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Thomas Sturtevant, Esquire  
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Augusta, ME 04333-0006

**RE: INS-15-1001, Progressive Insurance Companies**

Dear Mr. Sturtevant:

I am in receipt of the Reply Brief which has been filed by the Advocacy Panel. There are positions taken in that Brief which support the need for oral argument in conjunction with the briefing. First, for the first time in this proceeding the Brief makes a mootness argument based on a different filing made by Progressive. In fact, the filing of August 8, 2015, referenced in the Advocacy Panel's Reply Brief, is not at all germane to the appeal at bar. That is an issue which, if allowed to stand, should be explored further.

Second, again for the first time, the Advocacy Panel Reply Brief brings up the notion of waiver based upon the previous Consent Decree of 2011. The Parties and the Hearing Panel have proceeded from the start from the position that the issue on appeal is this specific rate filing, not the Consent Decree. Indeed, until this waiver argument was made in a Reply Brief<sup>1</sup>, there had been no reference to it in any Order. It was referenced, however, in discovery. Progressive's First Information Request specifically asked for a copy of all documents which included discussion of the Consent Decree. (Informational Request #8, p. 3 of October 5, 2015). The Advocacy Panel's response of October 20, 2015, was to object on the grounds, *inter alia*, that the requested information was "irrelevant and of no practical significance". (Advocacy Panel Response, October 20, 2015, ¶ 5, p. 2, and ¶ 8, p. 4). Allowing this reversal of course in midstream is highly prejudicial to Progressive.

In fact, the actual waiver has been by the Advocacy Panel. It is legally barred from trying to raise these arguments (however lacking in merit) at the eleventh hour as they were known at the time the appeal was filed.

The Hearing Panel would be assisted by oral argument in another way. Progressive has presented a due process argument from the outset. Progressive has pointed the Advocacy Panel

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<sup>1</sup> As a rule, Reply Briefs are limited to responding to arguments that were made by the opposing party in initial briefs. This argument, of course, is totally unrelated and since it has been injected into the appeal at this late date, in the face of the Advocacy Panel's earlier position that it was irrelevant, Progressive should be allowed to discuss its position, in oral argument, which is that the Consent Decree is completely unrelated to this appeal.

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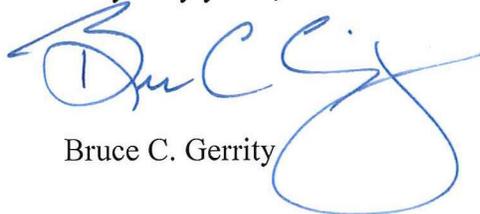
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and Bureau staff generally to other approved filings which clearly contradict the Advocacy Panel's interpretation of § 2916. Each time the Advocacy Panel has been made aware of such approved filings (Allstate, SERFF Filing No. ALSX-G126732499 and Travelers, SERFF Filing No. TRVA-129638305) the response has been to go back and disapprove those filings.<sup>2</sup> In addition, Progressive has now pointed to a third filing, SERFF Filing No. VERM-129703326, from Vermont Mutual. Progressive should be allowed to explore in oral argument the implications of these reversals of position on Progressive's due process arguments.

Finally, the parties take diametrically opposed positions on what § 2916 means. Discussion on the meaning of this statute can only help the Bureau.

There is obviously a question within the Bureau as to how to interpret § 2916. Filings have been approved which have now been pulled; Progressive made a filing which comports with those other filings which nevertheless was disapproved from the get go; and other companies have, or will make, similar filings correlated to age. It behooves the Bureau to clarify this issue and oral argument will help.

Very truly yours,



Bruce C. Gerrity

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cc: James Bowie, Esq.

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<sup>2</sup>Progressive also awaits with interest the final disposition of these disapprovals.