

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

On April 14, 2005, 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 2005 should be renewed to set such rates for 2006. 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 16, 2005 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; Francis A. Mancini, Esq., president of the Massachusetts Association of Insurance Agents (“MAIA”), James Harrington, Esq., for the F.A.I.R.ness for Good Drivers Coalition, and Paul Moran for the American Insurance Association. In addition, Leonard Fisher, Esq. and David Brussard, President of Safety Insurance Company, submitted written statements.

The AG, the SRB, and the other speakers at the hearing all support moving to a competitive marketplace in Massachusetts. They further agree on the need for significant reform to the Massachusetts private passenger automobile insurance system, including changes to the structure of the residual market. Several speakers pointed out that only 19 carriers now write private passenger automobile insurance in Massachusetts, a number far

below the 53 writers in 1990 and far below the number writing automobile insurance in neighboring states. The Massachusetts market is further concentrated because three carriers write 50 percent of that market. It was noted that such market concentration, absent a set rate, could lead to collusion and rate increases that would not be in the interest of consumers, and might produce disruptive increases for urban drivers that were even greater than those seen when competition was unsuccessfully implemented in 1977.

The SRB pointed out that the current system provides some opportunities for competition in the form of group discounts and deviations, and also incorporates some subsidies that, in general, lower the otherwise indicated rates for urban and inexperienced drivers. It observed that steps have been taken to adjust the rates for inexperienced drivers and those whose driving records include at-fault accidents and moving violations, but that any move to greater competitiveness should be accompanied by safeguards to ensure that rates for urban and inexperienced drivers do not, as in 1977, increase dramatically.

Speakers also noted that, although initiatives have been undertaken to address market reform, at this time they remain works in progress. Several statements expressed hope that the legislature would soon act on comprehensive reform measures that would, among other things, improve choices for consumers, lower costs, attract new entrants into the system, and obviate the need for future hearings on competition.¹ It was also pointed out that the outcome of revisions to the Commonwealth Automobile Reinsurers (“CAR”) Rules of Operation, designed to reform the residual market, is uncertain. Prior decisions on competition have observed that addressing problems with the residual market has been identified as a necessary precondition to a competitive market. *See, Decision on Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2004-08. One statement this year included the comment that implementing full competition under the existing CAR rules would further disrupt the market.

In light of the ongoing status of these initiatives, there was general consensus that it is preferable to reform the residual market and to reform private passenger automobile insurance through legislative action before deregulating rates. Several speakers affirmatively urge retention of the fix-and-establish system for 2006, and no one

¹ On June 1, 2005, Governor Romney filed legislation to reform the Commonwealth’s automobile insurance system.

recommends going to a fully competitive system in 2006. On consideration of the written submissions and the statements made at the hearings, I conclude that a move to full competitive rating in 2006 is not desirable. Institution of competitive rating without thoughtful planning and carefully structured implementation would benefit neither consumers nor insurers. No speaker has presented a comprehensive alternative to fixing and establishing rates that, within the current statutory framework, would ensure that

urban and inexperienced operators would not be confronted with dramatic rate increases. In addition, moving to competition at this time could disrupt the operation of the legislative process.

Based on the record of this proceeding, I find that present conditions are such that competition, if implemented in 2006, 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 calendar year 2006.

This decision has been filed this 16th day of June 2005 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