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SENT VIA EMAIL

Office of the Montana State Auditor
Commissioner of Securities and Insurance
840 Helena Ave.
Helena, MT 59601

Jodi Medlar, Asst. to Commissioner
jmedlar@mt.gov

RE: Draft Advisory Memorandum on Notice-Prejudice Rule – NAMIC’s Written Comments

Dear Commissioner and State Auditor Monica J. Lindeen:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written comments on the above captioned draft advisory memorandum.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 134 members who write property/casualty insurance in the State of Montana, which represents 40% of the insurance marketplace.

NAMIC respectfully requests that the CSI remove the proposed requirement that all insurance forms conform to the notice-prejudice rule within sixty days of the date of the advisory. NAMIC submits the following comments in support of its request:

- 1) Nothing in the *Gleason* Court ruling requires or even suggests that insurance forms need to be revised to be in compliance with the law. The court ruling merely provides a legal interpretation of the law. Since all contracts, including insuring agreements and related insurance forms, are interpreted and applied so as to be consistent with current statutes and case law, there is no regulatory necessity for requiring insurers to change their legal forms. Insurers need only comply with the *Gleason* Court’s legal interpretation of the Notice-Prejudice Rule case ruling.
- 2) The proposed requirement for insurers to change all their forms to comply with the *Gleason* Court’s ruling will create an unnecessary administrative burden and expense for insurers, who diligently try to avoid needless revisions to their forms and contracts as part of their pro-consumer, cost-containment business practices. Since insurers are required to comply with the *Gleason* Court’s ruling regardless of what their contracts and forms state in regard to the policyholder’s duty to provide timely notice of a claim to the insurer, the proposed requirement to change all contract and forms is entirely unnecessary and will create an economic burden on insurers without creating any corresponding consumer protection benefit for the consumer.
- 3) NAMIC is concerned that this proposed requirement to change all insurance forms to comply with a case law ruling is inconsistent with standard regulatory practices. Case law rulings change as courts continuously reinterpret the law, and apply the law to the facts of the case at issue; so it doesn’t make sense from a public policy or administrative law standpoint to adopt a regulatory practice that requires

ongoing contract and form changes based upon each case law interpretation of a statute or legal doctrine. Had the case law ruling specifically and expressly required a change to the contract language or insurance form, that is a totally different story, but in the *Gleason* case, the Court merely interpreted and applied the established legal doctrine on notice-prejudice rule. NAMIC believes that requiring insurers to change their insuring agreements and all forms based upon a ruling by the court on a particular legal dispute is impractical and imprudent, and will require insurers to spend financial resources and reallocate staff resources to address an unnecessary regulatory requirement. Insurers should be using their resources to address the needs of insurance consumers, not administrative activities that provide no benefits to consumers. Moreover, the proposed requirement will require the CSI to have to expend limited agency staff resources to review all of the insurer revisions to their forms. CSI staff resources would be better used in standard regulatory oversight.

4) Even assuming that the proposed requirement is deemed appropriate, the proposed requirement for insurers to change all forms to comply with the *Gleason* case is rife with unintended adverse consequences for insurance consumers. The proposed legislation is likely to confuse consumers, because nothing in the *Gleason* Court's ruling prohibits insurers from having a contractual deadline for a policyholder to file his/her claim. Consumers could easily misinterpret a contractual statement about the *Gleason* Court ruling to their legal detriment, by believing that the case law means that there is no contractual insurance claim filing deadline. This could lead insurance consumers to needlessly delay filing their insurance claims, which could have dire legal implications for them if the delay injured or prejudiced the insurer. Further, it could lead to more costly litigation for insurance consumers and insurers, which is an insurance rate cost-driver.

5) NAMIC believes that the sixty day deadline is unrealistic and unnecessary, and will create a hardship for insurers, who don't have the staffing and resources necessary to overhaul all of their forms and contracts in a two month period of time. The *Gleason* case was decided in May of 2015, almost a full year ago, and there is no evidence on the record to support the contention that there is any major time sensitivity/necessity to this issue. If there were, NAMIC believes that the CSI would have acted long ago, immediately after the *Gleason* court ruling. Providing insurers with a reasonable amount of time, like 6 months, to effectuate changes to all their forms is appropriate and in the best interest of all stakeholders.

For the aforementioned reasons, NAMIC respectfully requests that the CSI remove the language that requires insurers to change all their forms to comply with the *Gleason* case ruling.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
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