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Proposed Changes to CAR Rule 29, Assignment Procedures

Docket No. C2016- 01

On January 13, 2016, the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee voted to amend CAR Rule of Operation 29, Assignment Process. On January 14, CAR submitted the proposed amendments to the Commissioner of Insurance (“Commissioner”) for his approval. On the same date, pursuant to Article X of the CAR Plan of Operation, the Plymouth Rock Assurance Company (“PRAC”) requested a hearing on CAR’s proposed amendments. A hearing notice, issued on February 2, 2016, scheduled a hearing for February 25.

Rule 29 addresses the assignment to CAR members of applications for private passenger motor vehicle insurance that are submitted to the Massachusetts Automobile Insurance Plan (the “MAIP”). Section E of the Rule establishes Credit Programs that allow a CAR member, rather than wait to receive assigned MAIP applications, to receive a credit for voluntarily writing business in operator classes and territories that are disproportionately represented in the residual market. M.G.L. c. 175, §113H requires CAR annually to maintain a credit system; any change to Rule 29 must then be submitted to the Commissioner for his approval. CAR’s proposed amendments, if approved, would be effective for the rate year beginning April 1, 2016.

CAR specifically proposes to amend Rule 29 E. subsections 2 (Amount of Credit) and 3 (Credit Factors by Territory and Operator Class). Subsection 2 addresses credit factors for 10 Residual Market Groups; CAR proposes to adjust the residual market share ranges that underlie

the classification of carriers into residual market groups, but not to change the voluntary credit factor assigned to each group. Subsection 3 is a matrix of 330 cells, each representing a combination of operator class and rating territory, that identifies the territory/class combinations that are credit eligible.¹ CAR members receive credit for writing applicants from those cells voluntarily; the matrix specifies the credit available for each cell. CAR proposes to amend Subsection 3 by eliminating sixteen territory/class cells from the credit eligible group and adding thirteen to that group. In particular, it proposes to eliminate from the credit eligible group three cells consisting of experienced drivers in three urban territories, Lynn, Lowell and Brockton. CAR also proposes to reduce the maximum available credit to 150 percent of the credit premium amount. It states that the proposal will result in a 22.6 percent statewide decrease in credit eligible exposures and a 21.4 percent decrease in available quota share credit premium.

Massachusetts General Laws, c. 175, §113H requires the residual market plan (*i.e.*, the MAIP) to provide territorial and classification credits to companies for voluntarily writing private passenger insurance in territories and classifications that would, without such credits, be disproportionately represented in the plan, and that the size of the credits be calibrated “to enhance the prospects that no classification or territory is disproportionately represented in the plan.” PRAC’s request for a public hearing is based on its opinion that CAR’s proposed amendments to Rule 29 do not comply with that statutory mandate. As support for its opinion, PRAC attached to its request for a hearing a 2015 letter from the Office of the Attorney General expressing concern about CAR’s proposal to reduce quota share credits for some territory/class cells.

In addition to Paula Gold, Esq., Chief Regulatory Counsel for PRAC and Glenn Kaplan, Esq., Chief of the Insurance and Financial Services Division at the Attorney General’s Office, five insurance producers made statements at the hearing. Their collective opposition to CAR’s proposed Rule 29 amendments focused on the removal from credit eligible cells of policies written on experienced operators in Territories 41 (Lowell), 43 (Lynn) and 45 (Brockton). PRAC did not dispute CAR’s assertion that its Rule 29 amendments would reduce the number of credit eligible exposures statewide by 22.6 percent, but objected to achieving that reduction primarily through removing operator Class 10 policyholders in territories 41, 43 and 45, from the credit eligible groups.² Ms. Gold noted that credit eligibility is a factor that attracts insurers to

¹ Multiplying 10 operator classes by 33 Territories, numbered 1-27 and 40-45, produces 330 cells.

² PRAC’s analysis indicates that a 22.6 reduction in credit eligible exposures statewide translates into 119,381 policyholders. Of that group, 117,059 are Class 10 operators in Territories 41, 43, and 45.

write applicants on the voluntary market, and acts as an incentive to compete for that business. She expressed concern that, absent that incentive, more policyholders would be unable to find insurance on the voluntary market and would be assigned to the MAIP. As both Ms. Gold and Mr. Kaplan observed, voluntary policyholders receive benefits from their insurers that are not available to insureds who are assigned through the MAIP.

Three producers who spoke at the hearing operate insurance agencies in Lynn; all expressed concern about the potential effect on their customers and their business operations of reduced credit eligibility for residents of that city. They uniformly expressed the opinion that credit eligibility encourages insurers to write business voluntarily in their territory and that the availability of credits for business written through their agencies is a significant factor in appointing them as producers for motor vehicle insurers. They commented that, absent credit eligibility, customers might no longer be written voluntarily.

At the close of the hearing the record was left open to accept additional written commentary. PRAC submitted a statement responding to questions asked at the February 25 hearing. Two producers, one from Lowell and one with offices in Lynn, Lawrence and Lowell opposed the proposed Rule 29 amendments for the reasons stated by the producers who spoke at the hearing. The Mapfre Insurance Company, however, submitted a statement supporting CAR, asserting that reducing the amount of available credit will not adversely affect the size of the MAIP. It contends that much of the business written in credit eligible cells is good business, and questions whether credit incentives are necessary to encourage carriers to write that business voluntarily.

The credit eligibility system adopted after the shift from a fixed-and-established to a competitive market for motor vehicle insurance is intended to ensure that in a competitive market, where insurers compete for business on the basis of price and policy enhancements, territories and operator classifications are not “disproportionately represented” in the residual market. Quota share credits have been extremely successful at controlling the overall size of the MAIP that most recently, on a statewide percentage basis, stood at 1.3 percent. Those who spoke at the hearing uniformly opined that, by removing credit eligibility for a significant number of experienced operators in three urban territories, CAR’s proposed Rule 29 amendments would reduce the incentives for insurers’ to write that business voluntarily and be likely to increase the amount of business assigned through the residual market. That outcome would adversely affect consumers and producers living or operating agencies in those territories.

Another goal of credit schemes is to calibrate credits to enhance the prospects that no classification or territory will be disproportionately represented in the residual market. For a number of years, particular concerns have been expressed about eleven territories in which the percentage of premium written in the MAIP has consistently been twice or more the statewide average; CAR, in its analysis of the residual market refers to them as the “DOI Territories.”³ CAR proposes to reduce, for some cells, the amount of credit that an insurer receives for writing business voluntarily for Class 20 operators (less than three years of experience and no driver training.) Its proposed reductions reduce the credit available for writing those operators in eight of the eleven DOI Territories, a choice that is unlikely to encourage carriers to write those risks on the voluntary market.

The material that CAR submitted to support its proposed amendments to Rule 29 documents extensive discussion and analysis of options and alternatives to the current credit system. Underlying those discussions was an Actuarial Committee review of three years of residual market share data that showed a significant indicated decrease in credit eligible exposures and available quota share credit premium. The Committee was concerned that implementing a credit system based on those indications would be disruptive to the marketplace and that revisions to Rule 29 should therefore be contemplated. Among the alternatives considered was freezing the credit factors at the current level. Ultimately the Governing Committee approved a model that recalibrates the residual market threshold to 3.5 percent and decreased both credit eligible exposures (by 22.6 percent) and potential credit premium (by 21.4 percent.) We are not persuaded that adjustments are needed at this time to a system that has achieved a remarkable reduction in the size of the residual market to a level significantly below the threshold underlying CAR’s proposal.

A second measure for evaluating the credit system is its support for the principle that no class or territory should be disproportionately represented in the MAIP. Both PRAC and the Attorney General express concern that in the eleven DOI Territories MAIP participation is disproportionate because the percentage of MAIP participants is significantly higher than the statewide average. The statute setting standards for credit systems does not define “disproportionate” or establish a methodology for measuring it. Ms. Gold, speaking at the hearing, considered that a MAIP presence twice the statewide average should be considered

³ The eleven territories are Chelsea (Territory 16), Hyde Park (Territory 20), Dorchester (Territory 21), Roxbury (Territory 22), East Boston/Charlestown (Territory 26), Holyoke (Territory 40), Lowell (Territory 41), Springfield (Territory 42), Lynn (Territory 43), Lawrence (Territory 44), and Brockton (Territory 45).

disproportionate, but agreed that “disproportionate” does not mean that the ratio of MAIP participation should be identical in all territories. In its post-hearing submission, PRAC observed that it is beyond the ability of credits to make all classes and territories equally represented in the MAIP, and that such equality is not the goal of the credit system.⁴

The MAIP exists for the salutary purpose of providing mandatory motor vehicle insurance to operators who cannot obtain such coverage on the voluntary market. Although credits are customarily reviewed annually, the factors that are now relevant to changes in credits differ from those in place before the shift to a competitive marketplace. Annual changes to fixed-and-established rates required recalibration of the credit factors. In a competitive market, credit eligibility is factored into individual companies’ business plans. As noted above, the current credit eligibility system has resulted in a remarkable reduction in the size of the residual market with a concurrent increase in the number of consumers who are able to obtain insurance in the voluntary market. A compelling reversal in the size of that residual market would support re-analysis of the role of the credit system; at the same time any reconsideration of credit eligibility should give careful attention to its effect on consumers and small businesses in affected cells.

For above reasons, pursuant to the Commissioner’s authority under Article X of the CAR Plan of Operation, the proposed amendments to Rule 29 E that CAR submitted January 14, 2016 are hereby disapproved. Consistent with this decision, the factors shown on page 9 of CAR’s proposal remain in effect.

May 31, 2016

Jean F. Farrington
Presiding Officer

Affirmed:

May 31, 2016

Daniel R. Judson
Commissioner of Insurance

⁴ A comparison of the percentage of MAIP participants in a particular territory to the statewide average, by itself, offers no insight into the reasons for the differences. A more comprehensive understanding of the factors that affect MAIP placement might contribute to a discussion of that question.