COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION
DIVISION OF INSURANCE

DOCKET NO. G89-10

AMENDMENTS TO RULE 13 OF THE RULES OF OPERATION OF COMMONWEALTH AUTOMOBILE REINSURERS

DECISION AND ORDER

BACKGROUND

On February 16, 1989 the Governing Committee of Commonwealth Automobile Reinsurers ("CAR") filed a proposed amendment to Rule 13 (A) (2) (a) of the CAR Rules of Operation ("the Rules") with the Division of Insurance ("the Division"). On March 16, 1989 the CAR Governing Committee filed an additional proposed amendment to Rule 13(A)(2)(a). Rule 13 of the Rules details the obligations of CAR member companies who have been appointed as servicing carriers.

United States Fidelity and Guaranty Company ("USF&G") requested a hearing on both proposed amendments to Rule 13(A)(2)(a). Pursuant to M.G.L. c. 175, §113H and the CAR Plan and Rules, a public hearing on the proposed amendments was hold on April 14, 1989 at 9:30 a.m. at the Division. Interested parties were invited to submit oral and written testimony at the hearing. Parties were also given the opportunity to submit additional post-hearing statements and rebuttal.

Representatives from CAR and two insurance companies presented oral and written testimony concerning the proposed amendments. Testimony in support of the proposed amendments was offered by Joseph J. Maher, Jr., Vice President and General Counsel of CAR, and Fran Delage, a member of CAR's Claims Advisory Committee and the Technical Claim Manager of the New England Branch of the Hanover Insurance Company. USF&G and Holyoke Mutual Insurance Company ("Holyoke Mutual"), both presented testimony in opposition to the proposed amendments.

ISSUES

In order to assure the protection of the public interest, Rule 13 (A) (2) (a) of the CAR Rules of Operation lists specific services which a member company must demonstrate it has the capability of performing in order to be considered for appointment as a servicing carrier. Once appointed, a servicing carrier must continue to satisfy those requirements. There are currently six (6) specific requirements, which include the ability to 1) provide policy issuance and premium collection to all eligible classes of risks; 2) service claims in every state; 3) administer a direct billing program for private passenger risks; 4) provide an installment payment plan; 5) maintain a special investigative unit; 6) report information to CAR in an accurate and timely manner.

CAR's proposed amendments place an additional requirement upon servicing carriers, namely, to adopt and maintain an approved direct payment plan. CAR proposed this additional requirement for servicing carriers in response to the recently enacted automobile insurance reform legislation, c. 273 of the Acts of 1998, specifically, §§ 24 and 31 of c. 273. CAR argues that, while §§ 24 and 51 of c. 273 do not require an insurer to have a direct payment plan, Insurers should take advantage of every cost-savings device available in Massachusetts. CAR claims that approval of its proposed amendments to Rule 13 will result in cost savings and improved service which is beneficial to both the industry and the consumer.

The two companies opposing the proposed amendments to Rule 13 argue that forcing servicing carriers to adopt and maintain an approved direct payment plan is contrary to the intent of §§ 24 and 51 of c. 273, since those sections do not require insurers to file a direct payment plan with the Division. They claim that each insurer should be left to determine, based an its own internal policies and methods, whether or not to establish a direct payment plan. They also point out certain aspects of the current regulation governing direct payment plans which cause them difficulty, such as potential exposure resulting from guarantees of repair shop workmanship and quality of materials, and the potential problems associated with creating and maintaining a referral shop list.

Holyoke Mutual emphasized that the increased staff costs associated with creating and maintaining a referral shop list are particularly burdensome to servicing carriers with a small market share. Holyoke Mutual also noted that those servicing carriers would be unable to demand significant discounts from repair shops due to the small volume of work to be offered to the repair shops. USF&G and Holyoke Mutual are not, however, opposed in principle to a direct payment plan; they argue only that a direct payment plan should not be required of a servicing carrier.

DECISION AND ORDER

M.G.L. c. 175, § 113H(C) clearly mandates that CAR "shall establish reasonable eligibility requirements for appointment as a servicing carrier, including but not limited to, the maintenance of a specific investigative unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud." In the current Rule 13(A)(2)(a)(1-6), CAR has created six eligibility requirements, all for the purpose of protecting the public interest. CAR now seeks to add another requirement which was specifically created to benefit consumers as well as the insurance industry as a cost-saving and service-enhancing device; indeed, the Legislature, in enacting §§ 24 and 51 in c. 273, intended to encourage insurance companies to develop programs which would assure consumers the greatest possible savings in insurance

costs. Clearly, a requirement imposed upon servicing carriers which is beneficial to both the industry in general and the consumer is reasonable and will protect the public interest. I am not persuaded by the testimony presented that the potential problems insurers may encounter in establishing a direct payment plan are sufficient justification for disapproving the proposed amendments in their entirety, for two reasons: first, the problems are, by one opponents' own admission, hypothetical; second, of the eleven direct payment plans which I have approved and which arc currently in effect in the Commonwealth, ten have been filed by insurers who are CAR servicing carriers. In other words, approximately one half of the current servicing carriers have overcome whatever problems may exist in establishing a direct payment plan. I note, however, that the servicing carriers who have thus far established direct payment plans insure approximately 60% of the private passenger risks insured in the Commonwealth, and may be better able to afford the costs associated with establishing and maintaining such plans than are servicing carriers with a comparatively small private passenger market share. However, I see no reason why most policyholders should not have the opportunity to take advantage of this new, more efficient cost-saving device.

Therefore, it is ordered that the proposed amendments to Rule 13 filed by CAR Governing Committee on February 16, 1989 and March 16, 1989 are hereby approved, with the following modification: a CAR member who is currently appointed as a servicing carrier shall be required to establish and maintain a direct payment plan only if that servicing carrier's average Massachusetts private passenger market share for the years 1986, 1987, and 1988 equals or exceeds one percent (1%) of the total Massachusetts private passenger market for 1988. This criteria shall also apply to any CAR member appointed as a servicing carrier during the calendar year 1989. For CAR members appointed as a servicing carrier subsequent to 1989, this determination shall be made using the average market share percentage for the three years preceding the year of appointment compared to the total market for the year immediately preceding appointment. In view of the fact that an industry-sponsored direct payment plan has been filed and approved by the Division, it is further ordered that all servicing carriers shall have until January l, 1990 to establish a direct payment plan.

This decision may be appealed to the Superior Court pursuant to M.G.L. c. 175, § 113H.

Dated:
October 10, 1989

Timothy H. Gailey
Commissioner