APPENDIX "C"

OBJECTIONS TO INCREASED COMPETITIVE RATING THAT ARE NOT PART OF THE STATUTORY STANDARDS UNDER G.L. C. 175E

Many of the objections to increased competitive rating articulated in this proceeding present policy arguments that are not part of our mandatory statutory analysis under G.L. c. 175E, §5 ("Section 5"). These objections are relevant, however, to the goal of the Commissioner of Insurance ("Commissioner") to move to a more competitive market in the smoothest fashion possible. We therefore address them in this Appendix to our Decision.

Objection One: Increased competition should not be allowed because the current private passenger motor vehicle insurance market is financially sound and healthy.

Opponents and advocates of increased competition agree on one fact: the Massachusetts private passenger motor vehicle insurance market is healthy and robust. Plymouth Rock Assurance Corporation ("Plymouth Rock") asserts that Massachusetts currently enjoys a stable, healthy market for private passenger motor vehicle insurance, with some competition. Arbella Insurance Group ("Arbella") describes the current Massachusetts private passenger motor vehicle insurance market as "already highly competitive within its structure." The Commerce Insurance Company ("Commerce") states that the current automobile insurance market is financially sound as evidenced by decreasing rates, a shrinking residual market, the decreasing numbers of Exclusive Representative Producers, a low rate of uninsured motorists and prosperous companies.

G.L. c. 175E ("c. 175E" or "Chapter 175E") does not require that the private passenger motor vehicle insurance market be financially ***unsound*** before competitive rating is allowed; rather, it establishes, through Section 5, the file-and-use system as the presumptive norm and the fix-and-establish system as an alternative, available only if competition is either insufficient to assure that rates will not be excessive, or so conducted as to be destructive of competition or detrimental to the solvency of insurers. A financially unsound private passenger motor vehicle insurance market that could

impact the solvency of insurers has been one of the primary reasons why Commissioners of Insurance ("Commissioners") have not allowed more competitive rating over the years.. The consensus that our market currently is healthy is an additional, compelling reason to allow more competition.

Objection Two: Increased competition will cause overall private passenger motor vehicle insurance rates to increase.

Commerce, Arbella and Plymouth Rock assert that the increase of competition in Massachusetts private passenger motor vehicle insurance will lead to higher rates overall. In support of this assertion, Commerce states that rates have not been decreasing as rapidly nationally since 1999 as they have been in Massachusetts. Commerce failed to attach a copy of the press release that it stated allegedly supported this contention.[1] As with other objections addressed in this Appendix, Section 5 does not empower the Commissioner to replace company filed rates with fixed and established rates based on unfounded rate anxiety. Nonetheless, we address this objection because the Commissioner has a legitimate interest in ensuring that Massachusetts motorists enjoy the lowest private passenger motor vehicle insurance rates that also are adequate.[2]

Those who point to South Carolina and New Jersey as evidence that increased competition could adversely affect Massachusetts private passenger motor vehicle rates have not considered the arsenal of tools at the disposal of the Massachusetts Commissioner to review company filed rates. Chapter 175E "did not . . . eliminate the Commissioner's role in the ratemaking process." *Metropolitan Property and Liability Insurance Co. v. Commissioner of Insurance*, 382 Mass. 515, 518 (1981); *American Manufacturers Mutual Insurance Co. v. Commissioner of Insurance*, 374 Mass. 181, 184 (1978). Traditionally the Massachusetts Commissioner has been vested with broad discretion and authority by the Legislature in the area of motor vehicle insurance rate regulation. *Metropolitan Property*, *supra* at 517. As a former Commissioner stated: "[P]ricing freedom was intended to be granted only so long as reasonable rates were

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[1] Although Mr. Ermilio stated that a press release issued by the Insurance Information Institute dated December 5, 2006, was attached to his commentary dated June 15, 2007, neither the original provided to the docket clerk by hand delivery or the copy provided by facsimile contained any attachment.

[2] The Commissioner is charged with ensuring that private passenger motor vehicle insurance rates are adequate, but not excessive. G.L. c. 175E, §§ 4(a); G.L. c. 175A, §5(a)(4).

guaranteed to the public. The plethora of safeguards the statute contains are ample evidence of the Legislature's unwillingness to leave the outcome to a laissez-faire marketplace." *Id.* at 522.

The Commissioner has broad powers to control rates. Rates cannot be excessive, inadequate or unfairly discriminatory.[3] The Legislature has provided definitions of the first two of these terms. G.L. c. 175E, §4(a)(¶2) provides that "[n]o rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided." This statutory definition focuses on the cost to the insurance company of providing the insurance product and does not make reference to the income of the buyer of the product.[4] The statutory description of what constitutes an "inadequate rate" also focuses on the cost to the insurer, or to the effect of a rate on that insurer (endangering its solvency) or on other insurers (creating a monopoly or destroying competition): "No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly." G.L. c. 175E, §4(a)(¶3).

Rates also cannot violate public policy[5] and must be equitable for policyholders.[6] Furthermore, the companies must file their rates at least 45 days before they become effective.[7] The Commissioner may compel an insurance company or rating organization to provide more information to support its filed rates.[8] She also may delay the effective date of filed rates if she needs more time to review them.[9] The Commissioner has the

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[3] G.L. c. 175E, §4; c. 175A, §2.

[4] We address the issue of cost from the perspective of the insurance consumer later in this Appendix C.

[5] G.L. c. 175E, §8.

[6] G.L. c. 175, §4.

[7] G.L. c. 175E, §7.

[8] G.L. c. 175E, §7.

[9] G.L. c. 175A, §6.

power not only to disapprove rates before they become effective,[10] but also can disapprove rates after they become effective, at any time during the rate period, if they fail to meet any of the statutory requirements, and can order a premium adjustment.[11] The Commissioner has the power to issue regulations to control the conduct of the market.[12] The Commissioner also has the power to institute market conduct examinations to assure her that companies are complying with all of their obligations.[13]

The Commissioner's review of company filed rates requires, among other evaluations, due consideration "to past and prospective loss experience within and outside the commonwealth, to catastrophe hazards, to a reasonable rate of return on capital after provision for investment income, to past and prospective expenses both country-wide and those specially applicable to the commonwealth, and to all other factors, including judgment factors, deemed relevant within and outside the commonwealth." G.L. c. 175E, §4(b); *see also* G.L. c. 175A, §5(a)(1). The recent decreases in Massachusetts private passenger motor vehicle insurance premiums have been based on the loss and expense experiences of Massachusetts private passenger motor vehicle insurance companies. This same data will be part of the foundation on which companies will base their filed rates, and the Commissioner will evaluate this data in her review of the rate filings. Rates, be they fixed and established or company-filed, must be based on actuarially sound data.

The statute governing the residual market for private passenger motor vehicle insurance contains language to help ensure that the cost for this insurance, some of which is compulsory, remains affordable. Under a competitive rating system, Commonwealth Automobile Reinsurers ("CAR"), the operator of the residual market mechanism, will be required to file rates for the residual market in accordance with G.L. c. 175A. The premiums calculated from these rates will serve as the residual market's maximum premiums. G.L. c. 175, § 113H ("Section 113H") states, however, that CAR's premium

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[10] G.L. c. 175E, §7.

[11] G.L. c. 175E, §8.

[12] G.L. c. 175E, §10; c. 175A, § 15.

[13] G.L. c. 175, §4 provides for the Commissioner's review of the equity of a company's dealings with its policyholders whenever she determines it to be prudent.

charges, "shall not exceed the premium charges which would be used by each risk's servicing carrier for that risk if such risk were not insured in the plan." This means that a servicing carrier issuing a policy to a residual market risk must charge that consumer its voluntary premium if the voluntary premium for that risk is less than the premium calculated using the CAR rates. The result is that drivers in the residual market also will receive the benefit of competitive premiums and will not be disadvantaged based on price merely because they are unable to find coverage in the voluntary market.

The Attorney General, through the Chief of her Insurance and Financial Services Division, argues that one reason that the Massachusetts market is not ready to sustain competitive rating is the lack of a "transitional structure" to ensure that the rates, which she asserts have been "excessive" from 2004 through 2006, are no longer excessive after increased competition is underway. She bases this argument on her belief that using the rates set for the period 2004 through 2006 as a point of departure will lead to rates that will be even more "excessive" than they have been in the past. The Attorney General's argument presupposes two conditions: (1) that the rates fixed and established over the past few years have been excessive; and (2) that the companies will only increase, rather than decrease, rates. On the first point, rates were not excessive during the period 2004 through 2006; the Commissioner set premium charges for each of those years that were "adequate, just, reasonable and nondiscriminatory," as required by law. G.L. c. 175, §113B. No party appealed these past rate setting decisions, including the Attorney General. On the second point, the Attorney General has not submitted any evidence that companies will increase rates under competition. The Attorney General's doomsday prophesy is wholly unsupported. [14] When companies are permitted to set rates based on their individual experiences, rates will become more accurate and more likely to decrease for the vast majority of policyholders.

The 2007 rate, which carriers will use as a starting point for their own rates, is a valid springboard from which more competitive rates can be established that will be

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[14] Indeed, the docket contains evidence to the contrary. Dr. Tennyson from the Fairness Coalition stated that the fix-and-establish ratemaking process may contribute to inflated rates due to high lost costs. *Evaluating Competition in Insurance Markets*, May 16, 2007. Ms. Blank of the State Rating Bureau questioned whether this was, in fact, currently the case in Massachusetts, to the extent that it appears that our territories may exceed rate need. "*Testimony of Cara M. Blank*," June 15, 2007.

adequate but not excessive, as is required by G.L. c. 175E, §4(a) and G.L. c. 175A, §§ 2, 5(a)(4).

Objection Three: Increased competitive rating is not "consumer friendly."

Some opponents of increased competition assert that Massachusetts has the most "consumer friendly" system in the nation based, in part, on the abundance of subsidies for urban and youthful drivers, which keep rates affordable for these consumers. They warn that increased competition will cause these rates to skyrocket, as they did in 1977. They fail to address, however, the very consumer ***unfriendly*** aspects of the fix-and-establish system: limited choice of insurance carriers and products and overcharging of the vast majority of drivers so that a very small number of drivers are subsidized.

1. Objection: Increased competition will reduce consumer choice.

In the *Order on Proposed Changes to Rules of Operation 2, 9 through 14, and 17 And Rules 21 through 40*, Docket No. C2004-02, filed on November 23, 2004, we described the illusion of "consumer choice" in the current Massachusetts private passenger motor vehicle insurance market:

> In the voluntary market, an individual can purchase insurance either directly from an insurance company or through an insurance producer. In most states, independent producers have contracts with many different automobile companies, providing the consumer with numerous choices. In Massachusetts, however, few producers have contracts with multiple insurance companies. Indeed, many have contracts with only one company. Because the average consumer typically purchases insurance through his producer rather than directly from an insurance company, his choice of producer can have a dramatic effect on the universe of opportunities available to him. Indeed, choice in this regard is more meaningful as it pertains to the choice of *producer* rather than to the *company*. [15]
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> Fifty-five percent of the producers only have contracts with one insurance company. Therefore, individuals who purchase policies through those producers actually have *no* choice as to which company writes their policies. In 25 percent of the cases, producers have contracts with three or fewer companies, giving the individuals very limited choice.

[15] Of course, an individual could approach an insurance company directly to obtain a policy. This does allow for "choice" in the truest sense. In practice, however, Massachusetts' agency-based system is so integrally woven into the culture that most individuals only go through their producers to purchase this insurance rather than go directly to the company. It is this practice of seeking automobile insurance through a producer where choice is exercised. [Footnote 4 at page 4 of the original.]

Id. at 5. The argument that we will lose "consumer choice" if we move to company rating in the private passenger motor vehicle insurance market under c. 175E is specious. Increased competition will provide consumers with a meaningful choice of company, products and service; choice that is lacking under the current fix-and-establish system. Company rating also will permit price competition to a greater extent than has occurred under the fix-and-establish system. All of these added benefits will lead to a healthier and more robust market -- the ultimate harbinger of real consumer choice.

2. Objection: Increased competition will allow the use of non-driving record criteria for rating.

Several speakers at the hearing expressed concern about the use of socio-economic factors as criteria in company rating. Particularly, they denounce the use of credit information in rating and related tools that may be used in a file-and-use system. While Massachusetts law does not prohibit the use of credit information by insurers, it also does not require it. *See* G.L. c. 93, §§51, 62. The Commissioner will look very skeptically at the use of such information in rating.

Other provisions of the law prohibit the use of *some* factors in underwriting and rating. For example, an insurer may not use the following criteria in any of its underwriting or renewal decisions: age, sex, race, occupation, marital status and principal place of garaging a vehicle. G.L. c. 175, §22E. The provisions of §22E will guard against redlining in underwriting based on location, a fact overlooked by the opponents of increased competition. Further consumer protection from unfair underwriting practices is provided by G.L. c. 175, §113D, which provides that any person aggrieved by the cancellation of a motor vehicle liability policy or bond, or by the refusal of any company to issue such a policy or to execute such a bond as surety, or by the issuing of a written notice purporting to cancel such a policy, may file a written complaint with the Commissioner. These laws will not change simply because more competition is allowed in the Massachusetts private passenger motor vehicle insurance market.

With respect to rating, Commerce asserts that a consumer's driving record is more important under a fix-and-establish system than it is in states that allow competitive rating. It asserts that insurance companies in other states use factors such as credit

scoring, marital status, education and home ownership in rating which, Commerce declares, is undesirable. Commerce cites a New Jersey consumer group (New Jersey Citizen Action) and a newspaper (Passaic County *Herald News*) as evidence that GEICO uses education and occupation in New Jersey as proxies for race and income, resulting in discrimination against lower income people and minorities. Plymouth Rock cites a report by the Commissioner of the Florida Office of Insurance Regulation which linked insurers' use of occupation and education with income-level and ethnicity. This report concluded that lower income, less educated people were charged more for insurance even when all other factors were equal. Anxiety over such potential practices in Massachusetts is unfounded. The Commissioner in Massachusetts has the power to disapprove or prohibit such rating practices if such unfair rating discrimination were shown to be occurring here. G.L. c. 175E, §8.

Chapter 175E invests the Commissioner with active oversight of the fairness of rating plans, including the use of socio-economic factors as criteria in company rating plans. It provides that competitive rates shall not be unfairly discriminatory.[16] G.L. c. 175E, §4(a). It contains detailed directives about what facts must be used to support company filed rates. Indeed, this statute requires companies to use the same factual and actuarially sound approach to filing rates as the Commissioner has used the past 30 years under the fix-and-establish system. G.L. c. 175E, §10 provides that the Commissioner may make reasonable rules and regulations to facilitate the operation of c. 175E, to enforce the application of c. 175E, to govern the form and content of filings made pursuant to c. 175E, and to expedite the conduct of hearings and investigations under c. 175E. At any time during the rate period, following a hearing, the Commissioner may order that a classification, rule, rate or rating plan be disapproved, and may order a premium adjustment if she determines that any of the foregoing does not comply with this chapter or is violative of public policy. G.L. c. 175E, §8(¶2).

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[16] Our laws do not define "unfairly discriminatory." The National Association of Insurance Commissioners ("NAIC") defines "unfairly discriminatory" pricing as "if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise or blanket policy or a mass marketed plan [as defined]." NAIC Property and Casualty Model Rating Law (File-and-use Version) (1998).

The Commissioner has additional powers under G.L. c. 175A ("c. 175A") to ensure fairness in company rating for private passenger motor vehicle insurance. G.L. c. 175A, §15(d) broadly authorizes the Commissioner to make reasonable rules and regulations necessary to effect the purpose of c. 175A. G.L. c. 175A, §2 mandates liberal interpretation of c. 175A to promote the public welfare by regulating insurance rates to the end that they shall not be unfairly discriminatory. With regard to rating factors, G.L. c. 175A, §5 discusses factors in company ratemaking. As is true of G.L. c. 175E, §4(a), this statute also requires companies to use the same factual and actuarially sound approach to filing their own rates as the Commissioner has used when fixing and establishing rates. Under G.L. c. 175A, §6(a), the Commissioner may require an insurer to furnish the information upon which it supports its filing. This statute also empowers the Commissioner to delay the effective date for a filing if she determines that a delay is necessary to properly examine the filing and any supporting information filed with it, or to permit a hearing on the filing. G.L. c. 175A, §13(b) authorizes the Commissioner to order the discontinuance of any activity or practice of a group, association or other organization of insurers engaged in joint underwriting or joint reinsurance that she finds to be unfair or unreasonable or otherwise to be inconsistent with any provision or provisions of c. 175A.

In addition to these provisions of c. 175E and c. 175A, Chapter 175 of the General Laws provides further mechanisms by which the Commissioner can regulate insurance companies, company filings and rating practices. G.L. c. 175, §4(2) provides for the Commissioner's review of the equity of a company's dealings with its policyholders whenever she determines it to be prudent. Pursuant to this statutory provision, she has the implicit authority to refuse to give approval to contracts and riders that she determines to be unfair and inequitable toward policyholders. *Opinion of the Attorney General*, September 29, 1944, Page 22. Moreover, G.L. c. 175, §4(3) specifies that the Commissioner "may also consider other matters reasonably related to . . . market conduct."

Opponents of more competition overlook the practical fact that, as the number of rating variables increases with the introduction of more competition, the possibility of any one variable being disproportionately weighted becomes less likely. For example,

the factor of territory likely will become less important as a rating variable when insurers are able to rate based on a number of other factors.

Plymouth Rock argues that we should not allow competitive rating until the Legislature requires that individual driving history shall be the most important factor in determining premium, and prohibits the use of socio-economic factors such as credit, occupation, education and homeownership in ***rating*** decisions. We disagree. The legislature in c. 175E has stated a clear *preference* for competitive rating in motor vehicle insurance. It is not appropriate for the Commissioner to ignore this clear statutory mandate.

3. Objection: Increased competition will eliminate the subsidy of urban driver premiums.

The Attorney General argues that competitive rating should not be allowed for the Massachusetts private passenger motor vehicle insurance market because current laws do not permit the Commissioner to employ any types of discretionary, regulatory tools to "preserve fair rating for urban areas." The Attorney General warns that some will assert that c. 175E requires pure, unregulated competition, and that the Commissioner lacks the statutory authority to regulate competition by the use of "flex bands" or for "optional" coverages only. She predicts that opponents will maintain that G.L. c. 175, §113B explicitly allows insurers only to reduce their rates below the fixed rate, rather than permitting them to increase them above the fixed rate.

The argument that the Commissioner's use of certain regulatory tools, such as flex bands or premium capping is a violation of the fix-and-establish statute, G.L. c. 175, §113B ("Section 113B"), is irrelevant. The Commissioner would employ these regulatory tools, if, in fact, she so decides to do so, pursuant to her authority under c. 175E; *not under the fix-and-establish statute*, G.L. c. 175, §113B. Section 113B will not be triggered as a result of our findings in this proceeding.

Under c. 175E, the Commissioner has the authority to employ a variety of tools, such as flex rating and capping, to introduce and monitor competition in the marketplace to preserve the goals of c. 175E. Commissioners repeatedly have considered these types of tools over the past 30 years and no one has ever seriously challenged the Commissioner's authority to utilize them under c. 175E. The Attorney General, in

particular, during the Section 5 hearing concerning 1989 rates, proposed that the Commissioner institute flex rating for optional coverages and, if successful, extend flex banding to mandatory coverages over the course of a few years.[17] He specifically asserted that the Commissioner had "broad" discretion under c. 175E and that she was authorized to utilize a variety of regulatory tools to achieve the goal of the statute, including the use of "flex rating" in individual cells and territories:

> Thus, in the view of the Attorney General, the Commissioner may choose not to set rates for only the optional property coverages, may impose a flex rating system, may continue to mandate territories and age symbol relativities and may continue to mandate a safe driver insurance plan – either as an interim measure or on a long-term basis.

1988 Competition Hearing, Docket No. 88-13, commentary of Hilary Rowen, Assistant Attorney General and Insurance Division Chief, p. 5. All relevant provisions of c. 175E are the same today as they were in 1988. Although the Commissioner chose not to fix-and-establish rates that year, it is significant that the Attorney General unequivocally asserted that the Commissioner possessed authority under c. 175E to employ a variety of regulatory tools.

The Attorney General continued to recommend the implementation of increased competition in the following years, each time repeating his recommendation that the Commissioner use her authority to institute flex rating in individual cells and territories (*i.e.*, capping) under c. 175E. These recommendations were not limited to one specific holder of the Office of Attorney General; a different Attorney General similarly recommended the use of these tools in 1991 and 1992.[18]

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[17] Attorney General Shannon advocated for the conservative, gradual introduction of competition in the motor vehicle market for the reason that he believed, as we currently believe, that such change would result in greater cost controls on the part of the companies, a general reduction in fraud, greater inefficiencies in the marketplace (including the disbanding of the lengthy fix-and-establish hearing process), and greater benefits to consumers statewide. *1988 Competition Hearing*, Docket No. 88-13, commentary of Hilary Rowen, Assistant Attorney General and Insurance Division Chief, p. 9. Although "flex band" rating and "flex rating" are repeatedly referred to throughout the Attorney General's testimony, it is more accurately referred to as "premium capping" as the use of the mechanism was intended to apply in individual cells and territories, rather than only on a state-wide average basis. It is the application to cells and territories that makes it a form of a cap rather than true flex rating.

[18] Furthermore, the current Attorney General notes that if the Commissioner does, indeed, implement such regulatory tools, she will open herself up to costly litigation. While we are acutely mindful of the fact that our decision might result in litigation since some insurers under the current system seem loathe to change the system in which they currently thrive, this is not an appropriate basis for inaction by the Commissioner.

Plymouth Rock, Commerce and Arbella express concern that an increase in rates for urban and inexperienced drivers will lead to more uninsured motorists in the Commonwealth. They failed to provide any factual support in the record for this supposition.[19] Dr. Tennyson of the Fairness Coalition, moreover, disputes any connection between rate increases and increases in the number of uninsured motorists: "...formal statistical analysis fails to show a significant link between state regulation and lower rates of uninsured drivers." Tennyson, "*Evaluating Competition in Insurance Markets*," May 16, 2007, p. 14.[20] The compulsory insurance laws will remain the same when more competition is allowed. We decline to base our decision under c. 175E on an expectation that Massachusetts drivers will break the law by driving without insurance. We are confident that the Registry of Motor Vehicles and police authorities will continue their vigilance regarding uninsured drivers. Massachusetts motorists should not be held hostage by an alarmist, speculative fear of future lawless behavior by a few.[21]

Objection Four: Increased competition should not be allowed absent review of the entire market and reform of the residual market.

Opponents of competitive rating caution that a move to increased competition must be studied within the context of the private passenger motor vehicle insurance system as a whole, including the residual market. The Attorney General, in particular,

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[19] Ruy A. Cardoso, Fellow of the Casualty Actuarial Society, offered commentary on behalf of Arbella. His statistics about the number of undervalued urban policyholders and the extent to which they are undervalued are not persuasive because he has not provided the source for his data with his analysis, so that his conclusions cannot be reviewed by us, and because his analysis fails to taken into account the Commissioner's powers to regulate rates.

[20] Dr. Tennyson additionally provided data regarding reform in New Jersey and South Carolina and the number of uninsured drivers in such markets after reform: "South Carolina reformed its rate regulation in 1999; in 1995 the rate of uninsured driving in the state (under strict regulation) was 26.3%; by 2004 (after reform) this rate was only 9.6%. New Jersey undertook regulatory reform in 2003, and has thus far seen a decrease in the rate of uninsured driving from 12.3% (in 1995) to 9.4% (in 2004). All statistics on uninsured driving are from *Uninsured Motorists*, Insurance Research Council 2006." Tennyson, "Evaluating Competition in Insurance Markets," May 16, 2007, P. 14.

[21] Several companies argue that more competitive rating could cause the residual market to grow. The potential growth of the residual market is beyond the scope of a Section 5 hearing. It also has been argued that more competitive rating will not attract national companies. This too is beyond the scope of a Section 5 hearing.

suggests that the marketplace must make a transition to a different residual market structure before more competition is implemented. While again not required under c. 175E, §5, we have addressed this concern.[22] We are issuing today, simultaneously with the issuance of this decision, our decision on the implementation of an assigned risk plan in the residual market. These changes to the residual market will only further invigorate our market and increase the likelihood of success for increased competition.

Ms. Blank of the State Rating Bureau, and others, stated that competition in the private passenger motor vehicle insurance market would be even more robust if an assigned risk system were to replace the current hybrid reinsurance pool. Companies will be in a better position to set appropriate rates when the method of distributing residual market losses is fairer and more predictable. A residual market allocates risk on a policy by policy basis rather than by agency or producer, and will go far in achieving the goals of fairness and predictability.

First, an assigned risk plan will ensure that companies' shares of residual market losses approximate their voluntary market shares. In addition, moving to an assigned risk plan will reduce the net effect that the territorial subsidies have on insurers. Ms. Blank explained that in the marketplace the lost premium and excess premium resulting from subsidies rarely balance each other out because, unlike the Commissioner's ratemaking methodology which assumes that a single company insures all vehicles, there are a number of companies writing private passenger motor vehicle insurance. Each company has a different book of business, and the types and locations of risks are not consistent or evenly distributed throughout the state, let alone within each territory and class. An insurer's written premium may therefore be too high or too low, as compared to the statewide average.

Ms. Blank calculated the actual range of the net premium effect of territorial subsidy for each insurer, as a percentage of its total average compulsory premium, to be between 3.0% below to 3.5% above the statewide average. She explained, "The reason for this range of average premium subsidy across insurers is not, however, purely a function of individual insurers' marketing towards or away from territorial rate subsidies.

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[22] We do not agree that the assigned risk plan must be underway prior to the implementation of competition but, rather, that it can be introduced simultaneously.

Approximately half of the observed variation can be explained by the current industry practice of making one-to-one assignments of Exclusive Representative Producers ("ERP"s) to insurance companies."[23] Randomly distributing ERP business under an assigned risk plan narrows the territorial rate subsidy range to 1.2% below to 1.8% above the statewide average for each insurer. As Ms. Blank states, "In a price competitive environment, a 3% spread in net premium effect due to territorial rate subsidy is less likely to position an insurer at a price competitive advantage or disadvantage than a 6.5% spread. *Testimony of Cara M. Blank*, June 15, 2007, pp. 9-10. While, as Ms. Blank noted, territorial rate subsidies are not a barrier to competitive rating, the effect of such subsidies should be allocated as fairly as possible.

Even consumers required to obtain private passenger motor vehicle insurance in the residual market stand to benefit from competitive rating because the carriers are prohibited from charging more to insure risks in the residual market. See G.L. c. 175, §113H(D)(5). This requirement, the so-called "Lane-Bolling" provision, was enacted following the failed attempt to move to competitive rating in 1997. Besides protecting consumers from paying more for residual market coverage, the measure also encourages voluntary writings.

Objection Five: Increased competition will result in greater collusion among companies because the anti-collusion section of c. 175E is inadequate.

The Attorney General asserts that competitive rating should not be allowed because the anti-trust section of c. 175E, G.L. c. 175E, §6, will not be effective in prohibiting collusion among insurers. She specifically asserts that Section 6(a)2, and Section 6(d) of c. 175E will allow the Automobile Insurers Bureau ("AIB") to continue to file rates on behalf of multiple companies, resulting in the sharing of all manuals of classification, rating plans and rates. This argument overlooks that G.L. c. 175E, §4(e) ***explicitly*** prohibits the AIB from filing rates for all of the insurance companies:

> On and after January first, nineteen hundred and seventy-seven, no insurer shall use rates developed on the basis of external loss and expense factors ***without making such modification of such rates as the credibility of its own loss and expense experience allows. Any insurer writing one per***

[23] Ms. Blank calculated the average net premium effect of territorial subsidy, for each insurer's ERP produced business to be between 14.5% below and 2.6% above the statewide average.

> ***cent or more of the premiums*** for motor vehicle insurance in the commonwealth during the preceding calendar year ***shall file with the commissioner*** or his designated representative under the provisions of section seven ***its own loss and risk expense experience to demonstrate the extent, if any, to which such insurer must so modify rates developed on the basis of external loss and expense factors***."

G.L. c. 175E, §4(e) (emphases added). Since 14 of the 19 carriers who currently write private passenger motor vehicle insurance in the Commonwealth write more than 1% of the market, the statute prohibits the very conduct that concerns the Attorney General. Furthermore, G.L. c. 175A, §13(b) authorizes the Commissioner to order the discontinuance of any activity or practice of a group, association or other organization of insurers engaged in joint underwriting or joint reinsurance that she finds to be unfair or unreasonable or otherwise to be inconsistent with any provision or provisions of c. 175A. This provides a further protection from collusive behavior by insurers.[24]

The generous number of anti-trust prohibitions under c. 175E, §6 should deter any type of collusion in our private passenger motor vehicle insurance market. There also are significant penalties in the event that a carrier is found to be colluding with another carrier, such as imprisonment for up to one year for ***each*** violation and a maximum fine

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[24] The Attorney General's citations to the partial provisions of Section 6 of G.L. c. 175E are misleading. The first provision that allegedly permits the AIB to establish advisory manuals of classification, rules and rates, and rating plans on behalf of the insurers is taken out of context. This provision, in its entirety, provides as follows: "***No insurer or rating organization shall agree with any other insurer or rating organization to charge or adhere to any rate***, although insurers and rating organizations may continue to exchange statistical information and provided further a rating organization may establish advisory manuals of classifications, rules and rates, rating plans or modifications of any of the foregoing in any manner not prohibited by the commissioner." G.L. c. 175E, §6(a)(2) (emphasis supplied). In this context, such exchange of information is specifically barred from being used to collude on rates among companies. The second partial provision of the quotation cited by the Attorney General for support for the proposition that the companies will be able to collude, pertains to the alleged ability of two or more insurers to "use, either consistently or intermittently, the ... rates [or] rating plans ... or recommendations of such organizations." This cited partial provision is also contextually inaccurate and misleading. The complete statutory provision provides as follows:

> The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently, or intermittently, the manuals of classifications, rules and rates, rating plans, modifications of any of the foregoing or recommendations of such organizations, shall not be sufficient in itself to support a finding that an agreement to adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

G.L. c. 175E, §6(d). This statutory provision is intended as an evidentiary standard of proof ***in the event that*** two or more insurers are charged with violating this anti-trust section of G.L. c. 175E, rather than ***permitting*** such insurers to do so in the first instance.

of $10,000 for ***each*** violation. G.L. c. 175E, §12. Finally, the Attorney General should not overlook that she, too, will have a role to play, if necessary. The Commissioner is authorized to bring an action to enjoin any such potential collusion ***through the Attorney General***. G.L. c. 175E, §6(b)(2) (emphasis added). The Commissioner has every intention of ensuring that the insurers in the marketplace abide by this law and will work with the Attorney General in the event that any collusive behavior occurs.

Objection Six: Increased competition should not be allowed until there is a comprehensive website to provide accurate price information to consumers.

The Attorney General asserts that the market is not ready to sustain increased competition because there is no comprehensive website to provide essential insurance products and price information to consumers, so that they can shop effectively. Although there are a number of commercial sites that provide insurance information, ideally, a comprehensive website should be created that provides motor vehicle product and pricing information to Massachusetts consumers. Although all of the carriers currently have websites on which their products and pricing information can be obtained, we are mindful that one consolidated site would be ideal. Such a consolidated site would assist consumers in shopping for the best products and rates. In addition to the concerns voiced by the Attorney General, Plymouth Rock urges the Division to maintain valid complaint statistics about Massachusetts private passenger motor vehicle insurers by market share and to report the information on the Division's website. The Commissioner and the staff of the Division are ready and eager to work with insurance companies, producers, consumer advocates and the Attorney General to establish procedures for maintaining statistics on valid complaints by market share and to make this information available on the Division's website.

Objection Seven: The Commissioner should allow more competition under the fix-and-establish system of G.L. c. 175, §113B rather than under Section 5.

Arbella recommends that the Commissioner deliberately set the fix-and-establish rate higher than what is justified, with the hope that insurers will choose to provide credits for some consumers, rather than allow increased competition under c. 175E. We decline to adopt Arbella's proposal as it defies common sense and ignores the Legislative

preference for competition under c. 175E. To do as Arbella suggests, the Commissioner would have to ignore the plain directive of Section 5 and, possibly, the mandate of Section 113B.