

Tate, Michele

2737

RECEIVED

From: Claire P PANTALONI [CLAIREP@iabgroup.com]
Sent: Tuesday, January 20, 2009 3:23 PM
To: Ruane, Lawrence; EP, RegComments
Cc: Jason F ERNEST; Kari L KISSINGER
Subject: Mine Subsidence Fund - Proposed regulation (25 PA CODE CH. 401)

2009 JAN 22 PM 2: 21
INDEPENDENT REGULATORY
REVIEW COMMISSION



MSI comment ltr
012009.doc (31...

To whom it may concern:

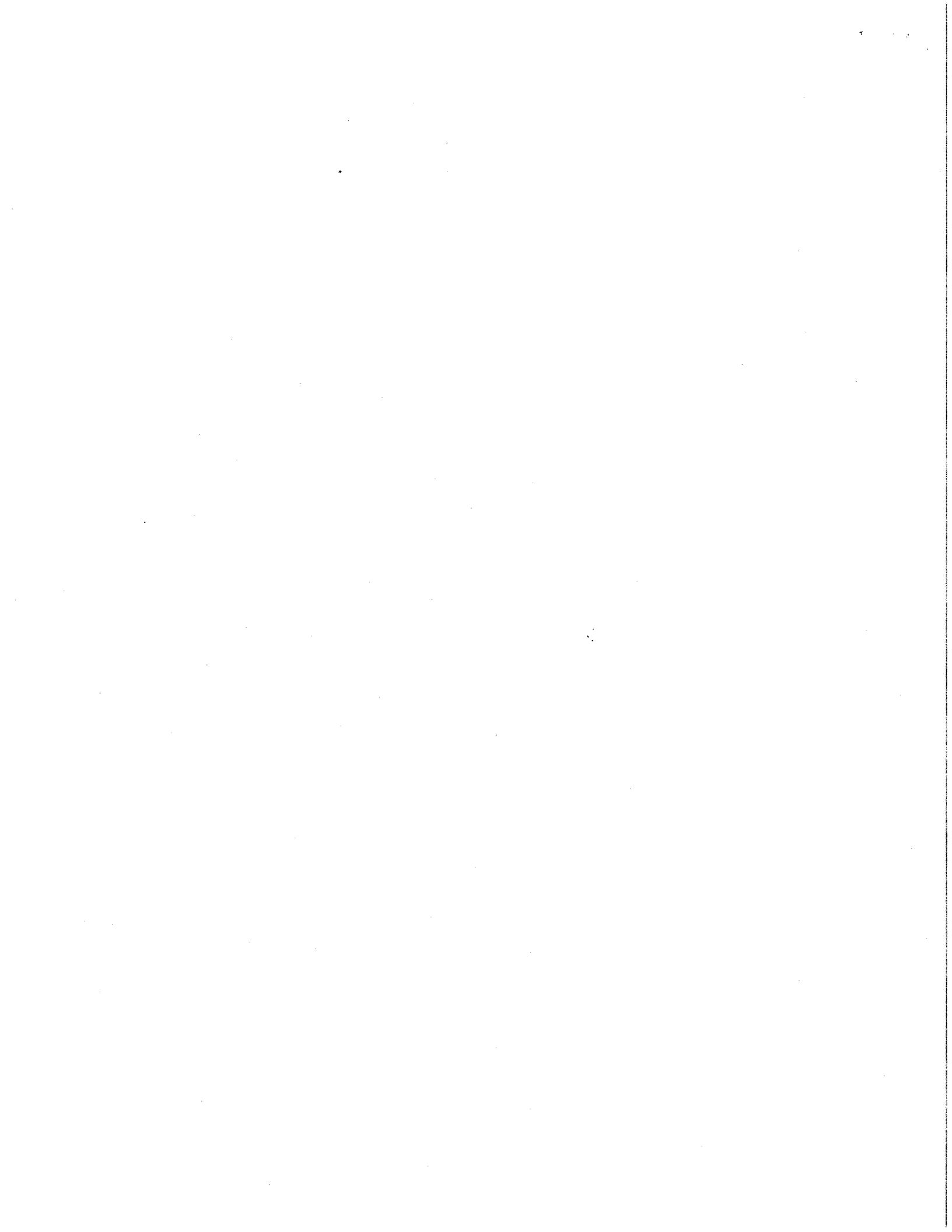
The Insurance Agents and Brokers of Pennsylvania (IA&B) would like to submit the attached comments to the proposed regulation regarding the Coal and Clay Mine Subsidence Insurance Board (25 Pennsylvania Code Ch. 401). Should you have any questions on those comments, please do not hesitate to contact Jason Ernest at jasoner@iabgroup.com. You may also use the phone number provided below.

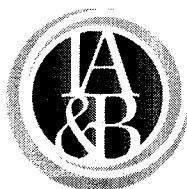
Since this is the last day for submissions, would you be kind enough to acknowledge receipt by return?

Thank you for your consideration.

Sincerely,

Claire P. A. Pantaloni, CISR
Industry Affairs Manager
Insurance Agents & Brokers Service Group
-serving PA, MD & DE
Phone: 800-998-9644, ext. 604
Fax: 717-795-8347
Email: clairep@iabgroup.com
Web: www.iabgroup.com





INSURANCE
AGENTS & BROKERS
OF PENNSYLVANIA

RECEIVED

2009 JAN 22 PM 2: 21

INDEPENDENT REGULATORY
REVIEW COMMISSION

January 20, 2009

Coal and Clay Mine Subsidence Insurance Board
Mr. Larry Ruane
Rachel Carson State Office Building - 5th Floor
400 Market Street
Harrisburg, PA 17101-2301

Dear Mr. Ruane,

RE: PROPOSED REGULATION

The Pennsylvania Coal and Clay Mine Subsidence Insurance Board proposes adoption of a regulation regarding the writing of mine subsidence insurance and delineates changes to the current program.

The Insurance Agents & Brokers of Pennsylvania (IA&B)¹, representing the majority of independent property and casualty agents in Pennsylvania, appreciates the opportunity afforded us to submit comments on this draft regulation. We wish to submit for the record the comments listed below.

Overall, IA&B understands this regulation to be mainly targeted at providing more consistency between the insuring agreement and the regulation, but also reviewing the scope and nature of the MSI Fund's coverage with regard to certain types of property. Most of IA&B's comment are of a typographical nature. One or two are of a more substantive nature. These comments follow the order of the regulation.

§ 401.1 Definitions

Commissions - Since the term "fees" is widely used in the industry to define other types of remuneration for insurance producers, IA&B would suggest amending the definition as follows:

Commissions -- Compensation paid to insurance producers for the applications they submit to the Board.

¹ The IA&B of Pennsylvania, Inc. is the largest association in Pennsylvania for independent property and casualty insurance agents. The IA&B is affiliated with both the Independent Insurance Agents and Brokers of America (IIABA) and with the National Association of Professional Insurance Agents (PIA).

Structure: The addition of appurtenances is an improvement. As a general comment, IA&B would simply suggest avoiding use of the word that is defined in its definition and would offer using the word "building" as an alternative:

Structure -- A complete building, which contains a roof, walls and a foundation that firmly attaches the building to the earth, and its appurtenances as defined in the insurance policy.

Mine subsidence: IA&B assumes that the removal of the words "partial or complete cave-in" is due to the fact that they are considered synonymous with "collapse," and would only question the reason if this assumption is incorrect.

§ 401.11 Eligibility for insurance

(1) While the term "policyholder" better qualifies the insurance relationship than the term "owner," IA&B would simply like to draw attention to the fact that in some cases "policyholder" and "insured" are not synonymous. Since this regulation extends to condominium/cooperative associations with multiple insureds, the purpose sought by the MSI Board may be better served by using the word "insureds." While inelegant, it is a widely recognized term of art.

(2) IA&B would like to seek additional information on the scenario under which a unit owner may purchase coverage for both the units and common elements. While IA&B appreciates that the underwriting of a policy against mine subsidence may not be required under the association's declaration or bylaws, it is highly unusual for a unit owner to insure common elements for the benefit of the whole association. IA&B would like to question how often this situation has been encountered and handled in the past to justify the proposal as currently written. Also, IA&B is unsure that the association should be named as policyholder and would like to seek clarification as to what is meant by "naming" the unit owner "in the application."

There are two (e) paragraphs. The first one should be renamed (d).

Paragraph (f) addresses the insurance of multiple unit structures, specifying that vertically stacked units must be insured under a single policy, and other unit configurations may be insured under a single or multiple policy at the owner's discretion. IA&B would like to clarify whether the intent is truly to have one policy or to indicate that "single entity" coverage will be sought. Condominium insurance is complex and prone to challenges when it comes to identifying the responsibility for coverage between the association and the unit owners. Since mine subsidence is not offered elsewhere, under a traditional HO-6 (unit owner's) policy, could you clarify the extent of coverage under an association policy? For example, if an association policy is written, does the unit owner also need individual coverage to insure his improvements and betterments as traditionally found in "single entity" or "original specification" coverage, or would the association policy be "all in" (all inclusive), in which case improvements and betterments made by unit owners are included in the coverage provided?

§ 401.43 Payment of commissions

IA&B commends the MSI Fund for introducing the ability for a producer to retain the commission upfront. This is clearly an improvement and is much more consistent with common industry practice.

§ 401.45. Confidentiality of policyholder information

IA&B takes issue with this section for two reasons. First, the language proposed disregards the independent insurance producer's inherent right to ownership of expirations. Client lists, policy expiration date and other customer information gathered by the insurance producer in the process of seeking and providing coverage are recognized under common law as the independent agent's main asset. While the MSI Fund may be doing business with all types of insurance producers, including captive or direct writers who are *not* independent producers, IA&B must oppose any regulatory verbiage which denies the intrinsic independent agents' ownership rights, even if by association. Secondly, insurance producers are by law and regulation subject to specific requirements when it comes to the handling of consumer and customer information (see, *inter alia*, Title 31, Chapters 146a, 146b and 146c of the Pennsylvania Code of Regulations). Third, the language under which insurance producers are "responsible for the misuse of information that is under their control" automatically shifts responsibility to them, regardless of the circumstances. Such misuse should not be governed through this regulation but rather addressed by (1) the existing applicable regulation regarding violation of privacy or data breach, and/or (2) the contractual agreement between the MSI Fund and the producer through a properly drafted and balanced hold-harmless provision. IA&B suggests that this section be rewritten and offers the following alternative:

"Insurance producers are responsible to safeguard all applicant and policyholder information in compliance with Title 31, Chapters 146a, 146b and 146c of the Pennsylvania Code and any other applicable law or regulation. Violation by an insurance producer of any applicable privacy regulation may result in exclusion from participation in the Fund."

Again, IA&B appreciates the opportunity to express its questions, concerns and suggestions, and looks forward to working with the Mine Subsidence Insurance Fund on this and other matters of importance to producers. Should you have any questions regarding these comments, please contact the undersigned.

Sincerely,

Jason F. Ernest, Esq.
Vice President - Advocacy

