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June 6, 2024

Senate President pro Tempore Mike McGuire
1021 O St., Ste. 8518
Sacramento, CA 95814

Assembly Speaker Robert Rivas
1021 O St., Ste 8330
Sacramento, CA 95814

Re: Governor's insurance trailer bill

Dear pro Tem McGuire and Speaker Rivas,

We have reviewed the June 5, 2024 letter (the "Letter") from Consumer Watchdog and others regarding the Governor's proposed insurance rate review trailer bill ("Trailer Bill") and feel compelled to respond. So little of the Letter is true, and its lack of truthfulness highlights the reasons why there are so many problems in the property insurance marketplace.

There is no healthy dialogue between the writers of the Letter and representatives of the property insurance industry. To the contrary, Consumer Watchdog, in particular, refuses to speak with us and would rather throw rocks than collaborate for the benefit of the public.

The Letter makes four, faulty arguments. They argue the Trailer Bill would:

1) allow insurers to force the California Department of Insurance ("CDI") to approve a rate application with inadequate information;
2) provide inadequate time for Proposition 103 intervenors to meaningfully participate;
3) change insurer behavior to file for a series of small rate increases instead of a larger, single filing; and
4) take an "intervenor's questions out of consideration."

We disagree strongly. In order to respond to these arguments, it is important, first, to say what the Trailer Bill does, instead of only refuting the Letter by saying what it does not.

Provisions of the Trailer Bill

The Trailer Bill would require the CDI to provide regular, public disclosure of the status of its rate application reviews. It addresses a problem in the current system, where an insurer can go months with no indication of the status of rate review. The current system affects the insurance markets profoundly.

The Trailer Bill maintains the current Proposition 103 (Ins. Code Section 1861.05(c)) process for initiating a rate application. Proposition 103 requires the CDI to provide public notice once it receives a "complete rate application." Unless, and until, the CDI receives adequate information, the CDI does not even issue public notice that it has received an application and no review is commenced. The CDI filing requirements are the most comprehensive in the country. The requirements are so complicated that the CDI issued a checklist to help insurers comply. Once the CDI confirms that the application is "complete," then, and only then, it provides public notice of the filing. The Trailer Bill changes none of this.

Within 45 days following public notice of a rate filing, members of the public can provide notice of their intent to intervene in the matter. Once they intervene, they are a party to the matter, ex parte rules apply, and they must be included in discussions between the CDI and the applicant. The Trailer Bill changes none of this.

Proposition 103, further, provides that a rate application not approved within 60 days following public notice is "deemed approved," unless the Insurance Commissioner orders the matter to a rate trial. Because 60-day approvals are not generally possible, the CDI, as a pattern and practice, requests that an insurer permanently waive its rights to a 60-day approval and, if the insurer refuses to sign a waiver of its rights, the CDI automatically orders that insurer to a rate trial – even if the CDI has no belief that the rate application is unreasonable.

The Trailer Bill does change this, by deleting an insurer's right to a 60-day approval and, instead, allowing the CDI, on its own initiative, to take additional 30-day periods of rate review, as long as it publicly discloses three things: 1) what issues are resolved, 2) what issues are unresolved, and 3) for the unresolved issues, the CDI's position at that moment in time. At 90 days, if the CDI needs an additional 30 days, this process repeats, with the CDI updating its public disclosure of the status of the rate review. This process can go on indefinitely, in 30-day increments.

At day 120, if the CDI wants additional time, the Trailer Bill would require the usual public disclosure and, also, require the CDI to publish its then-calculation of what rate level would be "inadequate," so as to jeopardize solvency, and what rate level would be "excessive," so as to result in unacceptably high rates. Proposition 103 mandates that no rate shall be "inadequate" or "excessive," so the Trailer Bill tracks this rule. If an insurer agrees with the CDI's calculation, it could accept the CDI's numbers and the matter would be concluded. If the insurer believes the CDI's calculation is too low, then

the parties can take another 30 days to discuss the matter, for an unlimited number of 30 day increments, with the CDI republishing its numbers monthly.

<u>Letter Argument #1: The Trailer Bill does not force the CDI to approve a rate application with inadequate information</u>

Nowhere in the Trailer Bill is a requirement that the CDI approve a rate based upon incomplete information. If an insurer fails to submit “complete” information, the CDI would not even issue a public notice to start the 60-day clock. If, somehow, after receiving a <u>complete</u> rate application and 4 months of public back-and-forth, the CDI would decide that it lacked sufficient information to be certain about its rate calculation, the CDI could publish a rate calculation with the lowest numbers possible for the rate formula and produce an absurdly low calculation. There is not an example in the last 30 years of an insurer accepting such a calculation.

<u>Argument #2: The Trailer Bill does not prevent meaningful intervenor participation</u>

<u>Current</u> law requires intervenors to state their position on an insurer’s <u>complete</u> rate application no later than 45 days after public notice. In practice, the only regular intervenor group, Consumer Watchdog, submits generic objections to rate applications with no evidence they actually reviewed the filing and, then, they usually take months to commence meaningful participation in a rate filing. It is not surprising that they feel threatened by a proposal that requires diligent and timely participation in the rate application process.

Recently, the CDI denied two intervention petitions because they contained no useful information and merely repeated cookie-cutter objections with no application-specific content. Rightfully, the CDI sent them away and indicated they could attempt to intervene at a later date if they put in sufficient effort to demonstrate a legitimate concern.

The Letter states that the Trailer Bill would “give the Commissioner the ability to approve a rate hike before the intervenor’s petition to participate is approved.” They cite no part of the Trailer Bill for this proposition. The Trailer Bill does nothing to stifle their participation. All the Trailer Bill says is that, by day 60, if the CDI wants an additional 30-day period of review, it must publicly disclose what matters are resolved and unresolved. Under the proposal, the CDI would have at least two weeks to consider an intervenor’s position before this first public disclosure and could decide whether the intervenor has raised any good points.

We believe Consumer Watchdog’s real concern is that the Trailer Bill would no longer reward them for submitting generic objections with little information specific to that rate filing. If they would continue to copy and paste paragraphs from previous petitions, they would not have their arguments included in public CDI notices. We understand why they would object to a process focused on ensuring timely work.

<u>Argument #3: The Trailer Bill would not change 30+ years of insurer behavior</u>

The Letter contains an odd fabrication about how the current system works. It states that the Trailer Bill would encourage insurers to file rate applications for less than 7%, <u>as if that has not been the practice for the past 30+ years</u>. Except for the last few years of unprecedented, large rate increase requests, the entire history of Proposition 103 is of insurers requesting small rate increases, less than 7%.

Seven percent is an important part of Proposition 103. Under Section 1861.05(c), if an insurer files for a rate increase of 7% or greater, an intervenor can force the matter to a rate trial even if the CDI thinks the rate increase is justified. So, not surprisingly, since the early 1990's, insurers have regularly filed rate increase requests below 7% - to avoid obvious coercion. The Trailer Bill language does not change this practice.

More interestingly, the Letter fails to point out what happens <u>today</u> when an insurer does file above 6.9% and faces an intervenor demanding a hearing. Under a rule announced in **2005** by then-Commissioner John Garamendi, the CDI made it clear that, for filings of 7% or more with an intervenor, insurers have the ability to withdraw the filing and refile at 6.9% -- thereby, removing the intervenor coercion. In practice, when this type of circumstance has arisen, the CDI has permitted the insurer to amend its filing to 6.9%, rather than going through a re-filing process. The 2005 bulletin is attached at the end of this letter.

<u>Argument #4: The Trailer Bill continues to treat intervenors as relevant participants but not state actors</u>

The Letter, lastly, criticizes the Trailer Bill because it does not elevate intervenor arguments to the equivalent of CDI official positions. They want the Trailer Bill to require their arguments, regardless of whether the CDI thinks they have merit, to be treated as arguments that the insurer must resolve. The criticism is telling for the level of hubris it displays.

Proposition 103 allows the public to participate by making arguments to the CDI. Proposition 103 does not make members of the public into decision-makers. The elected insurance commissioner and CDI staff retain that right on behalf of the people of California.

The Trailer Bill, rightly, retains focus on the rate review responsibilities of the State of California. It requires the CDI to publish its view of a rate filing starting at 60 days after they deem an application "complete," and every 30 days thereafter. If the CDI receives information from an intervenor and believes it is worthy of consideration, the CDI can adopt the argument and publish it. However, if the CDI believes an intervenor's argument is not worthy, it can set it aside. That's the way the current process works.

If the signers of the Letter want their arguments included in a CDI summary of issues, then they should advocate their positions to the CDI and convince them. It is the responsibility of the rate applicant to answer all questions deemed necessary <u>by the</u>

CDI. Intervenors do not get to define what issues are necessary for a rate approval. The CDI does.

Conclusion

The current insurance rate review and approval process needs reform to help restore insurance availability and reliability. Nowhere in the Letter is there the slightest acknowledgement of the well-documented flaws in the system that have led to the current homeowners' insurance market crisis.

Rate review times of a year or more happen regularly. It is a frequent occurrence for months to go by with no notice to the applicant or public as to why rate filings are languishing. The Trailer Bill simply says that the CDI must publicly announce its viewpoint on a filing in order to seek additional review time after 60 days. And, after a reasonable period of time, 4 months, the Trailer Bill would require the CDI to announce its calculations.

Real people are hurting in the current insurance market. We need to fix the rate review process to increase public transparency and accountability and restore a healthy and competitive insurance market.

While the Trailer Bill is not perfect, we believe it is an improvement over the current, opaque system.

Sincerely,

Rex Frazier	Seren Taylor	Allison Adey
President	Vice President	Legislative Advocate

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300 Capitol Mall, 17th floor
Sacramento, CA 95814
www.insurance.ca.gov

ADVISORY NOTICE

DATE: **FEBRUARY 18, 2005**

TO: **ALL PROPERTY AND CASUALTY INSURERS SUBJECT TO PROPOSITION 103 AND OTHER INTERESTED PERSONS**

SUBJECT: **RATE INCREASE APPLICATIONS WHICH EXCEED THE STATUTORY THRESHOLDS SET FORTH IN CALIFORNIA INSURANCE CODE SECTION 1861.05(c)(3).**

The purpose of this advisory notice is to explain how the Department handles applications for rate increases when the following two conditions exist: first, the rate increase sought in the original rate application (the"proposed rate adjustment") exceeds the applicable threshold set forth in California Insurance Code ("CIC") Section 1861.05(c)(3). Second, a consumer or his or her representative ("consumer representative") has requested a hearing on the rate application.

When these two conditions are met, the Department will initiate joint discussions that include the consumer representative and the applicant regarding the rate application. If the applicant submits any written or electronic data or correspondence regarding the application to the Department, the applicant must also send a copy to the consumer representative.

If the applicant, consumer representative and Department agree to a specific rate change the applicant may amend its rate application to request the agreed rate change. However, if the applicant, consumer representative and Department do not all agree to a specific rate change the applicant will have two options: the applicant may pursue the rate increase in a public hearing pursuant to CIC Sections 1861.05 and 1861.08 before the Department's Administrative Hearing Bureau, or the applicant may withdraw the rate application.

An applicant may withdraw an unapproved rate application at any time prior to issuance of a notice of hearing on the application. When a notice of hearing is issued the matter is referred to the Administrative Hearing Bureau. After the matter is referred to Administrative Hearing Bureau withdrawal may be permitted under certain circumstances. After an applicant withdraws a rate application, the applicant may file a new rate application at any time. The new rate application will be considered independently and will not be prejudiced by the existence of the prior rate application or any prior request for hearing.

Inquiries about this notice may be addressed to Daniel Goodell, Senior Staff Counsel, California Department of Insurance, 45 Fremont St., 21st floor, San Francisco, CA 94105. (415) 538-4191.

JOHN GARAMENDI
Insurance Commissioner