

Mass. DOI doubts industry's warnings over comp rate cut

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by Pat Healy
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BOSTON — Tempers continue to flare weeks after Mass. Insurance Commissioner Julianne M. Bowler announced that insurers writing workers compensation in the state must reduce their rates by an average of four percent.

The industry and the state lobbied criticisms at each other, the rating bureau considered whether to appeal the decision, and the regulator who made the decision blamed the system.

At a recent meeting of the Massachusetts Association of Insurance Women, Commissioner Julianne Bowler bemoaned the fact that under the current system of state-approved rates nobody will ever be happy about the rate decisions. She said she ends up taking the blame for a disagreeable system.

Bowler Comments

“The best that we can do at the Division is to operate within the system as it exists and to take a look at what the evidence is,” she said. “All three of these parties looked at the same evidence. They all looked at trending, they all looked at claims development and they all looked at profit but yet you have a span of 30 points between one and the other

“Clearly,” Bowler added, “we need to rethink what the wisdom is of the state setting profit and expenses for sophisticated businesses. It’s one thing to look at trend, which a number of states do. It’s another thing to be required to set a profit provision and an expense provision. Shouldn’t companies compete on that? But until that gets changed we’re stuck with the system that we have.”

Paul Meagher, president of the Workers Compensation Rating Bureau which had asked for an 8.6 percent increase in rates, said his organization would take most of its allotted 30 days to review the Commissioner’s decision and decide if an appeal is in order.

“This is a very complex decision,” he said. “We’re talking with our legal counsel and our consultant to see if there is an error of law or a major mistake.”

In Massachusetts courts traditionally uphold the decision of the regulator unless there is an error of law or a mathematical mistake. Because this would be the only grounds for an appeal to be successful, Meagher said there is no guarantee the WCRB will make one.

Glenn Kaplan, chief of the insurance division for the Office of Attorney General Tom Reilly, said the AG’s Office is ready to counter if an appeal is made. The AG’s office had recommended a 20 percent decrease in workers compensation rates.

“We’ll be watching very closely what the WCRB does,” said Kaplan.

Meagher said he is disappointed with the decision, and maintains that an increase is the only way to guarantee the viability of the voluntary market as the residual market pool grows when rates are considered to be inadequate.

Kaplan said the WCRB is overreacting.

“While the pool numbers may have increased, they’re still in the range of many other states and if the numbers actually increase to a level where it raises serious concerns they can file again and make that an issue,” he said, “but until they have that proof, their customers shouldn’t have to pay more based on that conjecture,” Kaplan said.

The WCRB is required to file a request every 24 months, but the organization can file again as soon as next spring.

Speaking for Bowler, Chris Goetcheus, of the Division of Insurance, offered that the increase of the assigned risk pool could be attributed to the departure of Eastern Casualty two years ago.

“They wrote a lot of restaurant business and perhaps some of the growth in the pool could be from the small restaurant business that Eastern Casualty formerly held,” he said, “but the thing is, the pool is not even at a problematic level at this point.”

James Harrington, executive director of the domestic insurers’ Massachusetts Insurance Federation, disagreed.

“Mandating a decrease in rates will unfortunately accelerate the growth of the residual market which has already expanded from four percent to 18 percent over the past three years,” he said.

Goetcheus insisted that the market is not in danger.

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“The market has been very successful over the last decade and it’s not the time to be sounding warning sirens,” he said.

Another warning siren the WCRB is sounding is the possible loss of workers compensation writers in the state.

“Companies leaving the marketplace is certainly a concern,” said Meagher. “We’re talking about an average rate level decrease which means rates can swing up to 20 percent each way based on different cases. Based on their books of business, these companies will have to evaluate their business plans,” he said.

Agents’ View

Frank Mancini, executive vice president of the Massachusetts Association of Insurance Agents, said a decrease of four percent is going to force some insurers to reconsider whether they want to stay.

“If some of the players leave that means there’s fewer markets for agents and fewer avenues of competition for the consumer,” he said. “I’m just concerned about the message this sends to the companies that are on the fence about doing business here. It might push them to leave.”

Richard Lord, president and CEO of Associated Industries of Massachusetts (A.I.M.), an employer of more than 7,500 Bay State businesses, echoed these words.

“A four percent decrease could drive insurers out of the Massachusetts market and thereby limits insurance options for Massachusetts companies,” Lord said.

Gerald L. Zimmerman, assistant general counsel for the National Association of Independent Insurers, shared in this criticism.

“The insurance department may well be turning the workers comp insurance market into a replica of the ill-conceived auto insurance market that has plagued Massachusetts consumers for years,” he said.

But Goetcheus also scoffed at this notion.

“Since the last rate decision we’ve had 11 companies actually apply for the designation to write workers comp in Massachusetts,” he said. “And if this wasn’t a healthy climate, we wouldn’t

have had those 11 carriers applying, would we?”

Gregory W. Malloy, chairman and CEO of PMC Insurance Group, a wholesaler specializing in workers comp nationwide, said he doesn’t foresee companies leaving, but believes they might change the way they do business.

“I think the majority of the market is not going to run away but I think there’s a good potential the market would say they’re going to limit writings,” he said.

In her decision, Bowler accepted the WCRB’s methodology for profit, but not the parameters. The WCRB had a slightly positive trend where she went with a zero net trend.

Peter Robertson, Massachusetts counsel for the NAI, said the Commissioner’s acceptance of the WCRB’s profit methodology was one of the only positive turns.

“The Commissioner is using a new profit model and a more rational approach and I think that’s a very positive development,” he said.

Stephen D’Amato, a public interest attorney in Cambridge, who used to be the head of the State Rating Bureau, had a gripe with the zero net trend.

“In the insurance industry when you see a trend in losses, insurers, regulators and actuaries will generally take the trend and project it into the future, and the fact is that we saw a distinct trend in losses,” he said. “If the trends were going up, and the Division came up with a zero net trend, the industry would scream bloody murder.”

D’Amato further criticized the decision. “If the Division had used the actuarially accepted method for trending losses employers would have seen a deeper decrease,” he said.

While he sees the profit formula as a victory, NAI’s Robertson had little else positive to say.

“I thought the WCRB had presented sufficient evidence for an increase and I think the wide disparity indicates that this is a politicized and unhealthy process,” he said. “It’s also unfortunate when you get another negative number when the pool is already growing that the pool will grow more and there will be even less capacity in the voluntary mar-

ket.”

Goetcheus said members of the industry can talk all they want, but even the most strongly worded op-ed piece doesn’t count as testimony.

“The Commissioner can only weigh the evidence presented in the case,” he said. “There are several pieces I’ve read where the various parties tell their positions on where the rates should have come out but we don’t adjudicate cases in the press.” □