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May 25, 2016

Washington State Office of Insurance Commissioner
Commissioner Mike Kreidler
PO Box 40255
Olympia, WA 98504-0255

sent via email to:
rulescoordinator@oic.wa.gov

RE: Draft Regulatory Proposal on Commissioner's Emergency Powers - NAMIC's written comments

Dear Commissioner Kreidler:

The National Association of Mutual Insurance Companies (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 138 members who write property/casualty in the State of Washington, which represents 48% of the insurance marketplace.

NAMIC commends the Office of the Insurance Commissioner (OIC) for its well-established practice of scheduling a series of pre-rulemaking stakeholder workshops when a proposed regulation is drafted with complex provisions and/or when the practical implications of broadly-worded provisions have complex implications for insurers and consumers. Consequently, NAMIC respectfully requests that the OIC schedule a number of stakeholder workshops on the draft proposed regulation before any rulemaking is formally commenced, so that insurers have a reasonable opportunity to consult with their subject matter experts and so that insurers may be able to provide the OIC with a clear and constructive statement of all of their various concerns and recommendations relating to the proposed regulation.

Although NAMIC appreciates the OIC's desire to broadly articulate its emergency regulatory powers, NAMIC believes that it is in the best interest of consumers, insurers, and the regulator for the proposed regulation to be drafted in a manner that provides clarity as to the *actual scope* of the commissioner's proposed regulatory powers during a governor declared emergency. NAMIC recommends that the OIC take full advantage of this opportunity to comprehensively address and resolve possible misunderstanding as to the proposed scope, intended interpretation, and contemplated application of the proposed regulation by the OIC. NAMIC believes that it is prudent for the OIC to address insurer concerns with the proposed regulation now before an emergency event has been declared and time for thoughtful deliberation and discourse over ambiguous and/or disputed provisions in the regulation is limited by the circumstances of the emergency.

The proposed regulation is replete with broadly-worded regulatory provisions that need to be spelled out in reasonable detail so that insurers understand the legal and practical implications of the proposed regulation.

NAMIC reasonably assumes that none of the broadly-worded provisions in the proposed regulation will be interpreted by the OIC as granting the commissioner authority to: temporarily disregard the legal terms and conditions of the insuring agreement relied upon by the contracting parties; modify, alter, or eliminate contractual rights and responsibilities of insurers and policyholders; ignore controlling insurance and contract case law, and long-standing legal doctrines; and/or change insurance code provisions pertaining to acceptable claims adjusting and underwriting practices without providing insurers with administrative due process protection. Since the proposed

regulation does not expressly address these issues, NAMIC believes that the Emergency Powers Regulation should be amended to specifically resolve any ambiguities relating to the possible legal ramifications of the regulatory proposal and the *proposed scope* of the commissioner's regulatory authority during a declared emergency.

NAMIC respectfully reserves the right to edit and supplement its list of concerns and suggested revisions, but offers the OIC this abbreviated list of concerns to illustrate the need for and regulatory prudence of scheduling a series of stakeholder workshops to address industry concerns with the proposed regulation.

1) The first section of the proposed regulation states, “[s]uch an order may include a statement of general findings that describe the need for the order, and declare the harm to be prevented or mitigated by the order.” [Emphasis added]. From a public policy standpoint, NAMIC believes that any and all OIC authored emergency regulatory orders should definitively include a detailed statement of the specific finding and necessity for the order. Consequently, we recommend the following revisions: “[s]uch an order shall include a statement of specific findings that describe the need for the order, and declare the specific harm to be prevented or mitigated by the order.” [Emphasis added].

2) The first section of the proposed regulation states, that the order must “provide the effective date of the order”, but it doesn't require a statement in the order as to when the order terminates, or how the termination date of the order shall be determined by the OIC or contested by insurers. NAMIC believes that a clear statement addressing the duration of the emergency order is necessary and beneficial to all interested stakeholders.

3) NAMIC also has concerns about the extremely broad language of the proposed provision that authorizes the commissioner to issue an order directing insurers “to accept alternative methods of reporting claims”; “to extend claim reporting periods”; “to extend or offer grace periods for payment of insurance premiums”; and “to postpone cancellation or nonrenewal of policies”. NAMIC appreciates the fact that the practical realities of a declared emergency may require insurers and the regulator to have certain flexibility to properly respond to the fluidity of an emergency situation, but reasonable regulatory parameters should be articulated in the proposed regulation well in advance of any emergency situation so that insurers know what to expect if there is a declared emergency. If insurers are not provided with detailed information about the proposed scope of the commissioner's emergency powers discretion now, they won't be able to appropriately create internal practices and protocols designed to effectively address the OIC's exercise of its emergency powers.

For example, the proposed regulation states that the commissioner may order insurers “to accept alternative methods of reporting claims.” What are the practical implications of this provision as it relates to standard insurer claims adjusting and settlement practices? Does it authorize the commissioner to fundamentally alter the policyholder's contractual duty to provide certain documentation pertaining to ownership and loss of tangible personal property to the insurer? Questions like this one need to be asked and answered now to streamline and expedite the settlement of claims after a declared emergency.

NAMIC believes that every specific provision in the second, third, and fourth sections of the proposed regulation needs to be thoroughly vetted so that insurers understand the expectations of the regulator and so that the regulator understands the practical business realities of adjusting claims for an insurer after a declared emergency. NAMIC believes that it is essential for the OIC to appreciate and clearly recognize that even during a declared emergency insurers need to continue to engage in sound actuarial underwriting practices and reasonable claims adjusting practices necessary to promote insurer solvency and their ability to honor the terms and conditions of the insuring agreement.

Additionally, emergency regulations should not ignore nor discount the importance of maintaining a healthy and robust insurance marketplace during and after a declared emergency event. The ongoing vitality of the insurance industry is essential to the protection of insurance consumers and the stability of the state's economy as it recovers from a declared emergency.

For the aforementioned reasons, NAMIC respectfully requests that the OIC schedule a series of pre-rulemaking workshops to discuss with insurers the legal and regulatory ramifications of the draft language, and the intended scope and contemplated application of the proposed regulation by the OIC.

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

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