November 17, 1998

Via Facsimile (2 total pages) 717-772-1969

ORIGINAL: 1992

Peter J. Salvatore, Regulatory Coordinator
Office of Special Projects
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Dear Mr. Salvatore:

On behalf of the Professional Insurance Agents Association of Pennsylvania, Maryland and Delaware (PIA), I am writing concerning the Insurance Department's proposed amendments to 31 PA. Code Chs. 33 and 67a. in the October 17, 1998 *Pennsylvania Bulletin*. As the Commonwealth's largest trade association representing more than 10,000 independent agents, PIA regrets the Department's decision not to share with us an exposure draft, as it commonly does, when the nature of the rulemaking directly affects our members.

We would be remiss not to mention the matter of *Roger Weber* and *PIA v. Pennsylvania Insurance Department* at Docket No. FC90-01 pending since 1990 before the Insurance Commissioner. The *Weber* case challenged the legality of Assigned Plan Rule 14A which governs the take-out procedures of the Plan. Most clearly the statute at 75 Pa. C. S. Section 1741 (MVFRL) requires take-out from the Plan into the ordinary market to be effectuated by way of regulations promulgated by the Pennsylvania Insurance Department. A Joint Stipulation of Fact surrounding the mechanisms employed for take-out under the Plan was reached between counsel for the Department, the Plan and PIA. The Briefs in the case were complete as of November 1996. All parties agreed under this Stipulation that the Plan operated take-out through Plan Rule 14A and that Plan Rule 14A was not promulgated by regulation. These stipulated facts notwithstanding, the Plan and the Department argue meritless positions in an effort to avoid the obvious, that being that take-out must be by regulation.

On May 11, 1998, PIA's counsel sought the status of the Commissioner's decision in the *Weber* case and was advised via letter of May 15, 1998 from Chief Hearing Examiner Johnson that the decision would be forthcoming.

Ironically, while a substantial portion of the take-out rules which directly affect the consumer, (premium rates, length of time in Plan before take-out, notice of take-out to insureds), are not being promulgated via regulations as required by the MVFRL, the regulations proposed by the Department at Chapter 67a, which in effect, protect the Plan, not consumers, and which are not clearly authorized by statute, are being promulgated.

5040 Ritter Road
P.O. Box 2023
Mechanicsburg, PA
17055-0763
Phone (717) 795-9100
Fax (717) 795-8347

Additionally, the definition of Assigned Risk Plan (67a.1) is different from the statute. We recommend that it follow the statutory definition (75 Pa. C.S. § 1702 or § 1741).

Second, producer of record is defined, in part, as "the agent or broker authorized by the department to conduct business and..." We recommend deleting the phrase "authorized by the department to conduct business," as it is unnecessary. The Department through the issuance of either a certificate of qualification or license already authorizes an agent or broker, respectively. No additional authorization is needed.

Third, the definition of voluntary market is inconsistent with the statute (75 Pa. C.S. § 1741). The statute refers to this as the ordinary market, and for consistency, we recommend it be changed to "Ordinary" market or add the word "ordinary" before "market" in the definition.

Fourth, 67.a.2 (b) confuses us. What is the intent of introducing a requirement that the producer conduct a "reasonable search" of the ordinary market? Plan rules are void of any such requirement, and there is no statutory basis for it as well. The statute provides that the Plan is for "...applicants of motor vehicle liability insurance who are entitled to, but are unable to, procure insurance through ordinary methods." (75 Pa. C.S. § 1741) There is no statutory duty on a producing broker to make a reasonable search of the marketplace.

Furthermore, Section 1742 of the statute prescribes specific items that the Plan must provide. There is no reference to producers conducting a "reasonable search", therefore it can be reasonably determined that the legislature did not find this requirement necessary.

We question the Department's authority to bar an agent or broker from accepting cash under 67a.2. (c) Does the Department have a legal interpretation to support its position? Furthermore, the acceptance of cash by the producing broker is oftentimes a benefit and convenience to the consumer, not a protection. The protection here is for the Plan.

PIA strongly opposes 67a.2(d) as presently written. We objection to the requirement that an additional receipt be provided when a copy of the application would suffice.

Once again, we appreciate the opportunity to comment on the regulation. If you have any questions, please call me.

Sincerely,

Peter N. Calcara, Vice President
Government and Industry Affairs