

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 14, 1999

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: IRRC Regulation #11-186 (#2050)
Insurance Department
Discounting Workers' Compensation Loss Reserves

Dear Commissioner Koken:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact John Jewett at 783-5475.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:wbg
Enclosure
cc: Pete Salvatore
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

INSURANCE DEPARTMENT REGULATION NO. 11-186

DISCOUNTING WORKERS' COMPENSATION LOSS RESERVES

OCTOBER 14, 1999

We have reviewed this proposed regulation from the Insurance Department (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, economic impact, reasonableness, and implementation procedures and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Applicability of amendments. - Economic impact, Reasonableness, and Implementation procedures.

One commentator questioned whether this regulation will apply to future reserves only. The commentator believes that if the regulation is applied retrospectively, existing reserves and premiums would be adversely affected. The regulation should state the effective date for compliance with the new requirements. If it will be applied to existing reserves, the Department should also explain the effect, if any, on existing reserves.

2. Section 116.4. Restrictions on discounting loss reserves. - Reasonableness and Clarity.

We have two concerns with Subsection 116.4(2). First, an insurance company is permitted to use the "current" yield to maturity. The term "current" is vague. It is not related to any timeframe. How will it be determined that a "current" yield has been used?

Second, an insurance company is permitted to use "a United States Treasury debt instrument with maturities consistent with the expected payout of liabilities." One commentator listed several debt instruments, which they believe would meet the regulation's requirement. The Department should explain why it is reasonable to permit the use of a broad range of debt instruments, rather than more specific debt instruments.

3. Section 116.9. Suspension of use of this chapter to discount workers compensation loss reserves. - Statutory authority and Clarity.

This section would allow the Commissioner to suspend this chapter "upon the publication of reasonable notice." There are two areas of concern. First, we question the Commissioner's statutory authority to unilaterally suspend the Department's regulations. Section 316 of the Insurance Department Act (40 P.S. § 115) gives the Commissioner the authority to require an

individual insurer to maintain greater reserves if that insurer's current reserves are inadequate. Presumably, the insurer could contest the Commissioner's determination in an adjudicatory proceeding. However, Section 316 does not grant the Commissioner the authority to suspend the use of this chapter for all insurers. For the Commissioner to do so, the Department would have to promulgate another regulation. Therefore, this provision should be deleted or the Department should explain the statutory basis for it.

Second, if the Department can provide the statutory authority for the Commissioner to suspend the regulation, it is unclear how "reasonable" notice would be accomplished. The regulation should state the minimum amount of notice that will be given.

INDEPENDENT REGULATORY REVIEW COMMISSION

To: Pete Salvatore OR
Terry Seneca
Agency: Insurance Department
Phone: (717) 787-4429
Fax: (717) 772-1969

From: Kristine M. Shomper
Deputy Director for Administration
Company: Independent Regulatory Review
Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2664

Date: October 14, 1999
of Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Insurance Department's regulation #11-186. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Pete J. Salvatore

Date:

10/14/99