

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:

APPEAL OF DISAPPROVED RATE
FILINGS BY PROGRESSIVE CASUALTY
INSURANCE COMPANY, PROGRESSIVE
NORTHWESTERN INSURANCE
COMPANY, PROGRESSIVE NORTHERN
INSURANCE COMPANY, AND UNITED
FINANCIAL CASUALTY COMPANY

Docket No. INS-15-1001

**ORDER SPECIFYING FURTHER
COURSE OF PROCEEDINGS**

The Advocacy Panel has objected in part to the First Informational Requests to the Maine Bureau of Insurance propounded by the Insurers (the four Progressive Group companies named in the caption above). Following apparent attempts to resolve the discovery disputes, including the filing of papers with the Superintendent, the Insurers have requested oral argument to resolve these objections. However, argument would be premature before it can be determined whether the information in dispute has any potential relevance to this proceeding,¹ because the participants' responses to the Superintendent's information requests indicate a significant possibility that the resolution of this proceeding on the merits depends on a pure question of law.

Specifically, the Advocacy Panel has conceded that the filing should be approved if 24-A M.R.S. § 2916 permits an automobile insurance rating plan in Maine to include increased classification rate factors for operators above specified ages when such factors are part of an actuarially justified multivariate analysis of loss expectation.² However, the Advocacy Panel has stated that it believes the disapproval was correct because, as the Advocacy Panel interprets the statute, "there is no language in 24-A M.R.S. § 2916 that allows an insurer to consider other factors not related to age in deciding to increase premium based on age." This means, according

¹ To clarify the nature and purpose of the current proceeding, Bureau staff's July 10, 2015, disapproval of the Insurers' rate filings was not "final agency action." See 5 M.R.S. § 8002(4). Thus, although the Insurers framed their hearing request as an "appeal," this is an adjudicatory proceeding that is being conducted *de novo* with no deference provided to Bureau staff's rate disapprovals. See, e.g., 5 M.R.S. §§ 9051–9064. The Superintendent is the decision-maker in this matter.

² The question propounded by the Superintendent described this interpretation in the form "if and only if." However, if there might be additional circumstances in which increasing age might be permitted as a basis for increasing a policyholder's premium, such circumstances could not constitute a basis for disapproving the filing.

to the Advocacy Panel, that an automobile insurance rating plan in Maine may never include one or more increased classification rate factors for operators above specified ages.

The Advocacy Panel's response indicates that there is a high likelihood that the outcome of this proceeding hinges entirely upon the proper interpretation of 24-A M.R.S. § 2916 as a matter of law, even though there was no corresponding concession on the part of the Insurers. Instead, when asked by the Superintendent whether they would concede that the filing was properly disapproved if 24-A M.R.S. § 2916 prohibits an automobile insurance rating plan in Maine from ever including one or more increased classification rate factors for operators above specified ages, the Insurers declined to answer the question because they believe that interpretation of the statute to be erroneous.³

Accordingly, I am requesting briefing on the questions that appear likely to be dispositive to the outcome of this proceeding, which include, without limitation:

- Whether there are any circumstances in which 24-A M.R.S. § 2916 permits an insurer to increase the premium of an automobile insurance policy in Maine (via increased classification rate factors, or otherwise) for operators that have reached a certain age;
- The reasons 24-A M.R.S. § 2916 should or should not be interpreted as permitting an insurer to increase the premium of an automobile insurance policy in Maine (via increased classification rate factors, or otherwise) for operators that have reached a certain age if such premium increase is the result of an actuarially justified multivariate analysis of loss expectation; and
- Whether there are any circumstances in which the outcome of this proceeding might depend on a disputed question of material fact, and if so, the nature of the question(s) and why it might be material.

It is therefore *ORDERED*:

1. Discovery in this proceeding is hereby *STAYED* until it is determined whether this matter may be decided as a pure question of law based on the undisputed facts and the responses to discovery to date.⁴ If it is determined after review of the briefs that the resolution of this proceeding might depend on disputed questions of material fact, discovery may proceed to the extent relevant to those disputed questions, and pending objections shall be addressed to the extent that the subject matter is still within the scope of discovery.

³ The Insurers also indicated that there is a dispute over the interpretation of Bureau of Insurance Bulletin 334. However, any such dispute is moot because the Bulletin is merely a guidance document, so that a definitive interpretation of the underlying statute supersedes the Bulletin if there is any conflict.

⁴ The stay of discovery by the Advocacy Panel and the Insurers is not a limitation on the Superintendent's authority to obtain information in this proceeding via further information requests or otherwise. *See, e.g.*, Insurance Rule Ch. 350(10)(A).

Otherwise, if there are no remaining disputed questions of material fact once the questions of law have been resolved, all pending discovery requests and all further discovery requests shall be denied as irrelevant.

2. The Insurers and the Advocacy Panel shall meet and confer to develop a specific schedule for briefing, including page limits, if any, and to specify any further issues to be briefed beyond those addressed in this order.⁵ The Superintendent shall issue a further order memorializing that agreement or resolving any outstanding disputes.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

December 4, 2015



ERIC A. CIOPPA
Superintendent of Insurance

⁵ A reasonable approach might be simultaneous briefing and reply briefing, on pre-set dates.