Consumer Watchdog

January 27, 2020

VIA OVERNIGHT MAIL AND EMAIL

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Mercury Insurance Group / California Automobile Insurance Company
Private Passenger Auto Prior Approval Rate Application (19-4239)

Dear Commissioner Lara:

Tomorrow, January 28th, the Department will conduct an informal, pre-notice workshop on whether to allow insurance companies to consider a person's job and their level of education to set auto insurance premiums, an issue we and ten other civil rights and public interest organizations brought to your attention in February 2019. As part of its September 2019 investigatory hearing into this practice, the Department found insurance companies' use of a driver's occupation and education level to set premiums creates "wide socioeconomic disparities,"[1] which you said were "disturbing" and promised that, "I am prepared to act to ensure all Californians have access to affordable auto insurance regardless of their income, education, or ethnicity."[2] We were glad to hear it, because we believe the current practice of arbitrarily surcharging drivers based on their education level and occupation violates Proposition 103 (Sections 1861.02, 1861.05).

Nevertheless, in the intervening four months since the investigatory hearing, the Department continues to approve rate applications that will continue these discriminatory surcharges. To add insult to injury, on the eve of the pre-notice workshop convened to address this discriminatory practice, the Department appears poised to approve another rate increase charging low-income, less-educated drivers more.

On November 7, 2019, Mercury Insurance Company's "substandard affiliate" California Auto Insurance Company (CAIC) filed a Rate Application with the Department seeking approval to increase its premiums by 5%. The public was notified of the application on December 6, 2019. In analyzing the details of Mercury's request, Consumer Watchdog noticed that Mercury was proposing not just a 5% increase to its premiums—but *an increase in the surcharge to drivers not employed in a preferred occupation that requires a college degree or professional license.*

[1] Press Release, California Department of Insurance, Commissioner Lara Sees "Disturbing" Disparities in Auto Insurance Discounts for Millions of Drivers (Sept. 24, 2019).
[2] *Id*.

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For example, according to the current base rates, drivers eligible for the "Basic Program" (*i.e.*, insureds not employed in one of CAIC's preferred professional occupation groups) pay 12% more than engineers—one of Mercury's preferred occupation groups. In CAIC's proposed base rates, drivers in the "Basic Program" will now pay 16% more than engineers. Moreover, whereas educators under the current base rates were surcharged less than half a percentage point more than engineers, educators will now pay 7.77% more than engineers.[3] Thus, despite assurances to address these unjustified and unlawful surcharges, the harm to communities of color and blue-collar California drivers is growing, forcing people who do not qualify for special treatment to subsidize the premiums of those in elite professions like doctors, engineers, and CPAs.

On March 1, 2019, the Department notified the public of Farmers Insurance and its affiliates' Prior Approval Rate Applications where it proposed to implement a three-tiered rating system under which doctors, engineers, accountants, and scientists ("Business and Professional Group I") are offered the special privilege of the lowest rate, its "Business and Professional Group II" (including police officers, firefighters, and nurses) pay up to 7.19% more than "Business and Professional Group I," and all others, including janitors, factory workers, and waiters who do not have one of these preferred occupations pay up to 13.81% more, all other characteristics being equal. Overall, more than 60% of Farmers' auto insurance business is subjected to higher base rates based solely on the rated driver's occupation. Consumer Watchdog filed a petition for a hearing on this application, under Ins. Code section 1861.05, and sought more information regarding the justification for Farmers request. But the company declined to provide any information, stating it had no records related to how it chose occupations eligible for the Business and Professional Groups, and that other data it had provided to the Department was confidential and not material to the application – itself a violation of Proposition 103's public disclosure requirements. (Ins. Code § 1861.07.) Equally shocking was Farmers' assertion that information showing the risk of loss and predictive value for its preferred occupations is immaterial to the filing. The Department approved this filing over Consumer Watchdog's objections on December 23, 2019. *See* Consumer Watchdog's November 13, 2019 letter to the Commissioner *In the Matter of the Rate Applications of Farmers Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange*, File No. PA-2019-00004.

On April 24, 2017, Consumer Watchdog filed a petition for hearing challenging Mercury Insurance Company's class plan applications on the basis that, *inter alia*, Mercury unlawfully considered a driver's education and occupation in the setting of premiums. Mercury's underwriting guidelines state that to receive a "premium reduction" engineers and scientists must have "a Bachelor's degree (or higher degree)" or be licensed in one of a specified number of engineering fields or physical sciences. Mercury's underwriting guidelines did not specify the amount of the "discount" or "premium reduction." But using data contained in the filing, Consumer Watchdog was able to determine that Mercury was charging 7-19% more to drivers who are not educators, scientists or engineers with a Bachelor's degree. Our analysis also

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[3] In reviewing CAIC's Rate Application, we note there is a discrepancy as to the change in base rates by coverage provided in their Exhibit 12 (Rate Manual) as compared to the proposed rate changes in their Exhibit 14 (Rate Distribution). The calculations set forth above are based on the base rates provided in Exhibit 12.

revealed that Mercury was not complying with Department rules governing how rate changes are calculated, and Mercury refused to provide other necessary information in response to our requests. The Department declined Consumer Watchdog's request for a hearing and approved Mercury's flawed filing on May 16, 2019. *See* Consumer Watchdog's April 1, 2019 letter to the Commissioner *In the Matter of the Class Plan Applications of California Automobile Insurance Company and Mercury Insurance Company*, File No.: PA-2017-00009.

Each time that Consumer Watchdog has challenged an insurance company's rate or class plan application, the Department has approved the filings notwithstanding our objections. In the most recent instance concerning the Farmers application, the Department declined to address our objections, noting that it had announced "a public *discussion* to *explore* a *possible* rulemaking" to address the matter we brought to your attention, and that "it would be inefficient for the Department to adjudicate individual insurers' existing group plans in individual rate applications, and that such piecemeal adjudication may create further inequities in the market." *In the Matter of the Rate Applications of Farmers Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange*, File No. PA-2019-00004, Decision Denying Petition for Hearing (Dec. 23, 2019).

While we support the efficient use of the Department's resources, and are well aware of the complexities of individual adjudications, we note that everything changed when the Department confirmed that companies' current use of occupation and education is discriminatory.

The Department's continued approval of these discriminatory filings requires urgent action to address this long-standing injustice for California motorists. Only by beginning a formal rulemaking barring the industry's discriminatory use of occupation and education will the public interest be protected.

Sincerely,

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