

Competition In the Public Interest



**DEDICATED TO THE SERVICE OF
THE PEOPLE OF NEW YORK STATE**

A Message for NYSIF Stakeholders

Competition is the engine that drives New York businesses to operate more cost effectively. A competitive New York State Insurance Fund, as envisioned under the Workers' Compensation Law, has been instrumental in helping to control workers' compensation costs, keep employers in business and guarantee coverage for their employees no matter how great the risk.

Other than initial administrative expenses in its first two years, NYSIF has not cost New York taxpayers a single penny. As a non-profit, self-sustaining public agency, NYSIF has relied on premium dollars and investment income to finance operations. NYSIF's extraordinary record of protecting New York businesses and their workers, at no expense to taxpayers, is due to its status as a competitive insurance carrier. That status is firmly established by the legislative intent of the bill that created NYSIF as part of the New York workers' compensation system in 1914.

NYSIF's mission, rooted in its mandate and supported by legislative reforms, is the same today as it was then: make workers' compensation insurance available at the lowest cost possible to any business in New York State. NYSIF has been, and continues to be, a stabilizing force in the marketplace. Our responsibility is to ensure that we remain so in the future.

Our status as a competitive state fund has been the subject of serious discussion revisited over the course of many years, as summarized in this pamphlet. We hope that you find it helpful.

NYSIF management



On the cover

High relief stone sculpture, "Dedicated to the Service of the People of the State of New York," by C. Paul Jennewein, 1954, NYSIF home office, 199 Church Street, New York City

There is a crucial difference between NYSIF and private insurers. Although it competes with private insurers for good risks, NYSIF insures any employer regardless of risk.

The Case for a Competitive Fund

The New York Workers' Compensation Law created the New York State Insurance Fund to offer the lowest possible rates consistent with remaining solvent, while controlling the cost of workers' compensation insurance borne by business and the consuming public.

Because workers' compensation insurance is a required expense of doing business ultimately passed on to consumers, the New York State Legislature designed NYSIF as a competitive, non-profit carrier to keep the cost of such insurance as low as possible. Since its inception, NYSIF has competed with private carriers as a self-sustaining public agency in the workers' compensation insurance market.

NYSIF continues to fulfill its intended purpose, ensuring the existence of a stable market for workers' compensation and disability benefits insurance in New York State as an industry leader in price, quality and service.

Due to the compulsory nature of workers' compensation insurance, the Legislature intended NYSIF to be an aggressive competitor with private carriers. This way, it would not only serve as a stabilizing influence on the market, but also acquire and retain a sufficient amount of business to fulfill its role of always being available to any employer seeking coverage.

NYSIF is fundamentally different from private insurers in one crucial respect. Although it competes with private insurers for good risks, NYSIF must insure any employer that applies for insurance regardless of the risk posed by its operations, and may only cancel a policy for non-payment of premium.

Those who characterize NYSIF as an insurer of last resort, however, misunderstand NYSIF's place in the New York workers' compensation and disability benefits insurance market. True, NYSIF may not refuse coverage for any business as long as it can pay its premium. However, in addition to providing this guarantee, NYSIF's mandate to compete for business has a stabilizing effect on rates. As a result, the New York workers' compensation

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insurance market remains competitive today – competition that is good for employers and employees, NYSIF and, most importantly, the people of New York State.

Private carriers may reject presumed bad risks summarily and may also cancel a policy without advancing any reason. Private carriers have been reluctant to insure emerging enterprises without experience records. Start-up operations historically have relied on NYSIF as their initial source of compensation coverage. NYSIF makes it possible for many new ventures to get their starts, creating jobs for workers across the state.

Allowing NYSIF to write only the residual business that other carriers refuse to write would be detrimental to NYSIF and to the New York workers’ compensation and disability benefits insurance industry. As a competitive carrier that can aggressively pursue good business risks, NYSIF’s history is full of examples where individual employers and entire industries have been able to secure coverage from NYSIF when workers’ compensation insurance was unavailable elsewhere to these risks.

This list continues to include employers with operations in window cleaning, building demolition, asbestos abatement and other airborne exposures, health care, taxi services, roofing, harness and thoroughbred racing, scrap iron and steel work, volunteer fire companies and ambulance corps, industries prone to occupational hearing loss, most of the construction industry in New York, and not-for-profits that make up the bulk of New York State social services. In each of these instances, NYSIF’s record of service speaks for itself.

As advancements in industrial science identify new substances, new hazards and new potential for occupational disease – for every new and existing workers’ compensation risk – NYSIF must remain competitively positioned to build on that record by providing the coverage necessary to meets its obligation just as intended in 1914.

History of the New York Workers' Compensation Law

The history of workers' compensation law in New York included two attempts to exclude private companies from writing workers' compensation insurance. In 1912, the Bayne-Sullivan bill passed by the State Senate, but rejected by the Assembly, provided for an exclusive State Insurance Fund. In 1913, a second bill providing for private insurers and a State Insurance Fund passed both houses of the State Legislature, but, amid criticism directed at private carriers, was vetoed by the governor.

Defending competition in the public interest, then-Superintendent of Insurance William T. Emmett wrote:

"The attitude of those who finally induced the governor to veto our bill was that companies had been tried and found wanting, and that the time had arrived when they should be put out of business once and for all... It would be both unwise from the standpoint of the state to do such a thing, and unfair from the standpoint of the companies. It would have been equally reprehensible... to have granted a monopoly of this business to stock companies, but what our bill did was the precise opposite. It subjected the stock companies, for the first time, to sharp competition from other insurance organisms. At first we depended upon the newly created mutuals for such competition; subsequently we created the State Fund as an additional competitor... Under this bill, the very best that the stock companies could hope for was an opportunity to prove themselves qualified to give a more satisfactory service to the public... than either of the other alternatives. Unless they could do that, they would inevitably be driven out of business within a few years by the inexorable law of competition."

The Legislature called an extraordinary session that same year to introduce a compromise bill providing for insurance through [1] the State Insurance Fund, [2] stock companies or mutual associations and [3] self-insurance. The bill passed both houses, was signed into law, and enacted in 1914.

NYSIF's Right to Compete

A central issue concerning enactment of a workers' compensation law was whether private carriers would be allowed to compete with a state fund. Various systems of insurance were thoroughly and exhaustively discussed and debated, and any contention now or ever that it was only a matter of passing concern is simply incorrect. Organized labor was so incensed over the history of private insurers providing employers' liability coverage prior to 1910 that it wanted a law excluding private insurance companies from participation.

Only through a compromise were private insurance companies permitted to write workers' compensation insurance in competition with NYSIF, not, as some would have us believe, that NYSIF was permitted to participate. The Legislature saw a need to make NYSIF an aggressive competitor for insurance business, concurring with governors, courts, and industrial and labor leaders many times over that NYSIF should remain an active competitor with private carriers. NYSIF's right to compete and to actively solicit workers' compensation insurance business is conclusively borne out by the facts and statements contained herein:

"In order that employers, who are compelled to insure their employees under the Compensation Law, may have safe and complete insurance at the bare cost of such insurance, the state was obliged to set up and create a State Fund. The Fund is and should be an aggressive competitor for business. The Commission does not believe that the Fund should be a mere passive agency and dumping ground for bad risks... If it is to be of real service to its policyholders and serve effectively the interests of the people of the state, it must do a sufficiently large business to guarantee its complete safety and to serve as a useful and necessary check upon the rates demanded by the stock companies writing a similar class of business."

– NYS Industrial Commission, 1915 annual report

"In his reply to the charges... the manager of the State Fund maintained the right of the State Fund to compete, using the following language: 'The State Fund, in order to realize the full measure of its potential usefulness to employers and employees, should be a live, active, vigorous competitor of the casualty companies. It should not be relegated to the insignificant position of insurance carrier for the undesirable business and bad risks not wanted by the casualty companies – though that is the role which the latter would

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naturally prefer to see the State Fund play. The function of the State Fund is something higher than that of serving as a convenient dumping ground for business rejected by the stock companies.’ In short, if the State Fund is to be made a really safe and cheap insurance institution for employers at large, it must be an active competitor for business and not merely a passive receiver of damaged goods for the private companies.”

– NYS Industrial Commission, 1915 annual report

“The fact that the manager of the State Insurance Fund is conducting a competitive business enterprise should entitle him to more latitude in this matter than would be accorded a state official holding a judicial position or an executive position of the ordinary governmental nature.”

– Governor Charles S. Whitman in a letter dated September 4, 1915, dismissing the referenced preceding charges made by a private insurer

“In line with the conviction that the State Fund should be at all times an aggressive competitor... Many of the arguments formerly advanced... against the Fund seem to have lost their plausibility, and cause us little or no difficulty at the present time. The general public is becoming better informed about the merits and substantial advantages of the State Fund as compared with other carriers.”

– NYS Industrial Commission, 1925 annual report

“When considering the State Insurance Fund in the field of compensation insurance in the state of New York, it must be constantly kept in mind that... it is only one of [many] insurance carriers always competing with one another. The Fund’s competitors are represented by thousands of agents and brokers who receive substantial rates of commission, and who are therefore keenly interested in the development of their business. It is necessary for the Fund to meet this competition by informing employers... of the advantages it offers.

“...Since its competitors now realize that the Fund can challenge any insurance carrier to offer superior service they have somewhat changed their tactics and frequently fall back on the plea that they extend more complete coverage than the State Insurance Fund and on the suggestion that the Fund is a political organization following a policy of inconsistency, or no policy at all, and further that the Fund was created for the sole purpose of affording a

haven for those risks which are unprofitable and therefore refused by other carriers. To point out the fallacies of these assumptions and to combat the arguments against the Fund it is worthwhile to state the Fund's position in relation to these questions.

"The Fund was not created merely to provide insurance [that] could [not] be obtained for risks unacceptable to stock or mutual companies. The fact is the original plan of legislation contemplated the establishment of an exclusive fund in the form of a monopolistic state mutual. It was only after insurance interests had brought tremendous pressure to bear that the draft of the law was changed to allow private carriers to participate, together with the Fund and self-insurers."


– NYS Industrial Commission, 1927 annual report

"The State Fund is, for all practical purposes, an insurance carrier and it would hardly seem to be the legislative scheme that the State Fund should not possess the same privileges and opportunities to carry on its work as any stock corporation or mutual association engaged in the business of providing workmen's compensation insurance. The legislative intent was that the State Fund should have every opportunity to compete with stock and mutual companies writing compensation insurance on the same terms."

– NYS Attorney General, February 7, 1933, regarding the Longshoremen's and Harbor Workers' Compensation Act

"The Fund differs from the ordinary state department or bureau in that it must operate on a basis of competition with private carriers."

– Governor Herbert Lehman, special message to the Senate, March 18, 1938

 n May 25, 1949, Insurance Superintendent Robert E. Dineen issued a bulletin, "Necessity for State Fund," pertaining to new disability benefits insurance legislation:

"Under any form of compulsory insurance, employers cannot be left without a source of insurance. Ordinarily, private insurers have the right... to reject any risk. Therefore, an assured source of coverage must be provided... In New York in the field of workmen's compensation, an assured and satisfactory source of coverage has been provided by the State Insurance Fund for the last 35 years..."

‘Official documents [are] barren of any doubt [about] the Fund’s status. In fact, many documents seem to harbor concern as to whether it was adequately competitive.’

“The idea was suggested, and rejected, that disability benefits coverage for risks unable to obtain insurance could be provided by private carriers through an Assigned Risk Plan such as is used in a number of states in workmen’s compensation and automobile liability insurance. New York’s experience under the automobile assigned risk plan has not been entirely satisfactory... Under any form of assigned risk insurance, it might do the employees... a grave disservice to compel them to deal with an assigned insurer that did not want to carry the risk... The solution adopted was to put the State Insurance Fund in the field to write the new coverage required by the law for those who choose to insure with it or are unable to obtain coverage from other sources. It was felt that the Fund should not be subject to needless handicaps in discharging its responsibilities and in furnishing coverage under the new law...”

A Look at the Record

In January 1959, the trade journal, *The Insurance Broker-Age*, published an article, “A Look At The Record,” excerpted here:

One of the popular legislative activities of insurance associations in New York State is to work diligently for a bill designed to curb the open solicitation of accounts by the State Insurance Fund.

But the advocates of such legislation usually make a serious mistake. They allege a... basis for the proposal by asserting that it never was the intent that the State Fund, from the time of its creation, be a competitive creature, and that it somehow, through response to the devious ambitions of civil servants who managed it, became a competitive creature. When they are unable to substantiate this assertion, those whose votes they are importuning turn from the proposal, sure that something is wrong. One would expect, if the assertion were founded in fact, to find in the early records some recognition of it.

Those who were around at the time of the enactment of the law creating the State Insurance Fund... have recollections that quite the opposite is true. They recall that never more than in 1914 and 1915 was there greater insistence on

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the proposition that private insurance enterprise had no place in the payment of workmen’s compensation benefits. They seem to recall that actually the avoidance of a monopolistic fund was, at the time, a great victory for the proponents of private enterprise. That is, excepting the wishfulness of one side, the legal status of the Fund as an operating creature free of restrictions was a compromise from the dominant legislative view that it ought to be an all-powerful and exclusive medium for employers to discharge their responsibility of paying benefits.

Official documents of the early compensation years may well be barren of any doubt as to the status intended for the Fund. In fact, many documents seem to harbor concern as to whether it was being adequately competitive with private insurance companies. Note the report made in May 1919 to Governor Smith by Jeremiah F. Connor, a special commissioner appointed under the Moreland Act... Mr. Connor reported that [he] found [the Fund] in excellent financial condition but... stated: “It is my opinion that if the State Fund had been properly handled from the start it would now be writing 25% to 50% of all the compensation insurance in the state.”

The report evoked a vigorous defense by the manager of the Fund... In his opinion it was the powerful competition from private industry which kept the Fund... from exceeding its present size and financial condition. He said: “The State Fund has had to meet ceaseless and resourceful competition on the part of stock and mutual companies, with their army of agents, brokers and field representatives. While these companies compete to some extent among themselves, they are virtually united in their operations against the State Fund. [They] have not hesitated to circulate the most damaging misrepresentations concerning the condition of the Fund... The State Fund has had to overcome a natural prejudice and skepticism on the part of many employers toward a state conducted enterprise, a difficulty which has been aggravated enormously by the persistent misrepresentations of its competitors.”

These are but a few examples... which establish the facts concerning the original intent... of the State Fund as a competitive creature. We believe it cannot be established that the Fund is now, or ever has been, different in that respect from what it was intended... We believe little can be accomplished by contending the law failed to express the intent of those who created it.

Legislative Intent

A significant, but often overlooked, fact is that private carriers insisted on participating in the workers' compensation market with NYSIF, well aware there was no profit factor in the original law. A definitive 1955 study by the NYS Insurance Department Deputy Superintendent Adelbert G. Straub, "Examination of Insurance Companies," addressed this:

"... the history of the enactment of the Compensation Law must include mention of a group... who went before a legislative committee and insisted that insurance companies be permitted to participate in this new form of insurance because they felt an obligation to their insureds to write their compensation insurance as well as their other forms of liability insurance. The insistence of the insurance companies upon the right to participate was thus based upon their representation that they felt an obligation to make a contribution to the public service... and to exist along with the State Insurance Fund, which could not operate for profit. Thus, from the time of passage of the law in 1914 until 1948, workmen's compensation was provided without any theoretical provision for profit. Since... the Insurance Laws of 1948, an allowance for profit has been made in workmen's compensation insurance rates."

From a January 1959 brief filed by The Commerce and Industry Association of New York, Inc.:

"By giving an employer an option as to how or where to insure, the Legislature clearly intended there should be competition between all who write insurance for workmen's compensation... That the legislative intent is being carried out under the present system is obvious: The State Fund has been competing successfully with the private carriers since the inception of the system."

From a December 1974 decision rendered by Chief Judge Charles Breitel, Court of Appeals*:

"...functions of coverage and claims satisfaction under the law are best performed by exclusively separated insurers, namely, private carriers, the State Insurance Fund, and self-insurers. These three categories of insurers are competitive with one another..."

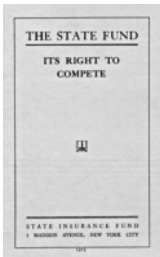
**Employers Claim Control Service Corp. v. Workmen's Compensation Board of the State of New York*, 35 N. Y.2d 492 (1974). *aff'g.* 43 A.D.2d 515 (1973)

About This Booklet

In 1915, The New York State Insurance Fund published the pamphlet “The State Fund - Its Right To Compete” (below, left), a collection of letters and opinions dismissing a private insurance company’s protest of alleged unfair business practices by NYSIF.

In 1975, NYSIF expanded the original pamphlet, renamed “Competition in the Public Interest” (below, center), in response to renewed protests.

NYSIF published a shortened, updated version in 1999 (below, right). This booklet is a condensed revision of the 1999 publication.



New York State Insurance Fund

Andrew M. Cuomo, Governor

Kenneth R. Theobalds, Chairman

Eric Madoff, Executive Director & CEO

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