# COMMONWEALTH OF MASSACHUSETTS
## Office of Consumer Affairs and Business Regulation
## DIVISION OF INSURANCE

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
http://www.mass.gov/doi

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

DANIEL O'CONNELL
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

DANIEL C. CRANE
DIRECTOR

NONNIE S. BURNES
COMMISSIONER OF INSURANCE


---

# OPINION, FINDINGS AND DECISION ON THE OPERATION OF COMPETITION IN PRIVATE PASSENGER MOTOR VEHICLE INSURANCE IN 2008

**Docket No. R2007-03**

---

## I. PROCEDURAL HISTORY

On April 20, 2007, the Division of Insurance ("Division") issued a notice of public hearing to consider commentary, both oral and written, concerning whether the Commissioner of Insurance ("Commissioner") should renew the fix-and-establish rate-setting procedures for 2008 private passenger motor vehicle insurance rates pursuant to G.L. c. 175E, §5 ("Section 5").

The hearing took place on May 18, 2007 at the Division's office in Boston and was well attended. A representative of the Attorney General presented comment at the hearing, as well as an expert on behalf of the State Rating Bureau ("SRB"). Speakers on behalf of numerous insurance companies also submitted comments, in addition to various insurance producers. Additionally, representatives of two consumer advocacy groups provided statements as well as spokespeople, including experts, for certain insurance organizations and insurance company coalitions.

The record was left open until June 15, 2007, to receive additional written comments. Many of these same individuals and organizations provided supplemental comments during this period. Other people, including a state representative, also submitted written statements during

this period. A list of all the people, agencies, organizations and companies that provided oral and written comments in this proceeding is attached to this Decision as Appendix "A".

## II. G.L. c. 175E

In 1976 the Legislature enacted what is substantially the current version of G.L. c. 175E ("c. 175E"). Chapter 175E eliminates the system of Commissioner-fixed rates in the first instance and sets forth a presumptive process for file-and-use rate approval (competitive or company rating). The Commissioner may not automatically fix-and-establish rates under Section 113B. She can do so only if she first makes the following requisite findings under G.L. c. 175E, § 5 that indicate that the marketplace cannot sustain competitive rating: competition is either (i) insufficient to assure that rates will not be excessive; or (ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. Furthermore, the decision to allow file-and-use rating under Section 5 need not be an all-or-nothing decision; the Commissioner may make the requisite finding solely as to (1) any territory, (2) any kind of insurance, (3) any subdivision of insurance, or (4) any class of insurance.

The Commissioner has broad discretion and authority in the area of motor vehicle insurance rate regulation. *Metropolitan Property and Liability Insurance Co. v. Commissioner of Insurance*, 382 Mass. 515, 517 (1981). The Legislature has provided her with an "arsenal" of tools under c. 175E to regulate the market as it becomes more competitive. *Attorney General v. Commissioner of Insurance*, 370 Mass. 791, 795, n. 2, 353 N.E.2d 745, 750 (1976). As the Court observed in *Metropolitan Property*:

> In prior decisions, the commissioners of this Commonwealth have extensively interpreted both the legislative purpose of G.L. c. 175E, and the nature of the remedial powers given to the Commissioner under the statute. The Commissioner has emphasized that the "arsenal" of regulatory powers given the Commissioner under the statute is strong evidence that the Legislature did not express an overriding preference for competitive rating. Rather, the Legislature saw the statute as a means of lowering insurance rates: "(P)ricing freedom was intended to be granted only so long as reasonable rates were guaranteed to the public. The plethora of safeguards the statute contains is ample evidence of the Legislature's unwillingness to leave the outcome to a laissez-faire marketplace."

*Id.* at 522.

## III. History Of Division Decisions Under G.L. c. 175E

Competition was implemented almost immediately after the Legislature's promulgation of c. 175E in late 1976. It commenced on January 1, 1977 but ended approximately seven months later. The 1977 experience became a model of what not to do in a file-and-use system and Commissioners have refrained from reintroducing such system in the 30 years since such time based on various reasons.[1] Various study groups and task forces comprised of representatives from the legislature, the Attorney General, consumer groups, the industry and the Division have convened periodically over the years to review whether competition in the private passenger motor vehicle insurance market was sufficient to allow companies to file competitive rates. Invariably rates were fixed-and-established. We can no longer be held hostage to the failed 1977 experience.

Our Decision and Order is more extensive, and comprehensive, than is legally required under c. 175E.[2] This extensive review demonstrates that no time is better than now to utilize the file-and-use system so that consumers, and the industry, can reap the multitude of benefits of a less regulated system.

The Division has held a hearing under Section 5 of c. 175E every year since 1977. In each one of the decisions, the Commissioners have (except in the commercial market in 1981) renewed the fix-and-establish rate setting process pursuant c. 175, §113B. A variety of reasons and a few major themes permeate throughout. Commissioners in the past often have found that certain then-existing laws could have undermined increased competitive rating or found that the marketplace was too unstable to support a less regulated market. These major reasons for abstaining from competitive rating, and renewing the fix-and-establish system, no longer exist. A review of some of these decisions, beginning with the 1977 Decision, illustrates that no major issues remain in our market or in our laws to require the Commissioner to fix-and-establish private passenger motor vehicle insurance rates for 2008.

---

[1] File-and-use was introduced in the commercial motor vehicle market only in 1981.

[2] In connection with this review, we have cited to other competition hearing decisions from various Commissioners of Insurance and public reports regarding the marketplace, some of which are not part of this docket. Therefore, we have attached Appendix "B" to this Decision with all of the public records that have been cited in our Decision but that were not part of this Docket.

**A. The 1977 Experience**

In November 1976, following enactment of c. 175E, 22 large companies and 89 small companies submitted rate filings to the Division's State Rating Bureau ("SRB") for effect on January 1, 1977. The Commissioner allowed all of the rates, either as originally made or as reduced, to go into effect on January 1, 1977. The SRB also received a filing from the Massachusetts Motor Vehicle Reinsurance Facility ("Facility"), the residual market entity then operating pursuant to G.L. c. 175, §113H.[3] The filing was made under a new Facility Plan of Operation for 1977 and proposed that (1) companies writing policies through normal marketing processes, but reinsuring those policies through the Facility, rate those polices using the voluntary market rates charged by the companies; and that (2) policies issued by brokers who could not obtain a voluntary agency contract with an insurance company and whose policies were ceded to the Facility automatically be rated at 80% of the voluntary market rates of all companies.[4] *American Manufacturers Mutual Insurance Co. v. Commissioner of Insurance*, 374 Mass. 181, 185 – 187, 372 N.E.2d 518, 523-524 (1978).

The *overall* average rate increase across the state during this period was 14.5%, a few percentage points higher than the increase in the prior year when the Commissioner fixed-and-established the rate. *Id.* at 186, 372 N.E. 2d at 523. The rates in certain urban areas, however, increased dramatically, while significant rate *decreases* occurred in rural areas. *Id.*; *Metropolitan Property*, *supra* at 518, 417 N.E.2d at 3. A furor arose from the public in response to the rate increases in urban areas. As a result, in early August 1977, the Legislature enacted an automatic reduction of the 1977 rates for those insureds whose rates increased by more than 25%.[5]

Prior to the Legislature's action, however, Commissioner Stone responded to the problem by noticing a hearing under Section 5 to review the effects of competition on the market and on consumers. After the 1977 hearing in which many consumers, companies, the Attorney General, the SRB and legislators testified, Commissioner Stone determined that there was no assurance

---

[3] The Facility was the predecessor to today's Commonwealth Automobile Reinsurers ("CAR").

[4] Our laws no longer allow for this type of disparity in rates in the residual market.

[5] This legislatively-mandated reduction became the subject of litigation shortly thereafter. *Automobile Rating and Accident Prevention Bureau v. Commissioner of Insurance*, 381 Mass. 592, 595, 411 N.E.2d 762, 764 (1980). This rate reduction was upheld as constitutional by the Supreme Judicial Court in *American Manufacturers*.

that competition at that time would prevent rates from being excessive. *Opinion and Findings on the Operation of Competition Among Motor Vehicle Insurers, Rendered June 1977, ("June 1977 Decision")*, P. 58. He ordered a reopening of the record and noticed a second hearing to further consider this issue. *Id.* at 59.

Numerous individuals, carriers and the Attorney General provided comments at a second hearing, following which, Commissioner Stone issued a final decision, almost simultaneously with the Legislature's premium rollback ("*August 1977 Decision*"). Many asserted at the second hearing that the Commissioner had no valid option but to fix-and-establish rates throughout the state, rather than only in certain territories or classes, if he did not allow file-and-use rate making. The Attorney General, however, emphasized that the Commissioner's discretion under this statute was quite broad "in shaping the size and extent of a remedy." *August 1977 Decision*, P. 2.

Commissioner Stone ultimately decided to fix-and-establish *all* motor vehicle insurance rates under c. 175, § 113B, and convened a hearing within 60 days to commence the fix-and-establishment process, as statutorily required.[6] He found that competition failed during its brief seven-month run for the following three reasons: (1) a lack of pricing information to enable consumers to "shop" for the best rates; (2) a lack of desire on the part of companies to increase their market shares; and (3) a lack of willingness on the part of companies to accept business at the prices quoted consumers.[7] The Supreme Judicial Court in *Metropolitan Property*, endorsed these criteria as appropriate measures for determining whether to renew the fix-and-establish rate-setting procedure. 382 Mass. at 524. In determining whether the state of competition today

---

[6] Commissioner Stone noted his discomfort with a partial rate-setting process and a partial competitive system: "...partial rate-setting might well cause undesirable reversals in the rate structure. For example, the average premium level in a competitive territory might turn out to be higher than that in a territory with state-made rates even though the past experience of the former was indisputably better than that of the latter. Based on the evidence at this time, we conclude that a partial determination of competitive insufficiency is unsupportable and that the application of a partial remedy is impractical." (*Id.* at 4).

[7] One contributing factor to the failure of competition in 1977 that was not mentioned in the *June 1977 Decision* was the Division's resetting of the territories immediately prior to the introduction of competition. Many of the urban territories that were carved out of Boston by regulation in anticipation of the implementation of competition, such as Dorchester, Roxbury, Charlestown and Chelsea, were the territories that suffered the greatest rate increases. *American Manufacturers* at 186.

justifies the imposition of fix-and-establish ratemaking, we shall examine these criteria in light of the facts in the record of this docket.

Consumers must have ready access to information to make educated decisions. The *June 1977 Decision* found that "[r]elevant evidence on the availability of price information would include the following: the informational content of advertising; the extent of dissemination of rate information to consumers by direct mail or similar means; the swiftness with which companies informed their agents and existing policyholders of their rates; and the responsiveness of agents and companies to customer inquiries concerning rate information." *Id.* at 25. This information was not readily available to consumers in 1977. "Consumers testified repeatedly that their shopping efforts had been stymied by an inability to obtain price quotations." *Id.* at 28. A majority of the carriers failed to launch any advertising campaigns and instituted no direct mailing. *Id.* at 28 – 29. Consumers could shop only by telephoning individual companies or their agents to determine pricing information. In many of these instances, the consumers' efforts were thwarted by agents' inability to provide information. This was in part because carriers were very slow to provide rate information to their agents: "[M]ost companies waited until the threat of Division rate challenges had been minimized to begin the distributions [of rate manuals]," *Id.* at 29-30. In 1977, consumers had only a six-week window within which to find a new policy under the file-and-use system. The lack of available information and the reticence of the companies to provide actual rate quotes was debilitating.[8]

Secondly, the *June 1977 Decision* found that companies made no concerted effort to gain market share. *Id.* at 46-47. They did little, if any, advertising to grow their businesses. This failure is contrary to a truly competitive market, in which players strive to expand their market shares. Additionally, some companies discouraged their agents from expanding their businesses, and other companies set astronomically high rates likely intended to discourage substantial classes of business. *Id.* Furthermore, and more troubling, was the study's finding that many companies "forced" insureds into the residual market. *Id.* at 41–42. Indeed, the residual market grew to 25%, which was a "substantial" increase from the prior year. *Id.* at 53.

[8] In 1977, all policies renewed on January 1 of each year. *Id.* at 30-31.

Thirdly, the *June 1977 Decision* found that companies were unwilling to do business at their posted prices. *Id.* at 47. A "take-all-comers" law existed at the time prohibiting companies from declining any business.[9] Companies were required to write all risks and either retain them or cede them to the Facility. The record suggests that, to circumvent this requirement, companies issued high price quotes for the business they did not wish to write so as to deter potential new business. Companies also failed to honor the prices quoted new business by ridding themselves of such business and ceding a high percentage of such business to the Facility. *Id.* at 52 - 53. Commissioner Stone found that "direct Facility placements were used to reject a high percentage of new applicants in 1977" and that "the pattern of Facility placements [constituted] sufficient grounds to conclude that sellers are unwilling to accept approximately one-fourth of all policyholders and a higher percentage of new applicants at posted prices. Such an environment necessarily implied serious market break-down."[10] *Id.* at 56-57.

Additionally, the procedure for ceding risks to the Facility and the effect on prices of ceded business were materially different in 1977 than it is today. In 1977, cessions occurred through three different venues. Companies could cede risks (consistent with today's system), the companies' appointed agents could cede risks or "designated brokers" (who could write policies only on behalf of the Facility) could cede risks.[11] *Id.* at 52. Risks ceded to the Facility by the companies or their appointed agents were charged the same rates as those charged by the

---

[9] There is no "take all comers" law in the voluntary market today. *Commerce v. Commissioner of Insurance*, 447 Mass. 478, 486 (2006) ("Take all comers, since 1983, is legislatively required in the residual market only.").

[10] The Supreme Judicial Court recognized the problems in a two-tiered rating system in the residual market:

> Under the 1977 Plan, the Facility Governing Committee authorized any broker or agent automatically to cede a policy to the Facility, to be carried by the Facility as a "servicing carrier policy." From experience under previous plans, the Commissioner assumed that within the competitive rating system, these "servicing carrier policies" written at 80th percentile rates would be used only as a market of last resort for undesirable new business. The effect of the 1977 Plan, however, was to increase greatly the number of servicing carrier policies, such that approximately 35% of the insurance market was placed in this category. The filing included no information concerning the number of insureds likely to fall into each of these two classes. . . . The combined effect of the territorial reassignments, made by the Commissioner, the territorial relativities applied by the companies, and broad expansion by the Facility of servicing carrier policies written at the 80th percentile, resulted in rates which, to many policyholders, were unexpectedly and unprecedentedly high.

*American Manufacturers*, supra, at 186.

[11] The "designated brokers" were the precursors to today's Exclusive Representative Producers ("ERPs").

company in the voluntary market. The rates charged by the "designated brokers" were set at 80% of the voluntary market rates of all companies. *American Manufacturers* at 185–187.

**B. The Early 1980's**

A few years after the promulgation of c. 175E, the Division of Insurance again reviewed the feasibility of competitive rating. In 1981, Commissioner Sabbagh determined that he was unable to renew competitive rating for private passenger market but he succeeded in doing so for commercial automobile insurance. This market, by all accounts, continues to be a success story to this day.

For the years 1980, 1981 and 1982, Commissioner Sabbagh repeatedly voiced his desire to allow companies to file their own rates, which he believed to be the intent of the Legislature by virtue of its promulgation of c. 175E in 1976:

> The idea that price competition for automobile insurance is not feasible and will never come to fruition in Massachusetts is difficult to accept. It is well known that automobile rates in every other state are the subject of competition among insurers. . . The Legislature of this Commonwealth, however, has seen fit to keep Chapter 175E in the General Laws. We understand the intent of the Legislature is, therefore, to attempt to put the automobile insurance system on a competitive scale, as it is in other states and as it is with other lines of insurance in this state. To achieve this intent and purpose, the Insurance Commissioner has been given extraordinary powers which must be exercised with extraordinary care.

*Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5* ("*1980 Competition Decision*"), P. 7-8.[12]

Notwithstanding this belief, Commissioner Sabbagh found that all parties, whether advocates or opponents of increased competition, agreed that certain sections of Chapter 175 needed to be amended in order for more competitive rating to be successful. Specifically, the

---

[12] See also *Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5* ("*1981 Competition Decision*"), P.2 ("the competitive rating will work in Massachusetts provided the Insurance Commissioner exercises sufficient supervisory authority without over-regulating"); see also *Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5* ("*1982 Competition Decision*"), P.5 ("we stand ready, willing and able to cooperate, participate and assist in every way with the legislature, the insurance industry and any interested party to prepare and coordinate a smooth transition from the present regulatory system to a competitive system consistent with the provisions of Chapter 175E").

sections of concern were: (1) The "Mandatory Offer" Law (§ 113C), which resulted in accident-free insureds subsidizing other motorists who had surcharges; (2) the "Merit Rating System" Law (§ 113P), which was believed to be too costly and inefficient; and (3) the "Facility" Law (§ 113H), which failed to "recognize the quality, kind and types of risks, an insurer in this state is required to assume involuntarily." *1980 Competition Decision* at 5, 9. In 1981 and 1982, as the Legislature still had not acted on the requisite statutory changes, Commissioner Sabbagh again set the rates for private passenger motor vehicle insurance.[13] *1982 Competition Decision,* P.4.

In the meantime a new impediment arose in 1982. The residual market had grown to 50% of the entire market. This fact, in and of itself, was a compelling deterrent to finding a healthy competitive environment: "[t]o think that Massachusetts licensed or authorized insurers will not voluntarily insure more than one half of the private passenger classification is strong evidence that a competitive environment is lacking and does not exist at this time." *Id.* at 3. Although the statutory concerns repeatedly addressed by Commissioner Sabbagh in his three competition decisions were ultimately resolved by the mid-1980's through legislative amendments,[14] the residual market in Massachusetts continued to grow unabated for the next five years, thereby suppressing any appetite to challenge the decision to fix-and-establish rates.

---

[13] Notwithstanding his belief that the statutory fixes were critical to the success of competition, he was abundantly clear of his disdain for the fix-and-establish system:

> 'Average rates' have meant that all companies, without regard to their own operating methods or particular expense efficiencies have not had to be concerned with rate competition within the industry. That system has led to both excessive and inadequate rates at one and the same time. Some companies have been able to operate profitably, others have not. More important however, our present system has not attracted new companies and new capital to our state. Innovation from the industry that is here is totally lacking. . . It is apparent then, that the present system has only refined inequities, discrimination, abuses, and inefficiencies that can no longer be tolerated. *1981 Competition Decision* at P. 4-5.

More than 25 years later, Commissioner Sabbagh's description of the fix-and-establish market is timely and directly on point.

[14] The "Mandatory Offer" law, G.L. c. 175, §113C, was amended as suggested under Section 17 of St. 1983, c. 241. The "Facility" law, G.L. c. 175, §113H, was changed to eliminate differential pricing in the residual market by creating a "fair and equitable apportionment among such insurance companies of premiums, losses or expenses or any combination thereof." St. 1983, c. 241, § 17. The Division changed the merit rating regulation. Finally, the

### C. Competition Hearings in the late 1980's and early 1990's

In the late 1980s, the residual market swelled to its historical maximum of approximately two-thirds of the entire market. *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. G-89-8, June 28, 1989 ("*1989 Competition Decision*"), P. 3. Automobile insurance rates also were rising and the general sentiment was that changes once again were needed in our private passenger motor vehicle insurance market. Several study groups and task forces convened to identify the major problems with the system and to suggest potential remedies. Concurrently, the Legislature promulgated Chapter 273 of the Massachusetts Acts of the General Court in 1988, to "restructure the automobile insurance system so as to provide residents of the commonwealth with effective automobile insurance protection at rates which are adequate, just, reasonable and nondiscriminatory." 1988 Mass. Legis. Serv. 273 ("1988 Mass. Reform Laws"). The reforms made changes in various areas, such as Personal Injury Protection coverage, salvage rules, adoption of standards for vehicle damage repair shops, reduced rates for less damageable vehicles or those with anti-theft devices, and implementation of the Safe Driver Insurance Plan. *Id.* Each of the Commissioners during these years sought input from the Attorney General, the SRB, the Industry and all other interested parties about how they could most effectively implement increased competition if it were appropriate to do so.

The two Attorneys General during these years, Attorneys General Shannon and Harshbarger, supported a gradual move towards increased competitive rating. In the first of these years, 1988, Attorney General Shannon, through his Insurance Division Chief, Hilary Rowen, stated that he believed that a competitive system was in the best interest of consumers and would result in greater cost controls by the companies, a general reduction in fraud and greater efficiencies in the marketplace. *Testimony of Hilary Rowen, Chief, Insurance Division Department of the Attorney General at the Competition Hearing Held Pursuant to G.L. c. 175E, § 5* ("*1988 Rowen Testimony*") P. 9. Importantly, he also stated that the Legislature preferred a competitive rating system rather than a fix-and-establish rating system based on the construction

---

"Take-All-Comers" law that was perceived as a newly identified statutory impediment by Commissioner Hiam in his 1983 Competition Decision was eliminated in the voluntary market by the Legislature.

of c. 175E. *1988 Rowen Testimony*, P. 4. He also noted the Commissioner's broad authority under this statute and the many tools the Commissioner had at his disposal:

> Thus, in the view of the Attorney General, the Commissioner may choose not to set rates for only the optional property damage 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. *Id.* at 5.

The Attorney General submitted a comprehensive plan for achieving competition in a gradual, conservative fashion. This plan recommended that the Commissioner institute a variety of creative measures under c. 175E, including a flex band of 10% for optional property damage coverages in all cells and territories.[15] Gradually, the flex bands would be expanded to other coverages over the next three to five years provided the launch proved successful. *Id.* at 19. This would help to prevent excessive rates in certain classes and territories after the onset of competition, the Attorney General explained. *Id.*

Over the next few years, and into Attorney General Harshbarger's tenure in the early 1990's, the Attorney General continued to advocate for a gradual and conservative transition away from fix-and-establish rate-setting. In all instances, flex rating (premium capping in these instances) was recommended. In each year, the Commissioners of Insurance chose not to allow increased competition for a variety of reasons. In the first three of these years, Commissioners Singer, Gailey and Doughty wanted to give ample time to the 1988 Mass. Reform Laws to see whether any of the new provisions remedied certain problems in the market, thereby making the market riper for competitive rating. *1989 Competition Decision*, P. 4; *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers,* Docket No. G-90-1, July 16, 1990, P. 13-14; *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers,* Docket No. G-91-16, August 20, 1991, P. 11. By 1991, however, the size of the residual market was once again increasing and numerous insurance companies were fleeing the automobile market. Thus, Commissioner Doughty decided that a transition should not occur until the market had once again stabilized. *Id.* at 24.

---

[15]The "flex rating" described in the individual cells and territories is what is understood by the industry to be a premium "cap" rather than actual "flex banding" or "flex rating." The latter terms, as they are understood, apply only to statewide average rates rather than to individual cells and territories.

**D. The 2002 – 2003 Hearings**

In 2002, a renewed interest to reform the private passenger market arose. Attorney General Reilly wrote Commissioner Bowler on June 25, 2002, to inform her that he had conducted a study of the private passenger motor vehicle insurance market. *Attorney General Reilly Letter to Commissioner Bowler* dated June 25, 2002. He stated that the residual market was not "fair and equitable" as required under c. 175, Sec. 113H because the losses were not "fairly and equitably apportioned among the companies." *Id.* at 2. He also raised concerns regarding the health of the voluntary market in view of the decreasing number of carriers. *Id.* at 5. The Division once again reviewed the feasibility of increased competition in rate setting. In the 2002 Competition Decision for 2003 rates, Commissioner Bowler found that rates would be excessive under the conditions at the time. Looking forward, however, she concluded: "...that it is time to form a new task force to reexamine issues relating to the current system and to the potential for competition within that system . . . I find it would be appropriate for a task force to consider alternatives that could be implemented within the fix-and-establish system including, but not limited to recommendations on appropriate subjects for endorsements and for procedures to be followed by companies that wish to utilize this approach." *Opinion, Findings and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2002-02, June 7, 2002, P. 4-5.

Numerous interested parties provided comments at the next Section 5 Hearing in 2003 regarding the Commissioner's authority to implement limited forms of competition in 2004 under the "current statutory framework." *The Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2003-09, June 20, 2003, P. 1. These recommendations were offered without legal support, thus prompting Commissioner Bowler to issue an interim order requesting "explicit statutory or common law authorit[y]" in support of five specific inquiries as to her authority to introduce competition under the current system. *Id.* at 1-2. Numerous parties responded and Commissioner Bowler issued a final decision on August 8, 2003. *Opinion, Findings and Decision on the Operation of Competition Among Motor Vehicle Insurers,* Docket No. R2003-09, August 8, 2003 ("2003 Competition Decision"). The 2003 Competition Decision noted that the majority favored reform of the voluntary market through a controlled and gradual introduction of competitive rates. *Id.* at 17. Despite this consensus, vastly divergent