" in Maine may engage in business outside of this State. If such business is conducted, the insurer is subject to regulation by each of the states concerned. 19 Appleman, Insurance Law and Practice, § 10322. One common aspect of this regulation is examination of the financial condition of the company by examiners from the respective state regulatory agencies. The expense of these examinations and the method and source of payment of this expense are matters which are determined under the applicable law of each examining state. If the examination expense is to be born by the insurer, as many states provide, the payments could be considered among those conditions which the insurer must meet to obtain and continue to hold the privilege of conducting insurance business in that State.

It is our understanding that it is common for examiners from other states or "zones" in which a Maine insurance company is authorized to do business, to join with examiners from the Bureau of Insurance in conducting periodic examinations. However, even though a "joint" examination is being conducted, payment of the expenses of each examiner would still depend upon the particular law of the state he represents. Therefore, the question is whether direct payment of examination expenses to other examining states, when so required by the laws of those states, may be set-off or credited against payments to the Bureau under Maine law.

Payment of expenses for examinations by the Bureau of Insurance is governed by 24-A M.R.S.A. § 228. The basic principal is that the examined company shall bear the examination expense. Paragraph 2 requires any insurer so examined to promptly pay to the Superintendent the expenses set forth in subsection 1. Included in the expenses set forth there are expenses incurred by ". . . examiners furnished for the purpose by other states in which the insurer is authorized to transact insurance. . . ." Records of the Commission which produced the draft of the Insurance Code containing this provision indicate that the "other state examiner" part was recommended by the Bureau of Insurance

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to make clear that insurers were still responsible for paying these expenses as independently required under the law of the state in question. Since it would be illogical to presume the Legislature intended that the insurer must pay "other state" expenses twice, it is our opinion that the insurer may set off expenses paid directly to the other state under its law against the expenses set forth in subsection 1 which would be paid to the Bureau, to the extent and only to the extent "other state" expenses paid direct by the insurer are also included in the Bureau's claims for expenses.

Subsection 3 of § 228 gives domestic insurers further options concerning payments of expenses. In lieu of the payment which is required by paragraphs 1 and 2, the insurer may pay an annual sum computed as a fractional part of its assets. If the insurer has assets exceeding \$10,000,000, it has further options available for payment of expenses of any one examination. The company may pay the amount required by subsections 1 and 2 (paragraph A), in which case it may set off direct "other state" payments as previously discussed, or it may make asset/formula payments, with the formula depending on the amount of assets (paragraphs B and C). It should be noted in passing that paragraph C, as amended by P.L. 1975, c. 467, is unique in that it requires annual formula payments with respect to a particular examination; however, this point does not affect the present question.

If the domestic insurer chooses to make annual payments as provided by subsection 3, or if it qualifies and opts to make formula payments as provided by paragraphs B or C, it would not be entitled to set off direct payment of "other state" examination expenses to the respective state. Payments under these options are "in lieu" of the actual expenses defined in subsection 1. Therefore, the "other states" provision of that subsection would not be applicable. If the insurer has assets exceeding \$10,000,000 it may pay the expenses as set forth in subsection 1 or the formula amount of paragraphs B or C as applicable. Again, the "other states" provision does not apply to the option.

The insurer's obligation to make whatever payment is required by the states where it is authorized to do business, under their laws, exists independent from its obligation to the State of Maine under its law, and would still be applicable even if Maine required no payment of its domestic examination expenses. Therefore, it is logical that the insurer should continue to bear the burden of these "foreign" obligations even if it is able to benefit from a ceiling on its domestic examination expenses by choosing one of the optional methods of payment.

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Furthermore, allowing the insurer to set off examination expense payments to other states would contravene the express intent of the Legislature. The first sentence in section 228 reads, in part: "The expense of examination of an insurer . . . shall be borne by the person examined." If the insurer was allowed to set off foreign examination expenses, part of the total expenses would then be borne by the Bureau of Insurance. If enough other states sent examiners to join in the examination and enough expenses were thus set off, the Bureau could end up absorbing the entire cost of its own examination. Therefore, it is clear both as a matter of statutory construction and as a matter of legislative intent, that a domestic insurer may not set off or credit direct payment of examination expenses to another State against payment of examination expenses to the Bureau, unless the insurer has chosen to pay all actual expenses and such set-off or credit would be necessary to prevent double payment.

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