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[FROM COUNSEL] By Sari Gabay-Rafiy

Mid-Term Cancellation of a Workers' Compensation Insurance Policy

Mid-term cancellation of insurance policies was a hot topic in New York in 2009: the Office of General Counsel addressed the mid-term cancellation of a property/casualty commercial insurance policy and supplemented a 2008 Circular Letter to address the mid-

coverage. Instead, the cancellation provisions for workers' compensation insurance are governed by Workers' Compensation Law, not the Insurance Law.

In OGC Opinion No. 09-11-03, the Department reviewed the relevant provisions of the Workers'

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term cancellation of a homeowners' insurance policy. The Office of Counsel also addressed the electronic delivery of such cancellation notices. Before the year end, on November 12, 2009, the Department issued yet another opinion on mid-term cancellations: in OGC Opinion No. 09-11-03, the Department addressed the mid-term cancellation of a workers' compensation insurance policy based upon the insured's failure to pay the audit premium on its most recently expired policy.

According to the facts presented, the insurer had provided workers compensation coverage to the insured for many years and none of the previous audits resulted in a change in premium. Its most recent audit, however, resulted in a very large additional premium which the insured refused to pay, because it disagreed with the audit results. The insurer responded by cancelling the insured's current workers compensation policy.

Typically, the Department's review of a mid-term cancellation focuses on the limited reasons for cancellation enumerated in §3426 (governing commercial lines insurance) or § 3425 (governing homeowners insurance). However, §3426 explicitly excludes workers' compensation insurance

Compensation Law (§54(5)) and determined that the statute does not limit the reasons that an insurer may cancel a workers compensation policy. As a result, the Department found that a workers' compensation insurance policy may be canceled by an insurer mid-term for non-payment of the expired policy's audit premium, so long as the policy does not contain any limitations to the contrary, and provided that the insurer complies with the notice provisions contained in §54 and any other applicable laws.

While an insurer may cancel a policy mid-term, an insured may have recourse: an insured has the right to request, in writing, a review of the rating classification(s) applied to its policy and may thereafter appeal to the Superintendent for a hearing and new decision. This right, set forth in Insurance Law § 2319, may assist an insured in resolving a dispute over the cancellation of its policy for reasons such as its failure to pay the expired policy's premium audit. **[A]**

This article is for informational purposes only and is not intended to give legal advice. For more information, contact the author at gabay@gabaybowler.com or (212)941-5025.