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Commonwealth Automobile Reinsurers’
Proposed Changes to MAIP Rules 21 and 30
Docket No. C2009-04

Order on Proposed Changes

Introduction

On June 3, 2009, the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee voted to adopt multi-part amendments to Rules 21 and 30 of the Massachusetts Automobile Insurance Plan (“MAIP”) and submitted them to the Commissioner of Insurance (“Commissioner”) for her approval. On June 19, 2009, the Commissioner notified CAR that one part of the proposed amendment to Rule 21.C.1.a and the proposed amendment to Rule 30.C.1 were disapproved. She directed CAR to submit a revised amendment to Rule 21.C.1 and issued a hearing notice scheduling a hearing on July 20 to address the sections of the proposed amendments that she had not specifically approved. CAR, in response to the Commissioner’s June 19 letter, submitted a revised amendment to Rule 21.C.1, which the Commissioner approved on July 1, 2009.

Twelve individuals spoke at the July 20 hearing; two others submitted written statements. The record was left open through July 21. Although the hearing notice

invited comment on CAR's initial amendment to Rule 21.C.1 and its proposed amendment to Rule 30.C.1.d, the sole issue addressed at the hearing was the Commissioner's disapproval of CAR's proposal to amend to Rule 30.C.1.d so as to eliminate a sunset provision regarding an insurer's obligation to pay a commission to the producer of a policy initially written through the MAIP when the insurer subsequently writes that policy voluntarily.

Summary History of Rule 30.C.1.

CAR's June 3, 2009 proposed amendment to Rule 30.C.1 is its third attempt to require an ARC to pay commissions to a producer on business written through the MAIP after the ARC writes the policy voluntarily, regardless of whether the producer continues to service the policy or has a contract with the ARC.¹ On June 19, the Commissioner reiterated her disapproval of CAR's proposal, citing the reasons set out in her January 2 and May 6, 2008 *Decisions*, and pointing out that those decisions highlight CAR's lack of authority to make rules for the voluntary market. This precise issue, importantly, also is on appeal before the Supreme Judicial Court in *Arbella Mutual Insurance Company, et al. v. Commissioner of Insurance*, Docket No. 10511.

Summary of Arguments

The statements made in this proceeding urge the Commissioner to reverse her disapproval of CAR's proposal. Some speakers characterized the proposed amendment as non-controversial, noting its unanimous approval by CAR's MAIP Steering Committee and the Governing Committee. Several speakers contend that CAR's proposed amendment does not constitute regulation of the voluntary market. MAIA argues for reconsideration of CAR's proposal on the ground that circumstances have changed since the Commissioner rejected it in 2008. Specifically, it notes that some former ERPs do not have voluntary contracts with carriers, but are Assigned Risk Producers ("ARPs") who may only place business with the MAIP.² MAIA asserts that the proposed amendment will ensure steady commission income for ARPs after March 31, 2011, maintain the market value of their agencies, and prevent them from going out

¹ Two prior Decisions by the Commissioner, issued on January 2, 2008 and May 6, 2008, rejected CAR's proposed amendment and established and affirmed the current Rule 30.C.1.d.

² An application for motor vehicle insurance that an ARP submits to the MAIP may be written by any carrier that CAR has appointed as an ARC.

of business. Several speakers contend that adopting CAR's proposed amendment will result in more agencies receiving voluntary contracts.

Discussion

No speaker contends that either CAR or the Commissioner has authority to regulate commission arrangements between carriers and producers in the voluntary market or argues that a policy that is taken out of the MAIP is not a voluntary policy. Rather, they assert that CAR's proposal regulates the residual, rather than the voluntary market. No one explains why the proposed amendment does not regulate on an unlimited basis commissions on voluntary policies that were initially written in the residual market.³

The MAIP Rules incorporate several transition provisions that establish a structured framework for the shift from a highly regulated to a competitive market for private passenger motor vehicle insurance.⁴ Rule 30.C.1.d is a transition rule that ensures that during the first three years of the MAIP an insurer cannot take its assigned risk out of the MAIP and write it voluntarily without continuing to pay a commission to the producer who placed the business for the policyholder, regardless of whether the insurer is an agency company or a direct writer, and regardless of whether the insurer and producer have entered into a contractual relationship.

Many statements in support of adopting CAR's proposal rest on the incorrect premise that Rule 30.C.1.d has particularly deleterious consequences for former ERPs. The rule, however, applies to the continued payment of commissions during the transition period to all producers of policies that an insurer initially wrote through the MAIP, whether or not the producer has a voluntary contract.⁵ All producers who place business through the MAIP, including former ERPs, benefit equally from the guarantee of commission income during this period. Rule 30.C.1.d does not apply when an insurer retains a MAIP policy for the full three years prescribed by Rule 29 or elects to renew it thereafter as an assigned risk. So long as the policy is written in the residual market, the

³ Unanimous approval by CAR of its proposal does not provide a legal basis for adopting a proposed rule.

⁴ For example, MAIP Rule 21 imposes a three-year moratorium on non-renewing policyholders with clean-in-three driving records.

⁵ An insurer need not write every application that a producer submits. However, as of April 1, 2009 all applicants without clean in three driving records who could not obtain voluntary insurance were eligible for the MAIP.

producer of record will receive a commission. Rule 30.C.1.d. also does not preclude an insurer from paying a commission to the producer of record on previously assigned policies it chooses to continue to write in the voluntary market.

Speakers raised several other issues relating to the potential effect of removing the sunset provision on the private passenger automobile insurance market. One speaker again suggested that CAR's proposed amendment should be approved because it is consistent with the rules of the New York Residual Market Plan. That argument was raised and rejected in the past and requires no further discussion here. Others contended that approving CAR's amendment would improve the chances of former ERPs getting voluntary contracts and depopulate the residual market, but offered no specific reasons for their position. Speculation about what insurers may do at the end of the transition period provides no basis for approving CAR's proposal to amend Rule 30.C.1.d.

Conclusion

For the above-stated reasons, and for all the reasons set out previously in the January 2, 2008 and May 6, 2008 *Decisions* on this matter I decline, on this record, to reverse the Commissioner's June 19, 2009 disapproval of CAR's June 3, 2009 proposed amendment to MAIP Rule 30.C.1.d.

Dated: September 10, 2009

Jean F. Farrington
Presiding Officer

Affirmed:

Nonnie S. Burnes
Commissioner of Insurance