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Via Email

September 17, 2013

Elizabeth Kelleher Dwyer, Esq.
Department of Business Regulation
1151 Pontiac Avenue
Cranston, RI 02920

RE: Proposed Amendments to Insurance Regulation 73, Unfair Property/Casualty Claims Settlement Practices

Dear Ms. Dwyer:

On behalf of the member companies of the National Association of Mutual Insurance Companies (NAMIC), I offer the following comments on the proposed amendments to Regulation 73. NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,400 national, regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders. NAMIC members write approximately 42% of the Rhode Island insurance market.

Section 3 – Paragraph L. Delete the phrase "of the occurrence of the contingency" as it adds confusion. The claimant's right to payment depends on a loss and the definition should focus solely on that.

Section 3 – Paragraph N. Insert after "any notification" the phrase "by a claimant". Then remove "by a claimant" after "its agent". This change would make the sentence flow better grammatically.

Section 3 – Paragraph P. Limit condition (ii) in "Replacement Vehicle" to read as follows: "be the same or <u>within two</u> newer model years". A "Replacement Vehicle" should be comparable to the original vehicle and not be significantly newer than the vehicle it is replacing.

Section 3 – Paragraph Q. The existing definition of "Third Party Claimant" should be retained. As proposed, the definition could be construed to include a first party claimant. Also the proposed definition implies that the third party has rights under the policy. The original definition is more precise and accurate.

Section 5 – Paragraph C. The phrase "first party" should be added before the word "claim" to clarify that the claim denial can only apply to first party claimants. Adding this language will make this provision consistent with other provisions in Section 5.

Section 7 – Paragraph D. The proposed changes to this paragraph should be rejected and the current language retained. Insurers should not be advising claimants who are represented by counsel as to the application of the statute of limitations. Claimant's counsel should be exclusively responsible for providing legal advice to their clients and protecting their legal interests.

Section 7 – Paragraph F. The words "for property damage" should be inserted after the first use of the word "liability" in the first sentence This revised sentence would read: "The insurer shall affirm or deny liability *for property damage* within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability."

Section 8 – Paragraph A(1). The language to the proposed regulation should track the statutory language by substituting the word "if" for "unless." As currently written the regulation implies that a car can only be declared a total loss when the cost to repair is *less* than 75% of the fair market value when it should apply when the cost to repair is greater than 75%. By changing the word "unless" to "if" the regulation will follow the statute and effectuate the statutory intent.

Section 8 – Paragraph A(3). The proposed language omits critical language concerning fair market value. We suggest revising it as follows: "If the total cost to rebuild or reconstruct the motor vehicle to its pre-accident condition is less than 75% of the fair market value of the motor vehicle immediately preceding the time it was damaged, the vehicle may be considered a total loss and thereby subject to salvage titling at the vehicle owner's request and with the vehicle owner's express written authorization. The owner of the vehicle is the person or entity listed on the title to the motor vehicle."

Section 8 – Paragraph B(3)(ii). Since the value of vehicles can vary significantly based on location, we recommend adding the phrase: "within 25 miles of the place of principal garagement of the total loss motor vehicle" after the phrase "which the claimant has located."

Section 8—Paragraph B. The recently enacted statute (Public Law Ch.509) calls for the use of fair market value in the determination of whether or not a motor vehicle should be deemed a total loss. The statute did not call for the use of fair market value as the basis for the settlement of total loss claims. The proposed regulation goes beyond the statute's intent.

Section 8- Paragraph C(5). The section title of Replacement Crash Parts should be changed to "Aftermarket Crash Parts" in order to keep the language consistent with the statute R.I. Gen. Laws §27-10.2. Throughout this section, the term "aftermarket crash parts" should be substituted for replacement crash parts. As currently written, the phrase

"replacement crash parts" implies that the parts are non-OEM parts but "replacement parts" could be either OEM or non-OEM parts. The statute defines an "aftermarket part" as "a motor vehicle body replacement part that is not an original equipment manufacturer part.: R.I. Gen. Laws §27-10.2-1 (1). Since this section is focused on non-OEM parts, the term aftermarket crash part should be used.

Section 8 – Paragraph C (5)(b). The statute provides that insurers may not require the use of aftermarket crash parts on vehicles that are less than 30 months beyond the date of manufacture without the consent of the vehicle owner. The proposed regulation goes beyond the statute and prohibits the use of used parts—regardless of whether the used part is OEM or non-OEM. A recycled OEM part should be allowed to be used in the repair provided it is of like, kind and quality. We suggest the following language:

For motor vehicles less than thirty (30) months beyond the date of manufacture, the insurer shall not specify the use of aftermarket crash parts or non-OEM used parts unless the Automobile Body Shop has written consent from the insured pursuant to R.I. Gen. Laws§27-10.2-2.

Section 8 – Paragraph D(5). The proposal references an administrative case for insight as to what constitutes impermissible interference with a consumer's choice of repair shop. Rather, the department should specify the situations that would constitute interference.

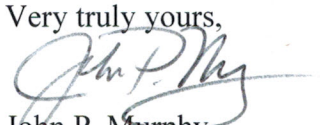
Section 8 – Paragraph (D) (7). The following language should be added at the end of the last sentence: "or the repair shop demonstrates an unwillingness for an appraisal to take place during normal business hours."

Section 8 – Paragraph E(6). To provide better clarity as to how much time a claimant has to remove a vehicle from storage after being notified that storage payments would be terminated, we suggest that the third sentence be changed to read: "Such insurer shall provide 2 business days after such notice for the claimant to remove the vehicle from storage prior to the termination of payment."

Section 8 – Paragraph E(6). Delete "with a copy to the storage facility." There is no need for a copy to go to the storage facility. The benefit runs from the insurer to the claimant under the policy, not to the storage facility.

Thank you for the opportunity to provide these comments. Should you wish to discuss them, please don't hesitate to contact me.

Very truly yours,



John P. Murphy
State Affairs Manager – Northeast Region