

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE:

APPEAL OF DISAPPROVED RATE  
FILINGS BY PROGRESSIVE CASUALTY  
INSURANCE COMPANY, PROGRESSIVE  
NORTHWESTERN INSURANCE  
COMPANY, PROGRESSIVE NORTHERN  
INSURANCE COMPANY, AND UNITED  
FINANCIAL CASUALTY COMPANY

Docket No. INS-15-1001

**ORDER ON CONFIDENTIALITY**

By correspondence dated September 28, 2015, Progressive Casualty Insurance Company, Progressive Northwestern Insurance Company, Progressive Northern Insurance Company, and United Financial Casualty Company (collectively, the “Insurers”) requested that “all materials in this filing and appeal” be deemed confidential and, therefore, exempt from public disclosure. The Insurers reasoned that this is an appeal of disapproved rate filings which are made confidential,<sup>1</sup> and this same confidentiality should equally apply on appeal.

The Bureau Staff Advocacy Panel, by correspondence dated October 28, 2015, challenged the Insurers’ confidentiality request in so far as it could be considered to seek confidentiality for “the entire appellate proceeding [INS-15-1001] and documents created in its course.” The Advocacy Panel reasons that the Insurers’ request is contrary to statute, citing both 24-A M.R.S. § 2304-A(7) and provisions of Maine’s Freedom of Access Act (1 M.R.S. §§ 400–414)<sup>2</sup>. While the Advocacy Panel recognizes that section 2304-A(7) makes rate filings and supporting information “confidential until approved”, the Panel argues that such confidentiality does not apply, per the statute’s terms, to appeals from disapproved rate filings. Accordingly, the Panel requests that the Superintendent deny the Insurers’ September 28 confidentiality request insofar as it constitutes a request for confidentiality beyond that available under Maine law.

---

<sup>1</sup> Per 24-A M.R.S. § 2304-A(7), “a rate filing and supporting data are confidential until the filing is approved.”

<sup>2</sup> Specifically, sections 402(2) and 403(1) which require that transactions by any agency of any function affecting Maine citizens must, unless otherwise exempted by statute, be open to the public.

By response, submitted October 30, 2015 (dated October 28), the Insurers objected to the Advocacy Panel's position to the extent the Panel seeks to make public the rate filings that are the subject of this appeal, and their supporting data. The Insurers explained that they "view[] and [are] treating all documents, exhibits, and other data or information produced or introduced in this proceeding as rate filing 'supporting data,'" which material is confidential unless and until the filing is approved, per section 2304-A(7). The Insurers further explained that they "limited [their] request" for confidentiality to "all materials in this filing and appeal" rather than requesting that "the appeal itself and hearing be private."

The Superintendent is ever mindful and respectful of his statutory obligation to conduct the people's business with transparency and openness to the greatest extent possible. *See* 1 M.R.S. § 401 ("The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.") Without doubt, however, the Superintendent must balance this overarching transparency objective with the express statutory language exempting from public access "[r]ecords that have been designated confidential by statute."<sup>3</sup> *See* 1 M.R.S. § 402(3)(A).

The Advocacy Panel appears to acknowledge, as it must, that section 2304-A(7) is a confidentiality statute within the meaning of section 402(3)(A), thereby making the Insurers' disapproved rate filings and supporting data exempt from public access. The confidentiality dispute between the Panel and the Insurers, therefore, centers on the breadth, extent, and/or duration of that statutory confidentiality.

Where a rate filing is disapproved, the Superintendent interprets the statutory confidentiality provided by section 2304(7) to continue, as to the disapproved rate filing and supporting data for such filing, during the pendency and following an appeal such as that presented in this proceeding. However, the Superintendent rejects the Insurers' claim that such confidentiality as provided under section 2304(7) applies to "**all** documents, exhibits, and other data or information produced or introduced in this proceeding." (Emphasis added.) Contrary to the Insurers' apparent "understanding" (*see* October 30 response), this has never been the Superintendent's position. Rather, as the posting of certain material on the Bureau's webpage demonstrates, not all filings in this proceeding have been treated confidential—nor should they be.<sup>4</sup>

As the Superintendent sees it, what is public includes matters such as: (1) that Bureau staff disapproved the Insurers filings on the ground that they violate 24-A M.R.S.A. § 2916 (which prohibits auto insurance rate increases "for the sole reason that the person to whom such

---

<sup>3</sup> This balancing of competing interests is influenced by the further legislative pronouncement that Maine's Freedom of Access Act "shall be liberally construed and applied to promote its underlying purposes and policies" for transparency. 1 M.R.S. § 401.

<sup>4</sup> *E.g.*, Notice of Proceeding, Insurers' September 28 confidentiality request, Insurers' and Panel's motions for enlargement, Insurers' and Panel's first information requests, Panel's October 28 objection to confidentiality, Insurer's October 30 confidentiality response. *See* [http://www.state.me.us/pfr/insurance/Admin\\_Enforcement\\_Actions/Other\\_Hearing\\_Types.html](http://www.state.me.us/pfr/insurance/Admin_Enforcement_Actions/Other_Hearing_Types.html).

policy has been issued has reached a certain age”); (2) that there is a dispute between Bureau Staff and the Insurers over the interpretation of that statute; (3) Bulletin 334, issued by former Superintendent Iuppa in 2005 (which sets forth an interpretation of that statute relevant to the dispute); (4) that the Insurers have jointly appealed the rate disapprovals, in a proceeding in which the differing interpretations of section 2916 are a central issue (and perhaps the only issue); and (5) the identification numbers of the disputed rate filings (which reveal nothing about their substance). Other non-confidential matters or documents may include broad subject areas of discovery (*i.e.*, information requests, as opposed to the detailed responsive data), procedural filings and rulings, legal argument on the meaning and interpretation of section 2304(7) and/or Bulletin 344, etc. However, prosecuting this appeal does not necessarily require the Insurers to waive the confidentiality of any part of the underlying disapproved rate filings and supporting data, other than the general information that has already been disclosed in the Notice of Proceeding. To the extent that the dispute is over whether Bulletin 334 is the correct interpretation of section 2304(7), that issue can be resolved without revealing any confidential information about the disapproved rate filings.

For the reasons articulated, the Superintendent will consider and treat some but not all information in this proceeding as confidential.<sup>5</sup> Accordingly, the Insurers’ request for blanket confidentiality for “all of the documents, exhibits, and other data or information produced or introduced in this proceeding” is DENIED. Rather, the Superintendent will undertake a balancing approach to evaluating confidentiality, as may be necessary from time to time throughout the proceeding.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

November 2, 2015



ERIC A. CIOPPA  
Superintendent of Insurance

---

<sup>5</sup> For example, the Insurers’ June 16, 2015 rate filings and supporting data, as filed electronically with the Bureau and designated SERFF Tracking #'s PRGS-130121409 and PRGS-130121425, which are the disapproved filings that are the subject of this proceeding, are and continue to be confidential per 24-A M.R.S. § 2304(7). Correspondingly, rating information or data, such as base rates and/or rating factors, and premium information derived from the June 16 filings are and continue to be confidential.