
**2005 TERRITORIAL ASSIGNMENTS FOR MOTOR
VEHICLE INSURANCE RATING
Docket No. R2004-07**

**Order on Appeal of the City of Lawrence, et al. of the Opinion and
Decision on Territorial Assignments for 2005**

I. Introduction

On September 14, 2004, a hearing officer in the Division of Insurance (“Division”) issued a decision in the above-captioned matter that, pursuant to G. L. c. 175E, §4, assigned municipalities in Massachusetts to territories for purposes of motor vehicle insurance rating (the “*Territories Decision*”). Because it was signed solely by the hearing officer, any person aggrieved by the *Territories Decision* was permitted, pursuant to G.L. c. 26 §7, to appeal it to the Commissioner of Insurance (“Commissioner”) within three days, or such further period as the Commissioner might allow in particular circumstances.

On December 8, 2004, nearly three months later, the City of Lawrence, and five elected officials representing the City of Lawrence, filed an appeal of the *Territories Decision* with me. The five officials are: Senator Susan C. Tucker, Representatives Barry Finegold and William Lantigua, Mayor Michael Sullivan and City Council President Patrick Blanchette (collectively, the “Appellants”). The appeal seeks to change the portion of the *Territories Decision* that rejected a recommendation of the Automobile Insurers Bureau (“AIB”) to assign Lawrence to a separate rating territory for the years 2005 and 2006. The Appellants state that the residents of Lawrence are adversely affected by the *Territories Decision* and ask me to modify or reverse that decision or, in the alternative, to reopen the proceeding for the limited purpose of reconsidering the assignment of Lawrence to a new, separate territory.

II. The Appellants’ Arguments

The Appellants argue that because Lawrence was not a party to the original proceeding, it did not receive formal notice of the *Territories Decision* and therefore did not have an opportunity to exercise any right of appeal to the Commissioner. They state that Lawrence did not seek to intervene in that proceeding or to make a recommendation

on its territorial assignment because the AIB's filing incorporated its needs into its recommendation. The Appellants note that no other party appealed the *Territories Decision*, so that their appeal provides the only forum in which to vindicate the interests of Lawrence. They request that the Commissioner exercise her discretion under G.L. c. 26 §7 and permit the appeal to proceed, notwithstanding the lateness of their filing.

The Appellants argue that the refusal to assign Lawrence to a different territory adversely affects the city and its residents, as well as similarly situated communities and the entire Massachusetts private passenger automobile insurance system, because it fails to recognize Lawrence's recent efforts to reduce insurance fraud. The Appellants point to cooperation among Lawrence, the Attorney General ("AG"), the District Attorney for Essex County, the Insurance Fraud Bureau ("IFB") and others to address a serious problem in Lawrence, noting that more than 97 people have been arrested and charged with insurance fraud. They point to a 33 percent reduction in the number of accident reports filed with the police between September 2003 and September 2004, and state that one thousand fewer accidents were reported for the period. In addition, they comment on the closing of several chiropractic clinics. The success of these efforts, the Appellants note, has led to the establishment of Community Insurance Fraud Initiative ("CIFI") Task Forces in Boston, Brockton, Lowell, Lynn and Springfield. The Appellants also note that the Legislature has been active in developing tools that will help law enforcement officials in this regard.

The Appellants argue that in order to continue to motivate Lawrence to pursue its anti-fraud efforts, the automobile insurance costs of Lawrence should be reduced. They note that the city is now, and has been for some time, assigned to Territory 16 along with Chelsea, and that, as a part of this territory, its residents pay insurance premiums that are among the highest in Massachusetts. Thus, they stress, the benefits of the anti-fraud initiative in Lawrence will have to be shared with Chelsea, a result the Appellants argue, is grossly unfair to Lawrence residents and undermines the value of the significant effort and resource commitment made by the City's public officials and law enforcement personnel to stamping out fraud within the past year.

Further, Appellants assert that the auto insurance ratesetting process and its statistical methods do not reflect improvements in rates based on underlying data for long periods of time. Therefore, they claim, Lawrence residents will continue to pay higher insurance premiums for longer than they should, despite the recent results of their ongoing anti-fraud campaign. The current territorial assignment process, Appellants argue, does not contain enough flexibility to permit timely current recognition of anti-fraud efforts in Lawrence or for other communities that are undertaking similar programs. Moreover, they assert, it undermines those efforts and must be revised.

With their petition, Appellants submit an affidavit of Donald Bashline, FCAS, MAAA, who was engaged to evaluate the actuarial appropriateness of the AIB's filing that placed Lawrence in a separate territory. The Appellants request that I either reverse the *Territories Decision* and place Lawrence in Territory 16C, as recommended by the AIB, or hold a hearing and thereafter order placement of Lawrence in that territory with constraints so that placement does not cause rates for Lawrence residents to rise while the results of the anti-fraud effort work their way into the data over time.

III. Discussion and Analysis

The proceeding to address territorial assignments for 2005 was initiated on May 21, 2004, with the issuance of a hearing notice. That notice, among other things, required any person who wished to make a specific recommendation on those assignments to submit a filing by May 28, and scheduled a public hearing on June 10. Further, it advised any person, other than a statutory intervenor or a party to the hearing on 2004 rates, who wished to intervene or participate in the proceeding to file a notice of intent to intervene or participate by June 7. On May 28, the Automobile Insurers Bureau of Massachusetts (“AIB”) made its filing and recommendations for territorial assignments for 2005 and 2006 (the “Territories Filing”). No petitions to intervene were filed. The AIB’s witness testified on June 28; the AG and the AIB filed briefs and reply briefs in August. The *Territories Decision* was issued on September 14, 2004. The Appellants, however, did not file their appeal until December 8, 2004, almost three months later.

The Appellants argue that I should exercise my discretion and allow an appeal filed nearly three months after the *Territories Decision* because Lawrence was not a party to the proceeding and therefore did not receive formal notice that the decision had been issued. Further, they assert, Lawrence did not attempt to intervene in that proceeding, because the AIB’s filing recommended the outcome it seeks in this appeal, placement in a separate Territory 16C. It appears, therefore, that Lawrence was aware of the territories proceeding and the AIB’s recommendations, and chose not to petition to intervene or participate. Indeed, no person appeared at the public comment hearing to state Lawrence’s opinion on the AIB’s recommendation. Even though, as a non-party to the proceeding, Lawrence did not receive formal notice of the decision, I am not persuaded that it was aware of the decision for almost three months. It is reasonable to expect a community that has a specific interest in the outcome of a ratemaking proceeding to apprise itself of the progress of that proceeding and to ensure that it promptly learns of the outcome. Although G.L. c. 26 §7 permits me to allow an appeal filed more than three days after the filing of a hearing officer’s decision, sound exercise of such discretion requires a factual basis of the reasons that justify delay. In this appeal, Lawrence points to no circumstances that persuade me that its appeal, filed nearly three months after the issuance of the *Territories Decision*, should be considered timely.

Further, to allow an appeal of this type several months after a decision, would be disruptive to the entire ratesetting process and all policyholders. Changes in territorial assignments must be correctly implemented because they affect all policyholders throughout Massachusetts. Because the system is revenue neutral, one cannot simply change the territory for one municipality without making changes to certain other territories in order to balance the changes. Accordingly, long before the Appellants ever filed their petition to file a late appeal in this matter, all of the rates for all of the 27 territories throughout the state had already been completed and balanced. These figures were promptly factored into the rate. One cannot simply change one factor of this equation without unraveling the whole ball of string. For this reason, any municipality that is concerned about the outcome of a territories proceeding should take appropriate steps to make its opinions heard during, rather than after, the proceeding.

Even though I am persuaded that Lawrence has stated no grounds for allowing it to appeal at this time, I am also concerned that the city does not understand that had I chosen to allow the AIB’s request to place Lawrence in a single territory, its rates would have increased based on the actuarial data before the hearing officer. Although Mr. Bashline’s

opinion was that it would have been actuarially justified to assign Lawrence to its own territory, commenting that the AIB's proposal to add two territories would have preserved the relationship of costs between territories, and would have allowed Lawrence's rates to be more responsive to its own experience, he fails to address the effect of placing Lawrence in a single territory in the context of the entire ratesetting process.

The *Territories Decision* examined the full range of consequences that might have arisen had the Division acquiesced to the AIB's proposal. The AIB's recommendation would have assigned Lawrence to a higher numbered territory and would have separated it from Chelsea. Adoption of that recommendation would have affected Lawrence in two ways. First, Chelsea's combined index (calculation based on claim frequencies and claim costs) is markedly lower than Lawrence's and thereby helps moderate the rate adjustment for Territory 16, Lawrence's current territory. In other words, Chelsea has been tempering Lawrence's higher rates for years. Separating Lawrence from Chelsea at this time would only result in an increase in Lawrence's rates. Second, as a one-community territory, Lawrence's high combined index would support a significant rate increase. Therefore, contrary to the Appellants' position, retention of Lawrence in Territory 16 *precluded rate increases* as a result of reassignment to a higher territory and, overall, benefited residents of Lawrence.

Finally, the Appellants argue that the territorial assignment process does not recognize Lawrence's anti-fraud initiatives promptly enough. It is true that the actuarial methodology employed computes the underlying statistics based on data from the previous few years rather than from only the past year. This methodology has proven to be very reliable over time and no party has ever convincingly advanced a better alternative. One must realize that Lawrence did not end up in one of the highest rated territories simply based on data from one bad year. It has repeatedly had some of the highest bodily injury claims statewide for many years. While I am impressed with its recent efforts to change these dismal statistics, more time is necessary from an actuarial perspective to show that these changes are not merely a very short-term aberration from Lawrence's historically bad experience. One would expect that enforcing existing laws would be motivation enough for the elected officials to maintain their commitment to pursuing anti-fraud efforts in Lawrence. It is my sincere hope that such anti-fraud efforts will continue to bear such ripe fruit so that rates will ultimately be adjusted downward for the good citizens of Lawrence.

Community-based efforts are critical if the overall accident rates in Massachusetts are to be reduced. More extensive driver training, improved roads, and vigorous enforcement of traffic laws will all contribute to that goal, as will success in eliminating fraudulent claims and reducing loss payments, whether through CIFI Task Forces or otherwise. All such efforts will inure to the benefit of all Massachusetts insureds, including the residents of the communities with a high rate of such fraud. It is important that the public officials in Lawrence realize that the current rate-setting system contains significant constraints in the rates for the highest claim territories. Since all drivers in Massachusetts have been subsidizing Lawrence drivers for years, it is appropriate for all policyholders to benefit from savings generated by Lawrence's recent anti-fraud initiatives.

IV. Conclusion

The appeal of the City of Lawrence, *et al.* is dismissed as untimely filed. Notwithstanding the lateness of this appeal, I also note that the Appellants have advanced

no argument that persuades me to modify the hearing officer's decision; indeed, the requested relief would have created the opposite result to that which the Appellants are seeking. My review indicates that Lawrence benefited from retention in Territory 16. Accordingly, I affirm the *Territories Decision*.

Dated: March 7, 2005

Julianne M. Bowler
Commissioner of Insurance