

STATE OF MAINE
BUREAU OF INSURANCE

<i>In re:</i>)	
)	
APPEAL OF DISAPPROVED)	
RATE FILINGS BY)	THE STAFF ADVOCACY
PROGRESSIVE CASUALTY)	PANEL'S MEMORANDUM
INSURANCE COMPANY,)	OF LAW IN RESPONSE TO
PROGRESSIVE)	QUESTIONS POSED BY
NORTHWESTERN INSURANCE)	THE SUPERINTENDENT OF
COMPANY, PROGRESSIVE)	THE BUREAU OF INSURANCE
NORTHERN INSURANCE)	
COMPANY, AND UNITED)	
FINANCIAL CASUALTY)	
COMPANY)	
)	
Docket No. INS-15-1001)	

Introduction

On June 15, 2015, Progressive Casualty Insurance Company, Progressive Northwestern Insurance Company, Progressive Northern Insurance Company, and United Financial Casualty Company (collectively, "the Insurers") made filings seeking approval of revised rates for their private passenger automobile insurance products.

On July 10, 2015, the Superintendent of Insurance, through staff, disapproved the Insurers' filings on the ground that proposed classification factors in the filings' Exhibit 1C for drivers who had reached a certain age violated 24-A M.R.S. § 2916. Section 2916 provides:

No insurance company authorized to transact business in this State shall cancel, reduce liability limits, refuse to renew or increase the premium of any automobile insurance policy of any kind whatsoever for *the sole reason* that the person to whom such policy has been issued has reached a certain age.

(emphasis added)

On August 4, 2015, the Insurers filed an Amended Notice of Appeal challenging the July 10 disapproval of their rate filings. The Superintendent appointed a Staff Advocacy Panel. Thereafter, the Insurers and the Staff Advocacy Panel engaged in discovery

On December 4, 2015, the Superintendent issued an Order Specifying Further Course of Proceedings, by which he stayed discovery and ordered briefing on three questions. The questions are:

1. 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 who have reached a certain age;
2. 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
3. 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 questions(s) and why it might be material.

This memorandum is the Staff Advocacy Panel's response to the questions presented. It explains why disapproval of the Insurers' filings is required.

Argument

Answers to all three questions presented by the Superintendent depend solely upon determination of the meaning of 24-A M.R.S. § 2916. This case is purely one of statutory interpretation.

- I. BY ITS PLAIN TERMS, TITLE 24-A M.R.S. § 2916 DOES NOT UNDER ANY CIRCUMSTANCE PERMIT AN INSURER TO INCREASE THE PREMIUM OF AN AUTOMOBILE INSURANCE POLICY BECAUSE AN OPERATOR HAS REACHED A CERTAIN AGE.

Statutory interpretation is a matter of law. *Harrington v. State*, 2014 ME 88, ¶ 5, 96 A.3d 696. The primary purpose of statutory interpretation is to give effect to the intent of the Legislature. *Maine Association of Health Plans v. Superintendent of Insurance*, 2007 ME 69, ¶ 34, 923 A.2d 918. The first step is to examine the plain meaning of the statute's words. *Bankers Life and Casualty Company v. Superintendent of Insurance*, 2013 ME 7, ¶15, 60 A.3d 1272. Unless the statute is ambiguous, the plain meaning of its words controls the outcome. *Maine Association of Health Plans*, 2007 ME 69, ¶ 34, 923 A.2d 918.

Two words in § 2916 are at the center of this controversy: "sole reason." The Insurers argue that those words do not prohibit an increase in premium when age is a ratemaking variable accompanied by another variable, even if that variable does not change, *i.e.*, that the mere existence of a variable besides age creates permission for an increase in premium when an operator's age changes. See the Letter of Jeffrey Palmer to Benjamin Yardley, p.1, last paragraph. (Apr. 24, 2015). The Insurers are wrong.

The phrase "sole reason" specifically is to be interpreted using those words' plain meaning. *Lauracuate v. Chase Manhattan Bank*, 891 F.2d 17, 23 (1st Cir. 1989). "Reason" means "[a] cause, explanation, or justification for an action or event." The Oxford Dictionaries online (www.oxforddictionaries.com). "Sole" means "only; single." *Id.* "Single" means "solitary" and is synonymous with "only one." *Id.* "Sole" is limiting to the point of exclusivity, so "sole reason" means the exclusive cause, exclusive explanation, or exclusive justification for an action or event. Moreover, "sole reason" in a statute is equivalent to "because of." *Lauracuate v. Chase Manhattan Bank*, 891 F.2d at 21 and 23 (1st Cir. 1989). And "because of" is equivalent to "but for." *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 176 (2009); accord, *Palmquist v. Shinseki*, 698 F.3d 66, 74 (1st Cir. 2012).

Earlier in this proceeding, the Insurers posed the following question to the Advocacy Panel:

Please explain the Bureau's position that age is the sole factor contributing to increased rates in The Rate Filing.

The Advocacy Panel answered the Insurers' question by referring the Insurers

to Exhibit 1C of their filing....[T]he Advocacy Panel notes that according to Exhibit 1C and looking solely at married females, for example, the rate factors for BI, PD, Collision, MedPay, and UM/UIM increase from the 30-34 to the 35-39 age group. There are other scattered increases in rate factors for married females who age from 55-59 through 63. As another example, for those insureds, the rate factors for BI increase for each attained age from age 64 to age 77-78 and for PD increase for each attained age from age 64 to age 87-88.

Exhibit 1C demonstrates that in the Insurer's filings an operator's age is sometimes the sole reason for increased premium; that age is the only explanation for some premium increases; that premiums sometimes increase because of age; and that in some instances, but for age, premiums would not increase. The Insurers' filings thus violate the plain meaning of 24-A M.R.S. § 2916, and the violation is a legitimate ground for their disapproval.

II. EVEN IF IT IS AMBIGUOUS, SECTION 2916 SUPPORTS A READING THAT BARS PREMIUM INCREASES ON THE BASIS OF AGE ALONE.

The analysis in Point I above, based on § 2916's plain meaning, is dispositive. Because the statute is unambiguous, further analysis is not required. Nonetheless, the Insurers might, as in they did implicitly in the letter of Jeffrey Palmer to Benjamin Yardley, incorrectly argue that the statute is ambiguous and therefore susceptible to a reading that serves their purposes. However, even assuming *arguendo* that § 2916 is ambiguous, it is still clear that the Insurers cannot prevail.

If the plain meaning of a statute's text does not resolve an interpretative issue, consideration of extrinsic factors such as the legislative history, statutory context, underlying policy, and prior implementation of the statute is in order. *HL 1, LLC v. Riverwalk, LLC*, 2011 ME 29, ¶ 17, 15 A.3d 725. In this case, extrinsic factors support the conclusion that the Insurers' filings violate § 2916.

While the legislative history of § 2916 is scant, the legislative history of a coordinate statute, 24-A M.R.S. § 2902-C, clearly manifests a

policy consistent with the Advocacy Panel's reading of § 2916. Section 2902-C is apparently intended to fill a gap in § 2916's protection against age-related discrimination. While § 2916 prohibits cancellation of a policy, reduction in liability limits, a refusal to renew, or a premium increase based solely on age, it does not include a prohibition against refusal to issue a policy solely for reasons of age. Section 2902-C corrects that omission. It provides:

No insurer may refuse to issue motor vehicle liability insurance solely because the applicant is 65 years of age or older.

Section 2902-C's legislative history elucidates the policy behind § 2916. The Statement of Fact in § 2902-C's enactor provides in relevant part, "This bill prohibits insurers selling automobile insurance from discriminating against insureds." L.D. 691(115th Legislature 1st Reg. Sess. 1991).¹ This clearly stated policy is consistent with Insurance Bulletin 334 and the plain meaning of 2916's text. It is support for disapproval of the Insurers' filings.

When an administrative agency has carried out a reasonable and practical interpretation of a statute and the Legislature is aware of the interpretation, the Legislature's failure to act to change the interpretation is evidence that the Legislature has acquiesced in the interpretation. *Thompson v. Shaw's Supermarkets*, 2004 ME 63, § 7, 847 A.2d 406. Since 2005, the Superintendent has implemented the interpretation of § 2916 set forth in Bureau of Insurance Bulletin 334, which provides in pertinent part:

Often the increase in rates with increasing age is the result of a multivariate analysis of loss expectation. Insurers are reminded that all automobile insurance rating plans are subject to the provisions of Section 2916 and that an insured's premium may not increase solely due

¹ The importance which the Legislature places on this policy is evident from the Statement of Fact's note that enforcement of § 2902-C can be pursued by the Superintendent of Insurance and the Attorney General. It mentions the possibility of civil penalties, cease and desist orders, reprimands or censure, refunds of overcharges, and restitution.

Maine is not the only state with statutes prohibiting age discrimination in issuance, nonrenewal, cancellation, and premium increases. *See, e.g.*, Massachusetts M.G.L. 175 § 22E; Illinois 25 ILCS 5/143, 24; Kentucky KDOI P/C; Hawaii § 431:10C-207; and New Hampshire § 412: 11.

to the advancement in age or the movement to another age group. It is the Bureau's position that an insured's premium may not increase if the only change is in the age of the insured.

Presumably, the Legislature is aware of the interpretation of § 2916 set forth in Bulletin 334. The Legislature has not acted to change that interpretation and has thus tacitly acquiesced to the interpretation of § 2916 set forth in Bulletin 334. That is the interpretation relied upon in the disapproval of the Insurers' filings.

III. SECTION 2916 DOES NOT PERMIT AN INCREASE IN PREMIUM BASED ON AGE, EVEN IF THE INCREASE IS THE RESULT OF A MULTIVARIATE ANALYSIS OF LOSS EXPECTATION.

The Superintendent asks whether § 2916 can be interpreted to allow an increase in premium for motor vehicle operators of a certain age if the increase "is the result of an actuarially justified multivariate analysis of loss expectation." Section 2916 cannot be so interpreted because its text does not contain wording that allows for that interpretation. Such an interpretation would constitute a rejection of Legislative intent as expressed in the text of § 2916. See Points I and II above.

"The result of an actuarially justified multivariate analysis of loss expectation" is synonymous with "consideration of any other applicable factor independent of credit information." If the Legislature wanted to allow "consideration of any other applicable factor independent of credit information" in § 2916, it could have done so. It chose not to do so, though it has done so in other provisions of the Insurance Code. See, e.g., 24-A M.R.S. § 2169-B(2)(C) and (2)(D). The Legislature's choice with respect to § 2916 is evidence that in the application of § 2916 the Legislature intended not to allow consideration of the result of an actuarially justified multivariate analysis of loss expectation. The Legislature has foreclosed the use of actuarially multivariate analysis of loss expectation as a justification for raising premium under § 2916 for persons reaching a certain age.

IV. THERE IS NO DISPUTED QUESTION OF FACT THAT WOULD NEGATE THE MEANING OF SECTION 2916 SO AS TO ALLOW APPROVAL OF THE INSURERS' FILINGS.

As noted above, statutory interpretation is *a matter of law*. *Harrington v. State*, 2014 ME 88, ¶ 5, 96 A.3d 696. It is possible to

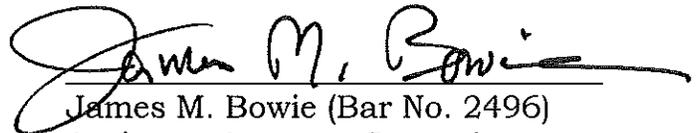
engage *ad infinitum* in discovery about irrelevant factual matters, disputed or undisputed. That is an exercise which the Insurers apparently prefer, but that exercise does not move us closer to answering the simple but dispositive question of what § 2916 means. The essential and indisputable fact is that the plain meaning of the words comprising § 2916 reveals the Legislature's intent, and the Legislature's intent is the touchstone by which the Superintendent must decide this matter. Disapproval of the Insurers' filings is consistent with the Legislative intent expressed in § 2916.

Conclusion

The true meaning of 24-A M.R.S. § 2916 requires that the Superintendent disapprove the Insurers' filings because those filings contain driver classification factors based on age constituting the sole reason for increases in premium.

Dated at Augusta, Maine this 22nd day of January 2016.

Respectfully submitted,



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