



September 28, 2016

The Honorable Mike Kreidler
Washington Insurance Commissioner
Attn.: Ms. Stacy Middleton
Rules Coordinator
P.O. Box 40260
Olympia, WA 98504-0260

Re: CR 102 – Addressing the Insurance Commissioner’s Powers During a State of Emergency (R 2015-17)

Dear Commissioner Kreidler:

This letter is submitted jointly, on behalf of the Property Casualty Insurers Association of America (PCI), the American Insurance Association (AIA), the National Association of Mutual Insurance Companies (NAMIC), and the American Council of Life Insurers (ACLI). PCI, AIA and NAMIC are national property casualty insurance trade associations, which represent insurance companies that write a majority of the property casualty insurance in Washington state. ACLI is a Washington, D.C.-based trade association with approximately 300 member companies who offer life insurance, annuities, retirement plans, long-term care and disability income insurance and reinsurance, representing more than 90 percent of industry assets and premiums. We are writing to express our concerns with respect to the proposed rule referenced above.

We are deeply concerned the informal stakeholder process on emergency powers of the Office of the Insurance Commissioner (OIC) has failed to take meaningful and important input from the industry stakeholders. On May 12, 2016, the OIC circulated to insurance industry representatives draft language regarding a possible rulemaking to address the powers of the OIC during a state of emergency. The OIC’s draft language also included notice of an informal stakeholder meeting to discuss the draft on Wednesday, May 25, 2016. The May 25 meeting was widely-attended and included key members of the OIC, together with representatives of national insurance trade associations, domestic insurers, foreign insurers, insurance producers, and others. The relatively lengthy stakeholder meeting covered a wide-ranging discussion of issues and concerns that were raised by insurers. We appreciated that staff advised attendees that the draft rule was modeled after rules adopted in Oregon after considerable insurance industry input and general agreement. Upon review of the Oregon rules, however, it became apparent to industry attendees that the OIC’s draft rules contained substantive differences from the Oregon rules, which do not include the language that caused the many concerns we had discussed at length during the stakeholder meeting; this apparent discrepancy was brought to the attention of staff subsequent to the meeting. General concerns raised during the meeting were that the draft language was too general and ambiguous, potentially impairing well-settled contractual language regarding policyholder contractual and statutory duties, and complicating insurer decisions regarding such issues as policy cancellation and nonrenewal.

Following the stakeholder meeting, letters and emails were submitted by industry representatives providing further detail to many of the concerns that were raised at the May 25 stakeholder meeting. Despite the industry concerns and input that was provided during the May 25 stakeholder meeting and in the follow-up letters and emails that were sent to the OIC regarding the draft language, on August 23, 2016, the OIC formally filed the CR-102 proposed rules and notice of hearing for these rules. Unfortunately, the proposed

rules that were filed with the CR-102 notice of hearing had only one substantive change from the draft rules that were discussed at the May stakeholder meeting, which is requiring a termination date for the order. Of significant concern to us is that important and substantive industry input, provided during the informal stakeholder process, resulted in little significant change to the language when it was formally proposed in the CR-102 notice of hearing. Speaking on behalf of our member companies, the input provided comes from detailed and experienced individuals who are well-situated to point out the real benefits or pitfalls with such a change in the law, thus failure to address industry concern could create very real legal and practical problems during the worst possible of times.

Specific Concerns

In addition to the legal and technical arguments presented by stakeholders in informal discussion and in written comments, our member companies continue to reiterate that they are concerned that the proposed rules contain language that is too ambiguous and broadly-worded to provide helpful guidance, and which may actually cause great harm. Together with our members, we are concerned that the effect of this ambiguity will be to allow the OIC to temporarily set aside the legal terms, conditions, and duties of both insurers and insureds contained in the policy language; these terms have been agreed to by the parties, and control issues of coverage, benefits, and the administration of the contract. We are concerned that such ambiguities could impair well-settled case law in these areas, leading to policyholder disputes, confusion, and possible litigation. For example, we remain concerned that the language in WAC 284-02-130(6) is so broad as to potentially allow the OIC to direct insurers to waive any and all statutory or contractual duties, including the duty for a claimant to cooperate in the investigation of a claim.

Subsection (8) of this section is also problematic—prohibiting an insurer “from canceling or refusing to renew a policy solely because of a claim resulting from the circumstances of the proclaimed state of emergency.” Our members are concerned that this language could impair the ability of an insurer to take appropriate action in the event of fraud or misrepresentation that is discovered during the investigation of a claim.

Similarly, our members are concerned with the language of WAC 284-02-140(4). Taken literally, this subsection suggests that insurers may be expected to pay claims on policies that have already been canceled for nonpayment of premium. Events that warrant a declaration of an emergency should not be used as a basis for imposing coverage on a policy that was canceled before the declaration of an emergency was issued.

The proposed rules are so broad and unfocused that they could create confusion and a lack of certainty for insurers. Insurers take justifiable pride in the CAT teams and related response activities that they deploy when catastrophic events take place. Clear and well-targeted rules can assist insurers and provide better services to their policyholders during an emergency. Unfortunately, the current language poses uncertainty for insurers, which would likely interfere in these efforts. Helping policyholders recover from unexpected losses is a fundamental service of the insurance industry. Assistance to policyholders in times of emergency requires efficiency, consistency, and effectiveness. In the wake of catastrophic events, it is necessary for insurers and insurance regulators to focus on assisting customers, and not trying to figure out the meaning of ambiguous language in a regulation.

We would urge the Office of the Insurance Commissioner to continue to review the concerns raised by the industry and also participate in the current NAIC work group addressing these issues. We would encourage delaying this rule until the NAIC has had an opportunity to complete its work.

Conclusion

On behalf of the Property Casualty Insurers Association of America, the American Insurance Association, the National Association of Mutual Insurance Companies, and the American Council of Life Insurers, and the hundreds of member companies that our associations represent, we would request that the OIC defer adoption of the proposed rule that is included with the CR-102 notice of hearing. We recommend that the OIC initiate further informal discussions with the industry to substantively address these concerns.

Sincerely,

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Katherine Pettibone
American Insurance Association

Christian Rataj
National Association of Mutual Insurance Companies

John Mangan
American Council of Life Insurers