
**Motorcycle Rates and Policy Forms for 2005
Docket No. R2004-10**

**Order on the "Renewed Petition to Intervene"
and the "Supplemental Petition to Intervene" of
The Modified Motorcycle Association of Massachusetts
d/b/a Massachusetts Motorcycle Association**

The Modified Motorcycle Association of Massachusetts d/b/a the Massachusetts Motorcycle Association ("MMA") has filed two documents in the above-captioned matter: 1) a renewed petition to intervene ("Renewed Petition"); and 2) a supplemental petition to intervene ("Supplemental Petition").

Procedural Background

On May 28, 2004, the Automobile Insurers Bureau ("AIB") submitted a filing relative to motorcycle insurance rates and policy forms (the "May 28 Filing"). On June 24, 2004, the Commissioner issued a Notice of Hearing ("Hearing Notice") establishing three separate dockets to consider specific aspects of the process to fix-and-establish private passenger automobile insurance rates for 2005. Docket No. R2004-10 specifically relates to the May 28 Filing. Docket No. R2000-12 considers underwriting profits, and Docket No. R2004-13, the Main Rate filing, considers insurers' losses and expenses. The latter also includes a section on motorcycle rates.

The AIB made its May 28 Filing in response to a directive of the Commissioner of Insurance ("Commissioner") in her *Decision on Private Passenger Automobile Insurance Rates for 2004* (the "*Decision on 2004 Rates*"). Her directive instructed the AIB to evaluate various

aspects of the rating methodology for motorcycles, including classifications for experienced and inexperienced operators, application of a multi-vehicle discount, territorial rating, and rating motorcycles on factors other than engine capacity.

The Hearing Notice, among other things, required any person, other than a statutory intervenor, such as the AG or the SRB, who wished to intervene or to participate in this docket to submit a petition for leave to intervene or to participate no later than July 16, 2004 and to attend a prehearing conference on July 22, 2004. By a letter dated July 14, 2004, the MMA, through Paul W. Cote, its Government Relations and Legislative Director, filed a "Request for authorization to Intervene," in which it gave notice of its intent to provide evidence, testimony and to participate in the Motorcycle Rates & Forms Case and specifically requested to intervene in Docket No. R2004-10 ("July 14 Petition").¹

The MMA's petition to intervene was addressed at the prehearing conference held on July 22, 2004. Mr. Cote spoke on behalf of the MMA, stating that it was then "working with the Attorney General's Office and the State Rating Bureau in their review of the submission by the AIB on the motorcycle rates for 2005." The AIB argued that "it may be practical or more practical for this matter to be handled by the Motorcycle Association cooperating with the AG and/or the SRB and having them ask questions *as they see fit* on behalf of the Motorcycle Association" and "*to the extent that they believe the Motorcycle Association is raising legitimate points that need to be explored on the record*" (emphases added). Following the AIB's comments, and additional comments from the AG, Mr. Cote stated that he took well

the points that Mr. Meyer has made and even more the recommendation or suggestion to work in concert with the State Rating Bureau and the Attorney General's Office. That was something that we did not do last year, nor did we seek to do it, and it's really based upon a lay person's lack of knowledge.

Mr. Cote then stated that, "in talking with two of the board members here from our Association, I would like to withdraw the petition where we have the open door communications with the Attorney General's Office and the State Rating Bureau, and we'll work with them."

Cross-examination of the AIB's witness occurred on August 3. Neither the SRB nor the AG submitted an advisory filing. A conference took place on August 11 for the purpose of

¹ By letter dated July 14, 2004, 4, Mr. Cote filed a notice of his intent, personally, to provide evidence and testimony and to participate in the hearing on Motorcycle Rates and Policy Forms. Mr. Cote, however, did not petition to intervene personally. This Order, therefore, addresses only intervention by the MMA. Mr. Cote spoke at the public comment hearing, as did other members of the MMA, and participated in the prehearing conference and subsequent conferences.

setting a briefing schedule. Mr. Cote participated in that conference by telephone. The AIB stated that it did not intend to file a brief in this matter, and urged the Commissioner to approve its filing. The SRB and the AG reported that they had made no decisions on briefing but suggested that, before making such a decision, the disputed issues should be identified. Mr. Cote indicated that the MMA had objections to the AIB's filings, but noted that it was "not necessarily" a party to the proceeding. He stated that the MMA would like an opportunity to confer with the AG and the SRB about submission of its objections. The presiding officer ordered that any issues that a party intended to brief be identified by August 17 and ordered briefs to be submitted by August 19.

On August 18, a second conference took place; Mr. Cote again participated by telephone. Mr. Cote stated that the MMA had informed the SRB about its objections to the AIB's filings, but that the SRB had indicated that it would not submit them on behalf of the MMA. The presiding officer² observed that the MMA had issues that it would like the hearing officers to address, and proposed that the MMA be allowed to submit a statement of those issues and a submission in the nature of a brief *amicus curiae*. The AIB objected to allowing the MMA, as a non-party, to submit statements; the SRB and the AG did not object to submission of filings in an *amicus* capacity. The MMA filed a statement on August 18 identifying four matters at issue in this docket and its position with regard to each of those issues. It also argued that the Commissioner should reject the AIB's filing, asserting that the filing "is incomplete, inadequate, and lacks significant new evidence." On August 20, the MMA filed a brief *amicus curiae* seeking rejection of the AIB's filing and a series of other orders.

On August 23, the MMA filed its Renewed Petition. An order issued on August 24 instructing the AIB and the SRB to file any opposition to the Renewed Petition by August 27, and scheduling a hearing on it for August 30. Both the AIB and the SRB timely filed oppositions to the Renewed Petition.

On August 30, the MMA filed its Supplemental Petition and a Draft Identification of Issues. The Supplemental Petition identified seven reasons for intervention by the MMA: 1) MMA members, and other owners of motorcycles, are "substantially, specifically and exclusively affected by decisions reached at the conclusion of these proceedings;" 2) the rates

² Susan G. Anderson, Esq., subsequently resigned from her position at the Division of Insurance and I continued as sole presiding officer in this proceeding.

charged motorcycle consumers are excessive and that coverage availability is discriminatory; 3) the MMA seeks a rate adjustment that reflects motorcycle experience exclusively, and access to coverage options similar to those available to operators of automobiles; 4) G.L. c. 175, §§113B and 113H, and 211 Code Mass. Reg. 77.04 (2)(b) allow the Commissioner to approve intervention; 5) the MMA, if allowed to intervene, by presenting testimony and cross-examining witnesses, will place on the record a pattern of discriminatory coverages and a history and continuation of excessive rates for motorcyclists; 6) without MMA intervention, more than 150,000 consumers will be unrepresented in a matter that affects them; and 7) intervention will not harm any party, as evidenced by the testimony of the AIB's expert witness that 2005 motorcycle rates are not calculated until October or later.

At the August 30 hearing, the MMA stated that its petitions had two goals: (1) cross-examination of William Scully, the AIB's expert witness, on a document titled "The 2002 Massachusetts Motorcycle Experience;" and (2) assurance that the record included the evidence offered by Mr. Cote, who is "the only person presenting evidence on behalf of the MMA." The MMA expressed concern that if Mr. Cote were not an intervenor, his "testimony would not be testimony." It contended that the hearing officer has broad discretion to allow documents to be filed in the course of a proceeding and that, because the hearing officer did not act on a motion to withdraw the MMA's July 14 Petition, one could infer that the petition had been allowed. Further, the MMA asserted, the document relating to the 2002 motorcycle experience was given to the MMA only on August 18. The MMA's Renewed Petition and Supplemental Petition were taken under advisement on August 30, 2004.

Arguments of the Parties

The AIB opposed both the MMA's Renewed Petition and its Supplemental Petition. It argued that both were untimely because they were filed well past the July 16 deadline set in the Hearing Notice. Furthermore, it noted that the MMA had withdrawn the July 14 Petition at the July 22 prehearing conference. In its opposition to the Renewed Petition, the AIB argued that the MMA gave no reason for its late request, other than apparent dissatisfaction with the representation of its interests by the AG and SRB. That reason, it asserted, is insufficient to support intervention at this late stage in the proceeding. Further, the AIB argued, conferring party status on the MMA at this time would cause unnecessary delay, and undermine the

integrity of the hearing process. It asserted that the parties to regulatory proceedings have a right to know, at the outset, the identity of all the parties and that allowing intervention after the record is closed would prevent proceedings from ever being closed.

Moreover, the AIB argued, even if the MMA had not withdrawn the July 14 Petition, it should have been denied because neither it nor the Renewed Petition meets the regulatory requirements set out in 211 CMR 77.04 (2)(b). In addition, it asserted, two parties to this proceeding, the SRB and the AG, represent the interests of the rate-paying public, and that the MMA's participation would be duplicative.

At the August 30 hearing, the AIB again argued that the MMA's petitions were untimely. It asserted that intervention by the MMA, either on the basis of the Renewed Petition or the Supplemental Petition, would further delay an already protracted proceeding, in which the record was already closed, because introduction of further evidence through the AIB's witness would allow additional examination by the parties to this case. It also argued that the document on which the MMA sought cross-examination was the AIB's response to a record request made by the SRB and the AG, and that hearings would not normally be reopened on the basis of responses to record requests.

The SRB argued that the MMA's July 14 petition was not a legally sufficient and proper petition under the applicable regulation, because it did not include the information required by that regulation. Further, it noted, nothing in the applicable regulation allows a petitioner to renew a petition to intervene after it has been withdrawn or provides for retroactive reinstatement of a withdrawn petition. Therefore, the SRB argued, the MMA's attempt to intervene at a later date must be viewed as a new submission, and rejected as untimely both under the regulation and the Hearing Notice. In addition, the SRB notes, the MMA bases the Renewed Petition on the implied failure of the SRB and the AG to assist it in presenting its positions on motorcycle rates and policies. The SRB argues that the MMA's contention is incorrect, stating that the SRB did include in its cross-examination of the AIB's witness some questions submitted by the MMA and, in addition, did not oppose the filing of an amicus brief by the MMA.

Discussion

The MMA's petitions to intervene in this docket must be measured against standards of timeliness and compliance with the substantive regulatory requirements.

A. Timeliness of the petitions.

211 Code Mass. Reg. 77.04 provides that petitions to intervene or to participate will be filed within specified time periods after an insurer submits a rate filing. The prescribed times permit potential intervenors or participants to examine the filing to determine whether it raises issues of sufficient interest to support a petition under the regulation, and also ensure that petitions will be filed within a time that reasonably can be expected to prevent delay in the proceeding.

The MMA's July 14 Petition, although timely filed, indisputably was withdrawn at the July 22 prehearing conference. The MMA's argument that the withdrawal was not effective because it was not formally allowed is not persuasive; no motion requiring a decision was before the hearing officer. The MMA cannot now recharacterize its action to suit its purpose. Moreover, it offers no legal support for relieving it of the consequences of its choice. I find that the MMA should not be allowed to rescind its decision to withdraw its July 14 Petition. *See Coggins v. New England Patriots Football Club, Inc.*, 397 Mass 525, 539 (1986) (The Supreme Judicial Court refused to permit intervention by a party who had rejected an earlier invitation to join the litigation, stating that the parties "have chosen their remedy and should not be permitted now to undo that choice.") Sound administrative practice and the efficient administration of regulatory hearings require that the MMA be held to the choice it made on July 22.

The MMA's Renewed Petition and its Supplemental Petition were filed more than one month after the July 16 deadline set by the Hearing Notice. Deadlines for petitions to intervene in regulatory proceedings are set to allow for the orderly conduct of hearings. The MMA offers no persuasive reason that would support allowance of its late petitions. It does not deny that the cross-examination of Mr. Scully included some questions asked on behalf of the MMA, but argues that its issues were not identified. In its opposition to the Renewed Petition, the SRB concurs that the MMA's concerns were placed on the record through cross-examination, and further points out that the SRB could not allow the MMA to substitute its judgment for that of the SRB in putting a case together. To the extent that the MMA seeks intervention to ensure that its interests are on record, I note that the MMA has, in the course of this proceeding, made clear its concerns about setting rates for motorcycle insurance in Massachusetts.

On this record, I am not persuaded that the MMA has offered any reason sufficient to set aside the timeliness standard and/or to set aside the principle that parties to a proceeding, in order

to litigate their positions effectively, have a right to know the identities of intervenors and participants, and the specific scope of their intervention or participation. I find that both the Renewed Petition and the Supplemental Petition should be denied as untimely.

B. Substance of the petitions

Petitions to intervene or to participate in ratesetting proceedings are governed by 211 Code Mass Reg. 77.04 (2), which provides, in pertinent part, that after an insurer submits a rate filing, any person who wishes to participate in a proceeding shall file a petition to intervene or to participate within ten days, or any other period designated in a hearing notice. The petition must include the petitioner's name and address and state: 1) the manner in which the petitioner is substantially and specifically affected by the proceeding; 2) the petitioner's contentions; 3) the relief sought; 4) the statutory or other authority for the petition; and 5) the nature of the evidence the petitioner will present if the petition is granted.

The MMA withdrew the July 14 Petition in response to suggestions about improving the efficiency of this proceeding, before the parties had a full opportunity to address the issue of its adequacy. Therefore, even if the MMA had offered a persuasive reason for reconsidering the July 14 Petition, it would now be subject to review for compliance with the regulatory standards. The July 14 Petition consisted of a two-paragraph letter stating that the MMA requested intervention. The Renewed Petition conceded that the MMA had withdrawn its July 14 Petition, but asserted that it should be allowed to renew it because the SRB and the AG declined to submit all the MMA's objections to the AIB's filing. Because neither the July 14 Petition nor the Renewed Petition supplied all of the information required by 211 CMR 77.04(2)(b), neither document satisfied the regulatory standards. Therefore, regardless of when filed, both should be denied on substantive grounds.

The MMA's Supplemental Petition, on the other hand, attempted to comply with the requirements of 211 Code Mass. Reg. 77.04. As authority for its petition, the MMA cited to the regulation itself, as well as to G.L. c. 175, §§113B and 113H. Section 113B refers to requirements and standards for fixing and establishing private passenger automobile insurance rates;³ §113H refers to the residual market plan through which consumers who are unable to purchase automobile insurance through the voluntary market can obtain coverage. Neither

³ Section 113B provides that the fixed-and-established rates shall provide a ten percent discount on the otherwise applicable rates for graduates of certain motorcycle rider training programs.

statute refers to intervention in rate setting proceedings. The MMA's Supplemental Petition to Intervene, therefore, must be reviewed for compliance with the regulatory requirements in 211 CMR 77.04 (2).

Petitions to intervene or participate must describe the manner in which the petitioner is "substantially and specifically affected" by the proceeding. The MMA asserts that its members, as well as over 150,000 Massachusetts consumers who own and insure motorcycles, will be so affected. In any ratemaking proceeding, however, the purchasers of the product for which rates are set will be affected by the outcome. The MMA does not explain how its members will be substantially or specifically affected beyond other purchasers or how it, as a membership organization, should be viewed as the representative of all motorcycle owners who insure their vehicles in Massachusetts.

In response to the requirement that the petition include the petitioner's contentions, the MMA contends that the rates charged motorcycle consumers are excessive and that the coverage available is discriminatory. The petition is silent as to the grounds for these allegations, but does refer to the MMA's own statements made at public comment hearings on automobile insurance rates held in 2002 and 2003 and in a petition for judicial review of those sections of the *Decision on 2004 Rate* that relate to motorcycle rates.⁴ The MMA also refers to its "prior filings in this proceeding" and to those in the Main Rate Case, Docket No. R2004-13.⁵ The MMA, however, submitted no filing in this proceeding. Further, MMA's reliance on past statements is misplaced; its contention fails to recognize changes to the coverages available to motorcyclists ordered in the *Decision on 2004 Rates*, at 134, or the changes approved in the September 2, 2004 *Decision on Motorcycle Insurance Rates and Policy Forms*, filed earlier this year in this docket. Mere conclusory assertions about rates and coverages insufficiently explain the purported rationale underlying the MMA's petition, especially in light of the recently ordered changes.

Petitions to intervene or to participate also must include statements of the relief sought and describe the nature of the evidence the petitioner will present if the petition is allowed. The MMA states that it seeks a rate that reflects motorcycle market experience specifically, rather than a rate that is derived from grouping motorcycles with private passenger vehicles. It also

⁴ The MMA's complaint for judicial review, Modified Motorcycle Association of Massachusetts v. Commissioner of Insurance, SJC Docket No. SJ-2003-0579 (Sosman, J.), was dismissed on June 10, 2004.

⁵ The MMA's contention is identical to that included in a Supplemental Petition to Intervene filed on August 30 in Docket No. R2004-13.

seeks coverage options similar to those available for private passenger automobiles, such as multi-vehicle and anti-theft discounts, and increased higher optional medical payments coverage. As an alternative, the MMA seeks to remove motorcycles from the requirements of G.L. c.175, §§113B and 113H. In support of its requests for relief, it attached to its petition a copy of 2002 data regarding motorcycle experience that includes loss ratios for various coverages. If allowed to intervene, the MMA states, it will present testimony and cross-examine witnesses to place on the record “a pattern evidencing discriminatory coverages and a history and continuation of excessive rates imposed on Massachusetts consumers who own and insure motorcycles.”

The MMA’s proposed relief raises a number of concerns. First and foremost, G. L. c. 175, §113B requires the Commissioner to fix and establish classifications of risks and premium charges for motor vehicle policies and bonds as defined in G. L. c. 90, §34A. That section, in turn, states that such policies cover motor vehicles as defined in G. L. c. 90, §1. Because motorcycles fall within the definition of motor vehicles, and are therefore covered under motor vehicle policies, current Massachusetts law does not permit the removal of motorcycles from the rate setting process. The Commissioner has no discretion in this regard.⁶

The relief sought by the MMA appears to be two-pronged. It seeks either to exclude from motorcycle ratemaking any values derived from the analysis of the private passenger motor vehicle market or to substitute an entirely new methodology for setting motorcycle rates. On the first issue, the use of motorcycle experience data, the MMA seems to misconstrue the methodology currently used to derive motorcycle rates. As applied to motorcycle rates, the methodology begins with an analysis of historical loss experience for motorcycles that results in an estimate of the pure premium needed to cover those losses. The factors used to develop and trend those losses forward to estimate rates for 2005 are those used to develop losses for private passenger motor vehicles. To the extent that the MMA seeks to ensure that motorcycle experience is used to set motorcycle rates, it seeks relief that is already part of the ratesetting methodology. The reason for using development factors that derive from data relating to private passenger motor vehicles was addressed in Mr. Scully’s testimony in this proceeding. The MMA’s memorandum did not address that issue.⁷

⁶ The MMA has sought legislation that would remove motorcycles from the fix-and-establish process.

⁷ In addition to stating that insurance rates for motorcycles are excessive, inadequate and unfairly discriminatory, the MMA specifically addressed classification of operators as experienced or inexperienced, classification of vehicles by engine size, and the availability of a multi-vehicle discount.

The MMA's conclusion that motorcycle rates are excessive seems to be based on 2002 motorcycle experience data showing loss ratios. Assuming, *arguendo*, that the MMA seeks to substitute a loss ratio methodology for that currently in place, it would need to present evidence as to how motorcycle rates may be carved out from the overall proceedings on motor vehicle rates, and to show how its proposed methodology would result in rates that meet the statutory standards.⁸ The MMA's petition, however, does not include information on the evidence that, if allowed to intervene, it would present on the rates for use in 2005. Instead, it proposes to offer evidence on allegations of discriminatory coverage and a "history and continuation of excessive rates." I conclude, therefore, that the Supplemental Petition, even if timely filed, does not meet the regulatory standards and should therefore be denied.

C. Other Issues

The standard for intervention requires the MMA to describe in its petition the evidence that it intends to offer. As noted above, the MMA did not describe in its petitions the nature of the evidence that it would present in this matter, whether in the form of an advisory filing or otherwise, if it were allowed to intervene. At the August 30 hearing, it stated that the extent of participation it sought was an opportunity to cross-examine Mr. Scully, on a document titled "The 2002 Massachusetts Motorcycle Experience." That document relates to loss ratio data for motorcycles for 2002, and was prepared by the AIB in response to a record request made by the SRB and the AG in the course of cross-examination of the AIB's witness. However, a loss ratio methodology is not used to fix-and-establish rates in Massachusetts, and the document in question relates to data for 2002, while rates for 2005 are set on the basis of 2003 data. Mr. Scully testified in August that such data would not be available until October 2004. The MMA has not shown that reopening the record, even for the limited purpose of putting this document into evidence, would produce evidence directly relevant to the methodology for setting motorcycle rates for 2005. I am not persuaded that intervention, even if timely, should be allowed on such a speculative basis.

The MMA also seeks intervention in order to clarify the status of Mr. Cote's statements in the course of this proceeding. Mr. Cote, Betsy Lister, Safety, Education and Awareness Director for the MMA, and several members of the MMA spoke at the public comment hearing

⁸ Loss ratio data, such as that the MMA submitted, may be used to develop rates. However, loss ratios alone would be an insufficient for ratesetting, because they do not address such rate components as company expenses.

on July 22, and articulated their views on the ratesetting process as it applies to motorcycles. Public comment hearings provide an opportunity for individuals and organizations to present their positions and opinions on matters before the Commissioner. However, because speakers at public comment hearing are not sworn in, and are not subject to cross-examination, their statements are not part of the evidentiary record. Nevertheless, they are included in the docket file. Mr. Cote's statements, then, and those of other MMA members, are considered informational. At the August 30 hearing, Mr. Provenzano provided additional clarification about the MMA's positions on classifying motorcycle operators as experienced and inexperienced, valuing motorcycles by engine capacity, and multi-vehicle discounts. On this record, I conclude that the MMA has, in the course of this proceeding, made clear its concerns about setting rates for motorcycle insurance in Massachusetts. However, because the MMA has not timely complied with the requirements for intervention in a ratesetting proceeding, its petitions for intervention should be denied.

Conclusion

The MMA filed its July 14 Petition within the deadline established by the Hearing Notice, but withdrew it on July 22. Thereafter, it sought to renew that petition and to file a Supplemental Petition. I deny the Renewal Petition and the Supplemental Petition on the grounds that they are untimely. Furthermore, for the reasons stated above, I conclude that none of the MMA's petitions to intervene comply with the requirements for intervention in this proceeding set out in 211 CMR 77.04(2)(b) and the petitions are therefore denied on this basis as well.

The record indicates, however, that the MMA presented its position on several issues in this docket and, subsequent to its withdrawal of its petition to intervene, was allowed to participate in this proceeding. See 211 Code Mass. Reg. 77.04(2)(d) ("The Presiding Officer . . . may allow a person who is not permitted to intervene to make a limited appearance as a participant by making an oral or written statement of his or her position on the issue, or by other participation as the Presiding Officer may determine").

December 31, 2004

Stephen M. Sumner
Presiding Officer