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March 1, 2016

Thomas C. Sturtevant
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-006

Re: Dkt. No. INS-15-1001
Progressive Insurance Companies

Dear Tom:

By letter dated February 12, 2016, the Insurers complain again about the course of this proceeding and ask again for oral argument. None of their complaints justifies the scheduling of oral argument.

Mootness

The Insurers claim that mootness is not germane and that it is too late for consideration of mootness. However, mootness is relevant because the insurers have made filings that replace their initial filings. Those second filings were not disapproved pursuant to 24-A M.R.S. § 2916, so existing facts do not present a live controversy whose resolution would conclusively settle the Insurers' claims. This case is moot, and mootness presents a jurisdictional issue. See *Anthem Health Plans of Maine, Inc. v. Superintendent of Insurance*, 2011 ME 48, ¶¶ 5-14, 18 A.3d 824 (dismissing appeal as moot; declining to find an exception to mootness in the highly regulated area of insurance law). Because jurisdictional issues must be addressed whenever they arise, even if they arise after judgment, it is never too late to consider mootness. The facts creating mootness are indisputable. Oral argument on the issue would be superfluous.

Waiver

Contrary to the Insurers' claim, reference to their 2011 Consent Agreement does not present a new issue requiring oral argument. The Insurers themselves raised the issue of the Consent Agreement's significance in early October 2015, with their Informational Request No. 8 asking for documents "which include any discussion or analysis of the Progressive Consent Order."¹

The Insurers' January 11, 2016 letter (dated 2015) to the Advocacy Panel's counsel, with a copy to you, raised the issue of waiver again. The Insurers proposed amending the Consent Agreement "to eliminate language suggesting improper discrimination by Progressive against elderly applicants or policyholders." The Insurers' goal was to remove the language in Paragraph 15 of the Consent Agreement that should have prevented them from making the filings that led to this proceeding. Responsive to the Insurers' proposal, the Advocacy Panel's argument regarding waiver is both appropriate and timely. Oral argument on this issue is unnecessary.

Alleged Disparate Treatment

The Insurers allege that Bureau action correcting erroneous approvals of other insurers' filings is evidence of disparate treatment justifying the scheduling of oral argument. The Insurers' February 12, 2016 letter acknowledges that the Bureau is treating erroneously approved filings just as it treated their initial filings, *i.e.*, it is disapproving them. It follows that there is no evidence of disparate treatment justifying the scheduling of oral argument.²

Alleged Due Process Concerns

The Insurers have provided no authority to support their argument that the Bureau's allegedly erroneous approval of unrelated filings by unrelated entities is a due process violation. When the Insurers made their initial filings, due process was in place. *See* page 2 of the November 11, 2015 letter from the

¹ Contrary to the Insurers' claim, in its response to Informational Request No. 8, the Advocacy Panel did not state that the Consent Agreement was "irrelevant and of no practical significance." Rather, the Advocacy Panel objected to Informational Request No. 8 as an impermissible attempt to obtain protected information about the mental processes of decision makers. The Panel noted that "the Consent Agreement does reference a proposal [by Progressive] to charge rates based upon age," an obvious recognition of the Agreement's relevance here.

² The Insurers erroneously cite Vermont Mutual's SERF filing No. VERM-129703326 as support for their argument. That filing is distinguishable from the Insurers' initial filings because the submission of a medical form has no bearing on determining premium. Therefore, the Vermont Mutual filing is not relevant to this proceeding.

Letter to Thomas C. Sturtevant
Re: Progressive Companies
Dkt. No. INS-15-1001

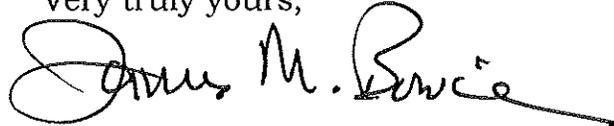
Advocacy Panel's counsel responding to the Insurers' letter of November 3, 2015. Since the initial filings, exchanges of correspondence and briefs have given the Insurers generous opportunities to be heard, so deprivation of due process is not a basis for scheduling oral argument.

The Meaning of 24-A M.R.S. § 2916

Finally, the Insurers reiterate their oft-repeated claim that oral argument is necessary in order for the Superintendent to rule on the plain meaning of the fifty commonly used words constituting the single sentence that is § 2916. The Superintendent already has the benefit of four extensive briefs on the issue of what § 2916 means. Oral argument will be unnecessary on that subject, if the issue is reached.

The Superintendent has sufficient information with which to decide this case. Oral argument will only be cumulative of what exists in the record.

Very truly yours,



JAMES M. BOWIE
Assistant Attorney General
Attorney for the Advocacy Panel

JMB/sm

cc: Bruce C. Gerrity, Esq.
Matthew S. Warner, Esq.
Members, Staff Advocacy Panel