

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE APPEAL OF)
RIDER INSURANCE COMPANY FROM)
THE DECISION OF THE NEW JERSEY)
PERSONAL AUTOMOBILE INSURANCE) DECISION
PLAN AND THE NEW JERSEY SPECIAL) AND ORDER
AUTOMOBILE INSURANCE PLAN)

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”) pursuant to the authority of N.J.S.A. 17:1-8.1, N.J.S.A. 17:29D-1, N.J.A.C. 11:3-2.12 and 11:3-2A and Article 18 of the New Jersey Special Automobile Insurance Plan, (“NJSaip”) Plan of Operation and Article 16 of the New Jersey Personal Automobile Insurance Plan (“NJPAIP”) Plan of Operation and all powers expressed and implied therein. In accordance with N.J.A.C. 11:3-2.12, any appeal of a decision by the NJPAIP which administers the NJSaip, may be petitioned for review by the Commissioner. On or about October 23, 2014 (received October 27, 2014), Rider Insurance Company (“Rider”) filed this appeal from an October 6, 2014 decision of the Appeals Subcommittee of NJPAIP (“Appeals Subcommittee”).

Procedural History

On July 16, 2014, Rider filed an appeal of its 2012, 2013 and 2014 assessments levied under NJPAIP and NJSaip to the Appeals Subcommittee, pursuant to Article 16 of the NJPAIP Plan of Operation, and Article 18 of the NJSaip Plan of Operation. The assessments were based on Article 6 of the NJPAIP Plan of Operation and Article 7 of the NJSaip Plan of Operation,

and reflected Rider's apportionment of NJPAIP and NJSAIP expenses based on its voluntary writings.

In its appeal to the Appeals Subcommittee, Rider asserted that it owed no assessment other than the minimum fee for insurers who are licensed but do not write automobile insurance, since Rider only writes motorcycle insurance. Rider alleged that both the NJPAIP and NJSAIP ("the Plans") improperly applied the Plan rules and were responsible for the improper administration of the Plans with regard to the assessments for the years indicated. Rider requested reimbursement totaling \$89,974.68, which represented the amount paid in assessments for 2012, 2013 and 2014 for both the Plans, less a \$100 minimum fee for each Plan in those years. During the argument of the appeal, Rider withdrew its request for reimbursement for 2012 assessments, acknowledging that they were not within the period of appeal specified in the Plans of Operation.

As to the NJPAIP assessments, Rider argued that a plain reading of the NJPAIP Plan of Operation, Article 6 limits the assessment to those companies not writing automobile insurance to the \$100 minimum. NJPAIP Plan of Operation, Article 6 provides that "[n]o assessment other than the minimum annual fee shall be levied against an insurer which has written no automobile liability or physical damage insurance other than for [NJPAIP] insureds during the period for which the quotas are based." As to the NJSAIP assessments, Rider argued that NJSAIP Plan of Operation, Article 7 provides that "[n]o assessment other than the minimum annual fee shall be levied against an insurer which has written no automobile liability insurance other than for [NJPAIP] insureds during the period for which the assessment is based." For both, Rider asserted that it is the only insurance company that writes only motorcycle insurance, and thus, it should not be subject to the same assessments as companies writing automobile policies.

On September 2, 2014, the NJPAIP and NJSAIP filed a response, arguing that the assessments were appropriate and Rider's appeal should be denied. The Plans argued that Rider is required by law and the Plans' rules to pay the apportioned assessments. Rider actively writes motorcycle insurance, which for the purpose of both NJPAIP and NJSAIP assessments is "automobile insurance."

As to the NJPAIP assessment, the Plans argued that insurers admitted to transact any line of insurance in New Jersey are required to participate in NJPAIP (N.J.S.A. 17:29D-1), and all insurers writing private passenger automobile insurance, including motorcycles are required to participate in NJPAIP (N.J.A.C. 11:3-2.1 (participation) and N.J.A.C. 11:3-2.2 (definition of "automobile" includes motorcycles)). The NJPAIP Plan of Operation, Article 6, which was approved by the Commissioner, provides for the assessment of all participating insurers and the basis for the calculation of each insurer's share.

As to the NJSAIP assessment, the Plans argued that the NJSAIP Plan of Operation, Article 1.B. states that all subscribers to NJPAIP shall share in the premiums, losses and expenses of NJSAIP. N.J.A.C. 11:3-2A.3(a)(1)(ii) provides for "[t]he sharing of the premium, losses and expenses of the [NJSAIP] among the member insurers of the NJPAIP." Accordingly, the Plans properly assessed Rider.

On September 24, 2014, the Appeals Subcommittee heard oral argument on the appeal in Executive Session teleconference. As noted above, during the argument of the appeal, Rider withdrew its request for reimbursement for 2012 assessments, leaving the appeal limited to 2013 and 2014 assessments. On October 6, 2014, the Appeals Subcommittee rendered a written decision, denying Petitioner's appeal. The Appeals Subcommittee found that the 2013 and 2014 NJPAIP and NJSAIP assessments for Rider were properly administered by the Plans in

accordance with NJPAIP and NJSAIP rules and New Jersey law. Accordingly, the Appeals Subcommittee denied Rider's appeal.

Thereafter, the Petitioner filed this appeal to the Commissioner. In its appeal, Rider is seeking: 1) Reimbursement of \$23,861.55, representing Rider's NJSAIP assessments paid in 2013 and 2014 less the \$100 minimum NJSAIP fee for each of the two years; 2) A finding that Rider not be assessed any amount other than the minimum fee under NJSAIP going forward; and 3) A prospective rulemaking by the Commissioner which aligns specialty vehicle writers' assessments with their assignment under NJPAIP.

On November 13, 2014, the Plans submitted a response to Rider's appeal. In the response, the Plans contend that Rider's NJSAIP assessments were properly administered in accordance with NJPAIP and NJSAIP rules, as approved by New Jersey Department of Banking and Insurance ("Department"). Thus, Rider's appeal should be denied. In the alternative, the Plans argue that if Rider's appeal is granted, the Commissioner can only do so by proposing and adopting an amendment to N.J.A.C. 11:3-2A.1 et seq., and then the NJSAIP's Plan of Operation can be amended. In addition, the Plans argue that Rider's Petition for Rulemaking should be denied as it is not properly before the Department and is contrary to NJPAIP's enabling statute.

Discussion

I. Did the NJSAIP Properly Assess Rider?

In this appeal, Rider argues that it is inequitable to require it to subsidize the automobile market when it does not write automobile insurance and never has. The special automobile insurance policy ("SAIP policy") created by N.J.S.A. 39:6A-3.3 and administered by NJSAIP is not designed to be purchased by motorcyclists. Motorcycles are excluded from coverage under NJSAIP, and Rider does not receive any assignments under NJSAIP. However, Rider is

assessed under NJSAIP despite the fact that no motorcycles will ever benefit from the NJSAIP. Rider argues that because it could never receive assignments under NJSAIP, it should not be required to pay assessments to fund NJSAIP. Rider contends that the enabling statute does not mandate that result.

Rider argues that fundamental differences exist between the Plans and the Plans treat NJPAIP and NJSAIP differently; thus, for fairness and reasonableness, the assessments under NJSAIP for Rider should be treated differently and not be linked to the NJPAIP. First, motorcycles are excluded from the definition of automobiles under NJSAIP (since motorcycles are not entitled to PIP coverage) but are included under the definition of private passenger automobile found in NJPAIP. Second, the minimum annual fee in NJPAIP is \$200, \$100 each for liability and physical damage insurance. The minimum annual fee in NJSAIP is only \$100. Since NJSAIP does not include liability or physical damage insurance, and only provides one kind of insurance (PIP), it follows that there would be a different fee. Third, there are no assignments of motorcycles under NJSAIP since by definition motorcycles are not automobiles under NJSAIP. Rider states that there are, however, assignments of motorcycles under NJPAIP.

Additionally, Rider asserts that the “Exemptions” sections of N.J.A.C. 11:3-2.4 and NJPAIP, Plan of Operation, Article 5.D.1.c, allow insurers who have only insured certain types of automobiles, including motorcycles, to “participate in the NJPAIP but only for the particular type of automobiles currently being insured.” See N.J.A.C. 11:3-2.4(c). Rider states that N.J.A.C. 11:3-2.4(d)(ii) provides that in order to qualify for the exemption, the insurer must submit a “statement that the insurer is not required to participate in the NJPAIP or receive assignments through the NJPAIP.” Rider contends that the word “participate” is used interchangeably with the word “assessments.” Rider asserts that it should “participate” or be

“assessed” for only “the particular type of automobile currently being insured,” which in Rider’s case is only motorcycles. Since there are no assignments of motorcycles under NJSAIP, Rider should also not be assessed under NJSAIP, other than the minimum fee.

In response to Rider’s appeal to the Commissioner, the Plans contend that Rider’s NJSAIP assessments are consistent with the creation of NJSAIP. The Plans state that N.J.S.A. 39:6A-3.3 established a SAIP policy “...in order to assist certain low income individuals in the State and encourage their greater compliance in satisfying the mandatory private passenger automobile insurance requirements.” The creation of a SAIP policy was part of a larger reform of myriad laws governing automobile insurance. The Plans contend that the New Jersey Legislature intended that the SAIP policy not be considered a residual market policy issued through NJPAIP, but rather that it would be considered a voluntary market policy. As such, the New Jersey Legislature required NJSAIP policies to be administered by NJPAIP. See N.J.S.A. 39:6A-3.3c. The Plans noted that the Senate Commerce Committee’s statements to the legislation specifically noted that it, “...provides a comprehensive set of solutions to automobile insurance availability and affordability challenges facing insurers, consumers and regulators, in New Jersey. ...in the interest of availability it contends that the bill creates a new policy option with very limited benefits that will only be available to low income drivers who qualify for the Federal Medicaid Program.”

The Plans further note that as required, in 2003, the Department promulgated regulations to govern the manner in which NJSAIP policies would be funded and administered. When the regulations were proposed, the Department received no comments on the manner in which the proposed regulations sought to fund NJSAIP. Upon adoption, the regulations provided for the creation for a Plan of Operation which shall include, among other things, “the sharing of the

premium, losses and expenses of the [SAIP policies] among the member insurers of NJPAIP.” See N.J.A.C. 11:3-2A.3(a). Thus, all NJPAIP participants were required to pay for the funding of NJSAIP policies. The Plans contend that since Rider is eligible to receive NJPAIP assignments, and therefore is a NJPAIP participant, Rider is obligated to pay NJSAIP assessments.

The Plans state that requiring Rider to pay NJSAIP assessments when Rider receives no NJSAIP assignments may appear to be unjust. However, the Plans argue that Rider fails to realize that the requirement that NJPAIP member insurers fund the NJSAIP policies and the mechanism created to administer them was the result of specific action and policy determination by the New Jersey Legislature as it worked to create a system whereby all individuals, regardless of income, could obtain automobile insurance.

Additionally, the Plans assert that granting Rider’s appeal and eliminating Rider’s NJSAIP assessments will have an adverse financial impact on NJSAIP as other carriers similarly situated will argue for a decrease or elimination of their NJSAIP assessments. Further, the Plans argue that if the Department adopts a methodology as suggested by Rider that only writers of automobile insurance in New Jersey who receive assignments through NJSAIP are required to fund NJSAIP, all NJPAIP member insurers will be required to shoulder a higher percentage of the costs associated with funding and administering NJSAIP policies.

Finally, the Plans state that should the Department decide to grant Rider’s appeal, the Department can only do so by proposing an amendment to N.J.A.C. 11:3-2A-1 et seq. consistent with the Administrative Procedures Act. Thus, any amendment to the manner in which NJSAIP calculates its assessments and the insurers who are responsible for those assessments must be on a prospective basis, first allowing for adherence to the Administrative Procedures Act and

providing all interested parties the opportunity to comment. Only after an amendment to the regulations governing NJSAIP is adopted can NJSAIP's Plan of Operation be amended.

Analysis

N.J.S.A. 39:6A-3.3 establishes a special automobile insurance policy ("SAIP policy") in order to assist certain low income individuals in the State and encourage greater compliance in satisfying the mandatory private passenger automobile insurance requirements. SAIP policies are administered by the NJPAIP, and are assigned pursuant to the methodology of the Plan of Operation created by NJPAIP. See N.J.S.A. 39:6A-3.3e and f. SAIP policies are designed to provide only emergency personal injury protection ("PIP") coverage and a death benefit of \$10,000. See N.J.S.A. 39:6A-3.3b. Motorcycle policies are not required to provide PIP coverage for anyone other than pedestrians. ("Motorcycle" not included in definition of "automobile" in N.J.S.A. 39:6A-2a.)

There are two components of the NJSAIP at issue here: assignments and assessments. SAIP policies are administered by the NJPAIP in accordance with a NJSAIP Plan of Operation, which is approved by the Commissioner. See N.J.A.C. 11:3-2A.3. The NJSAIP Plan of Operation is required to include, among other things, the procedure for writing of SAIP policies by: (i) assignment of SAIP policies to NJPAIP member insurers pursuant to the apportionment methodology of the NJPAIP Plan of Operation; or (ii) the sharing of the premium, losses and expenses of the SAIP policies among the member insurers of the NJPAIP. See N.J.A.C. 11:3-2A.3(a)(1). The regulations do not specify precisely how NJPAIP members should be assessed.

The NJSAIP Plan of Operation specifies both assignments and assessments in the NJSAIP system. For assignments, motorcycles are specifically excluded from eligibility for a SAIP policy; in other words, a SAIP servicing company will not receive an assignment of a

motorcycle risk to insure by NJSAIP. See NJSAIP Plan of Operation, Article 2, definition of “private passenger auto.” Motorcycles are excluded because the type of coverage provided by NJSAIP, namely, emergency PIP coverage, is not mandated to be provided in motorcycle insurance coverage.

As to assessments, the NJSAIP Plan of Operation provides that a purpose of NJSAIP is “to establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are subscribers in [NJPAIP], as defined in the [NJPAIP] Plan of Operation, for all risks qualified for coverage under [NJSAIP].” See NJSAIP Plan of Operation, Article 1.B. A subscriber to the NJPAIP shall be a subscriber to the NJSAIP. See NJSAIP Plan of Operation, Article 7.B. Further, each licensed insurer subscribing to the NJSAIP shall pay a minimum annual fee of \$100. For NJPAIP expenses over that amount, subscribers are assessed as follows:

Each subscriber’s ratio of Voluntary Private Passenger Nonfleet Written Car Years to the industry total written car years shall be used as the basis of apportionment of Plan expenses in excess of the minimum fee.
[See NJSAIP Plan of Operation, Article 7.B.1].

The NJPAIP Plan of Operation specifies both assignments and assessments in the NJPAIP system. For assignments, motorcycles are specifically included in the eligibility for a policy through NJPAIP. See NJPAIP Plan of Operation, Article 2.C.

As to assessments, the NJPAIP Plan of Operation provides that each licensed insurer subscribing to the NJPAIP shall pay a minimum annual fee of \$100 each for liability and physical damage insurance. For NJPAIP expenses over that amount, insurers are assessed as follows:

Each insurer’s ratio of Voluntary Private Passenger Nonfleet Written Car Years to the statewide industry total written car years shall be used as the basis of apportionment of all Plan expenses in excess of minimum fees.

[See NJPAIP Plan of Operation, Article 6.B.1].

Thus, the funding formula for NJSAIP is the same as NJPAIP; however, the types of coverages provided, the purposes and the insurer participation are different in each system.

The purpose of NJSAIP is to provide a low cost insurance policy designed to allow certain low income individuals an opportunity to comply with the mandatory insurance requirement. A NJSAIP policy provides only emergency PIP coverage. As noted above, motorcycles are not included in the type of risk that is eligible for a policy through NJSAIP.

The purpose of NJPAIP is to make automobile and motorcycle insurance coverage available for qualified applicants who are not able to obtain such coverage in the voluntary market, and to establish a procedure for the equitable distribution of risks assigned to insurance companies. The coverage available includes PIP, as well as bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorists insurance. See NJPAIP Plan of Operation, Article 2.D. For purposes of NJPAIP, motorcycles are included in the type of vehicles eligible to obtain coverage under NJPAIP. See NJPAIP Plan of Operation, Article 2.C. Thus, insurers who issue motorcycle insurance are eligible to receive an assignment of a policy and participate in the funding of NJPAIP through assessments.

Both NJPAIP and NJSAIP attempt to address issues related to automobile insurance in this State. Both attempt to equitably distribute risks and costs among those insurers in the specific market that write the required coverages under each plan. For NJPAIP, the coverage is private passenger auto, which for purposes of NJPAIP includes motorcycles. For NJSAIP, the coverage is emergency PIP, which does not include motorcycles. Thus, NJPAIP and NJSAIP serve different specific purposes and types of coverages. Currently, NJPAIP and NJSAIP

recognize those differences for purposes of assignment of risks. They do not recognize those differences, however, for purposes of assessments.

For 2013 and 2014, Rider was assessed because it is a NJPAIP subscriber, and thus a NJSAIP subscriber. Rider does not argue that the specific amount determined to be its assessments was in error or that it should not be required to pay the \$100 annual fee required by NJSAIP Plan of Operation, Article 7.A., but argues that it should not be compelled to subsidize the NJSAIP system beyond the \$100 annual fee, a system from which it cannot and does not participate.

Based on the current NJSAIP Plan of Operation, the NJSAIP correctly assessed Rider for 2013 and 2014. Therefore, Rider's request for reimbursement of assessments for 2013 and 2014 is denied.

However, Rider is unique in this market, as it is the only insurance company that exclusively writes only motorcycle insurance. There are other insurance companies that write motorcycle insurance, but those companies also write private passenger automobile policies and/or other miscellaneous type vehicles, included in the definition of "private passenger auto" as defined by NJSAIP Plan of Operation, Article 2. As noted above, no SAIP policy can be written to cover a motorcycle. The NJSAIP Plan of Operation compels Rider to pay NJSAIP assessments into a system under which it does not and cannot participate. This approach does not appear consistent with an underlying premise of the NJPAIP and NJSAIP systems; i.e., that insurers should collectively share in the risks and burdens of the systems in which they participate. As noted by Rider, they are eligible to participate and have been assigned in the NJPAIP (even if the assignments are limited to motorcycles, and consist of only one in the past

three years). Rider is part of the “automobile” system envisioned by NJPAIP, and is assessed accordingly.

Based on the above and consistent with the enabling statutes, prospectively Rider or any other insurer which is a subscriber of NJPAIP but does not write any “private passenger auto” as defined by NJSAIP should not be assessed any amount other than the minimum annual fee under NJSAIP so long as it does not write any “private passenger auto” as defined by the NJSAIP Plan of Operation, Article 2.

N.J.A.C. 11:3-2A.3(a)(1) does not need to be amended as it does not mandate the specific assessment at issue. As noted above, the regulations do not specify precisely how NJSAIP members should be assessed. Modification of the specific assessment formula may be accomplished by amending the NJSAIP Plan of Operation. Rider will continue to pay the \$100 annual fee by virtue of being a member of NJPAIP.

II. Rider’s Request for Rulemaking

Rider seeks a prospective rulemaking to revise the manner in which specialty companies such as Rider are assessed for NJPAIP. Specifically, Rider requests that the Commissioner revise N.J.A.C. 11:3-2.4 to require NJPAIP to develop a more equitable assessment formula which aligns the assessments with the assignments for a more fair and reasonable result. Rider asserts that the word “participates” means “assessments” in N.J.A.C. 11:3-2.4. Thus, that provision is not met unless NJPAIP is administered in a manner that differently assesses private passenger automobile carriers from specialty carriers that do not write private passenger automobile insurance. Rider states that it receives very few assignments through NJPAIP but it is “lumped in with all of the car, motor home, recreational vehicle and antique auto insurance

companies for the purposes of assessments.” Thus, Rider is disproportionately responsible for the cost of the NJPAIP. Moreover, Rider argues that inequity is wrongly imposed on such a small company that is servicing the owners of over 100,000 motorcycles on \$29 million in annual premium, supporting just 100 employees.

In response, the Plans argue that Rider’s request for rulemaking should be denied as it is not properly before the Department because it fails to comply with the statutory and regulatory requirements for a Petition for Rulemaking. In the alternative, if the Department accepts Rider’s request as a “Petition for Rulemaking,” the Plans argue that it should be denied because it is contrary to the NJPAIP’s enabling statute.

Analysis

To request a modification to a Department rule, interested persons must file a Petition for Rulemaking. Petitions for Rulemaking are governed by strict time-sensitive procedural rules. Accordingly, there are specific requirements that a Petition for Rulemaking must contain in order to be considered as a Petition for Rulemaking, including the following:

1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner’s interest in the request;
4. References to the statutory authority for the Department to take the requested action; and
5. A caption at the top of the document identifying it as a petition for rulemaking pursuant to N.J.S.A. 52:14B-4(f) and [N.J.A.C. 11:1-15.1 et seq.].
[See N.J.A.C. 11:1-15.2].

Moreover, Petitions for Rulemaking must be sent to the Department, Legislative and Regulatory Affairs, to the attention of Rulemaking Petitions. See N.J.A.C. 11:1-15.2(b). Any request, “which is not in substantial compliance...shall not be deemed to be a petition for a rule requiring further Department action...” N.J.A.C. 11:1-15.2(c).

Here, Rider's rulemaking request presented as a legal argument in an appeal filed pursuant to N.J.A.C. 11:3-2.12 fails to comply with N.J.A.C. 11:1-15.2. Accordingly, Rider's request for prospective rulemaking is not deemed a petition for rulemaking requiring further Department action.

Decision

For the foregoing reasons, I AFFIRM the October 6, 2014 Appeals Committee decision regarding the 2013 and 2014 NJPAIP assessments of Rider and DENY Rider's request that it be reimbursed those assessments. I find that the decision of the NJPAIP Appeals Subcommittee is consistent with the current NJSAIP Plan of Operation.

In addition, in order to maintain consistent application of the NJPAIP and NJSAIP Plans of Operation with regard to assignments and assessments, I hereby DIRECT that the NJPAIP shall submit an amendment to the NJSAIP Plan of Operation to me for approval within 30 days of the issuance of this Decision and Order that amends the NJSAIP Plan of Operation, Article 7, Cost of Administration and SAIP Settlement, to provide that Plan Assessments above the minimum \$100 assessment will not apply to insurers that **ONLY** write miscellaneous type vehicles that cannot be assigned NJSAIP policies. Insurers that write a mix of private passenger automobile insurance and miscellaneous type vehicles would still be subject to the assessment. The \$100 annual subscriber fee will continue to apply to such insurers so long as they are subscribers of NJPAIP.

Lastly, pursuant to N.J.A.C. 11:1-15.2(c), I hereby DENY Rider's request for rulemaking.

11-26-14
Date

A handwritten signature in black ink, appearing to read 'K. Kobylowski', written above a horizontal line.

Kenneth E. Kobylowski
Commissioner

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