

**OPINION, FINDINGS AND DECISION
ON THE OPERATION OF COMPETITION
AMONG MOTOR VEHICLE INSURERS**

August 10, 2006

Docket No. R2006-02

On April 13, 2006, the Division of Insurance (“Division”) issued a notice of public hearing, pursuant to the requirements of G.L. c. 175E, §5, to consider whether the fix-and-establish rate setting procedure used to set private passenger automobile insurance rates for 2006 should be renewed to set such rates for 2007. The statute requires the Commissioner of Insurance (“Commissioner”) to determine annually, with respect to any territory or to any kind, subdivision or class of motor vehicle insurance, whether competition is either i) insufficient to assure that rates will not be excessive; or ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. If the Commissioner finds that either condition exists, she must fix and establish the rates for such insurance or territory pursuant to G.L. c. 175, §113B. The hearing took place on May 19, 2006 at the Division’s office in Boston.

Representatives of the Office of the Attorney General (“AG”) and of the State Rating Bureau (“SRB”) made oral presentations at the hearing. Other speakers included Peter Robertson, Esq., on behalf of the Property Casualty Insurers Association of America (“PCI”), James Harrington, Esq., for the Massachusetts Insurance Federation, Inc. (“MIF”), and Donald Baldini, Esq., on behalf of the Liberty Mutual Insurance Company (“Liberty Mutual”). Statements were submitted on behalf of the Massachusetts Association of Insurance Agents (“MAIA”) by its president, Francis A. Mancini, Esq., and on behalf of the American Insurance Association (“AIA”) by its vice-president, John P. Murphy. The record was left open for two weeks to receive additional commentary.

Many speakers at the hearing support moving to a more competitive market for private passenger automobile insurance in Massachusetts. A competitive market is expected to increase the number of insurers offering such coverage, and to benefit consumers by providing a greater range of carriers, products, and prices. The SRB noted that some competition now exists in the Massachusetts market in the form of group discounts for employee groups and associations and rate deviations based on Safe Drive Insurance Plan rating, and expressed its support for changes that may increase such competition, including proposed legislation that would revise current statutes.

The AIA’s written submission also urges a move toward competition; it argues that an anti-trust analysis suggests that competition is sufficient in Massachusetts to support a decision not to renew the fix-and-establish procedure for 2007. MAIA, however, concluded that the rates should be fixed and established for 2007, expressing

concern that, if competitive rating were adopted, factors other than an individual's driving record and experience that insurers may use to determine automobile insurance premiums in competitive rating states might be used in Massachusetts.

Participants at the hearing, despite general consensus on the advantages of a competitive market, did not agree on a timetable for moving to a competitive market. PCI supported a full scale but careful reintroduction of competition, and asserted that it can be achieved for 2007. MFI noted that it has long advocated for implementing competition in conjunction with residual market reform, concluding that, although no decision had issued in litigation related to structuring the residual market as an assigned risk plan, the completed redistribution of exclusive representative producers would support implementing competition in 2007. Liberty Mutual raised the issue of introducing "regulated competition" in 2007, so as to avoid problems that have occurred in the past.

The SRB and the AG identified specific issues which, they believe, need to be addressed before full competition is introduced. The SRB reiterated its position that, in considering options for increasing competition, we should bear in mind that subsidies incorporated into the fix-and-establish system produce rate levels that differ from competitively determined rates. Although the subsidies have been adjusted over time, experienced drivers continue to subsidize rates for inexperienced drivers, who are usually younger people. While supporting a transition to a more competitive rating system, the SRB contended that any move to greater competition should be accompanied by safeguards to ensure that rates for urban drivers, and inexperienced drivers throughout the state, do not increase dramatically, as they did in 1977, and that no group of insureds experiences severe rate increases.

The AG affirmed his support for reform of the automobile insurance market, commenting that changes should focus on improving safety, eliminating incentives for fraud, adding competition, and completing residual market reform. The AG argued that rate regulation is needed as long as the current market remains highly concentrated and insufficiently competitive and that, until structural changes are made, the fix-and-establish process should continue. He noted that the disparity in claims experience between urban and suburban areas may be even wider now than it was in 1977, when competition was tried, and expressed concern that, without systemic reform, a shift to

competition could again produce disruptive premium increases in urban areas. The AG also linked entry by insurers into the Massachusetts market to additional reform to the residual market, arguing that competition should be implemented only after alterations to the residual market format. Finally, he noted, in order to benefit from competition, consumers need to be educated about their options and choices. Therefore, competition should not be introduced until a system exists that enables consumers to make meaningful comparisons between products. Until then, the AG recommends that the Commissioner should continue to fix and establish rates under G.L. c. 175, §113B.

Several speakers at the hearing noted that proposals to reform the private passenger automobile insurance system are now pending at the Legislature. PCI, the MIF, the AIA and Liberty Mutual urged the Commissioner to postpone a decision on implementing competitive rating for 2007 until after July 31, the end of the legislative session, so as to avoid any effect on the Legislature's deliberations.

As of August 1, 2006 the Legislature has not enacted any measure that reforms the private passenger automobile insurance system. No participant in these hearings has presented evidence that competition, if initiated in 2007, would be conducted in a manner that would address the concerns expressed by the SRB and the AG, and obviate the problems that arose in 1977. Issues relating to the concept of "regulated competition" were addressed at length in the *Decision on the Operation of Competition Among Motor Vehicle Insurers for 2004*, Docket No. R2003-09. No participant in this proceeding has offered a persuasive argument that the conclusions reached in that decision are no longer correct. If competition is to succeed for all Massachusetts policyholders, it must be developed within a framework that will avoid dramatic rate increases for urban and inexperienced operators. No speaker has presented a comprehensive alternative to fixing and establishing rates that would achieve that goal.

On consideration of the written submissions and the statements made at the hearing, I conclude that a move to full competitive rating in 2007 is not desirable. Institution of competitive rating without thoughtful planning and carefully structured implementation would benefit neither consumers nor insurers. I find that present conditions are such that competition, if implemented in 2007, would be insufficient to assure that rates will not be excessive, and might be so conducted as to be destructive of competition. Therefore, with respect to the private passenger class, the procedures set

forth in G.L. c. 175, §113B, whereby the Commissioner fixes and establishes rates, and insurers may apply to deviate from those rates, will continue to be used for all coverages for the year beginning April 1, 2007.

This decision has been filed this 10th day of August 2006 in the office of the Commissioner of Insurance and with the Secretary of State as a public document. Any party aggrieved by this decision may, within twenty days, file a petition for review in the Supreme Judicial Court for Suffolk County.

Jean F. Farrington
Presiding Officer

Affirmed:

Julianne M. Bowler
Commissioner of Insurance