

COMMENTS OF THE MASSACHUSETTS PROPERTY INSURANCE
UNDERWRITING ASSOCIATION CONCERNING 211 CMR 101.00.

I. INTRODUCTION.

The Massachusetts Property Insurance Underwriting Association (hereafter, MPIUA) is the statutorily-created residual market mechanism for Massachusetts homeowners insurance. The MPIUA was created by, and operates pursuant to, the provisions of G.L. c. 175C. The MPIUA is hereby commenting upon the provisions of 211 C.M.R. 101.00.

The last four MPIUA rates cases adjudicated before the Division of Insurance highlight the pressing need for several amendments to 211 C.M.R. 101.00. The MPIUA here proposes three such amendments designed to make the hearing process speedier, streamlined and more efficient.

II. LIMITING DISCOVERY.

Unlimited discovery has been permitted in past MPIUA rate cases. The unlimited nature of the discovery asked by other parties against the MPIUA has two separate dimensions: (1) discovery has been unlimited in extent, permitting hundreds of discovery questions to be propounded by other parties against the MPIUA; and (2) discovery has been unlimited in time, permitting discovery to be propounded by other parties against the MPIUA many months after the initial filing.

The MPIUA does not object to responding to reasonable discovery requests. **In Massachusetts state court proceedings, however, a party can object to an inordinately large request for documents if the request is overly broad or unduly burdensome. Cardone v. Pereze, 57 Mass. App. Ct. 1103 (2003). The Court is required to balance "the competing interests of preventing annoyance, embarrassment, oppression, or undue burden or expense" against "considerations of an efficient and just resolution of the action." Wansong v. Wansong, 395 Mass. 154, 156, (1985).** It should be noted that MPIUA files its entire case,

including the written direct testimony of all of its scheduled witnesses as well as all supporting documentation for those witnesses' testimony, at the time of its initial submission. As a matter of information, in the most recent Rate Hearing, MPIUA responded to 154 documents requests, many with multiple subparts, filed by the Office of the Attorney General and State Hearing Bureau. In response to those requests, MPIUA produced more than 700 mega bytes of electronic data, which translates to more than 30 boxes of documents and approximately 75,000 pages.

MPIUA'S FIRST RECOMMENDATION

Accordingly, the MPIUA recommends that two new sentences be added at the end of subsection 211 C.M.R.101.08(2)(a), as follows:

All requests for the inspection or production of documents or other tangible things made by other parties to the MPIUA shall be made within thirty (30) days of the date of the MPIUA's initial rate filing, and shall be limited to thirty (30) such requests by each such party. All requests for the inspection or production of documents or other tangible things made by the MPIUA to other parties shall be made within fifteen (15) days of that other party's filing, and shall be limited to fifteen (15) such requests to each such party.

III. EFFICIENT CONDUCT OF HEARINGS.

The proceeding in past MPIUA rate cases were often extremely lengthy. Weeks and months have sometimes passed between hearing days.

In the Rate Filing which was made by MPIUA on March 21, 2007, cross examination of MPIUA's witnesses began on June 6, 2007 and did not end until January 29, 2008. In her written decision, the Commissioner of Insurance invited MPIUA to make a new filing and stated that "[a] hearing on any such filings will proceed on an expedited basis and be conducted day-to-day." Although this definitive statement was made, no subsequent hearings ever proceeded with that level of efficiency.

MPIUA'S SECOND RECOMMENDATION

Accordingly, the MPIUA recommends that the following sentence be added to the current sub-section 211 C.M.R. 101.09(8) :

As much as possible, hearings shall be conducted day-to-day.

IV. TIMING OF DECISION.

As a matter of practice, the parties have been required to submit briefs within thirty (30) of the close of testimony. There has been a long time, however, between the filing of briefs and the rendering of a decision. The most recent case took seven months to be decided.

MPIUA'S THIRD RECOMMENDATION

Accordingly, MPIUA recommends that the following sentence be added to the current sub-section 211 C.M.R. 101.11:

The final decision shall be issued within ninety days of the filing of briefs made pursuant to 211 C.M.R. 101.04.