



CDI Requests Insurers to Submit Rate Decrease Application Filings

by Robert W. Hogeboom

The California Department of Insurance (CDI) Rate Regulation Division is being more proactive in making sure that rates are not excessive. In that connection, the CDI has been reviewing insurers' loss ratios. The CDI's concern is that insurers are overlooking the need to make rate decrease applications when the results would suggest that they may be charging an excessive rate. The CDI is looking at all lines of insurance in connection with its review.

CDI Letter to Insurers

The CDI has issued a "first wave" of letters to approximately thirty insurers indicating its concern that, after review of the loss ratios and length of time since the last rate filing was submitted, the rates may be excessive. The letter indicates that the CDI intends to perform a rate review of all programs and seeks confirmation from the insurer when it will be making a rate filing submission.

Absent the filing of a rate application, the letter suggests that the CDI may initiate an Order to Show Cause or otherwise require a filing on the basis that current data with the CDI suggests that the rate is excessive. It is expected that the CDI will follow with a second round of letters after it reviews the responses and/or submissions from the first round.

The letters are similar to the practice used by the Commissioner in 2006 when he issued notices of hearing to compel several large homeowners' insurers to reduce their rates. As a result of this procedure, one of the largest homeowners' insurers in California ceased accepting new business.

CDI Cannot Require Rate Application Filings

Under the California Rating Law, a rate may not remain in effect which is excessive. The CDI's

recourse is to issue a § 1858.1 Notice of Noncompliance under which the insurer may show the CDI they are in compliance, request a hearing, or enter into informal conciliation with the CDI. There is no specific provision which permits the CDI to mandate that a rate application filing be made.

The CDI's Strategy

It would appear that the CDI would prefer insurers to file rate applications under which the burden would be on the insurer to justify its rate as opposed to noncompliance actions in which the burden would be on the CDI.

Through the rate filing, the CDI would have all data in its required format, run the numbers per the CDI's template, and render a determination. However, in a noncompliance action, the CDI would have the burden to show that the rate is excessive which would require it to present a case as to why an insurer's current rates are excessive and that may ultimately prove to be a difficult task.

As the CDI may be contemplating issuing noncompliance actions for insurers who do not file rate applications, the CDI recently issued notice to amend § 2614 of the regulations which govern the Procedures for Noncompliance Hearings to permit the calling of adverse insurer witnesses without the necessity of submitting pre-filed written testimony. Under current regulations, all direct testimony must be submitted in writing 40 days prior to the hearing. This gives all parties time to examine the testimony, make appropriate objections and prepare for the hearing.

In a recent noncompliance hearing, the CDI attempted to call the insurer's employees and other

witnesses as “adverse witnesses” in support of its direct case. The CDI argued that the written testimony requirement should not apply. The court held that the CDI calling adverse witnesses in its direct case was improper since § 2614.13 requires the pre-filing of all direct written testimony. As a result, the CDI now seeks an amendment to the regulations which would permit calling adverse witnesses in its direct case without prepared direct testimony. This would greatly benefit the CDI in these cases.

It is expected that the industry will oppose this change as being inconsistent with the purpose of submitting pre-filed testimony. A hearing on the proposed regulations is scheduled for October 25, 2010, in San Francisco.

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