STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to Pure Premium Rates for workers' compensation insurance, California Workers' Compensation Uniform Statistical Reporting Plan—1995, and the California Workers' Compensation Experience Rating Plan—1995. These regulations will be effective on July 1, 2007.

FILE NUMBER REG-2007-000015

DECISION AND ORDER[1]

1. Decision on Pure Premium Rates

My Department's Senior Actuaries have reviewed the Workers' Compensation Insurance Rating Bureau's (WCIRB) filing and determined that the Pure Premium Rates should be reduced more than recommended by the WCIRB. I agree with the Department analysis and am ordering the Pure Premium Rates be decreased by 14.2% (-14.2%) from their current level.

2. Problems with Analysis and Forecasting by the WCIRB

As noted in the Proposed Decision, the WCIRB has had to deal with rapid and substantial changes to the workers' compensation system. Nonetheless, the WCIRB has a history of inaccuracy in evaluating changes to the workers' compensation system. The pre-reform recommendations for Pure Premium Rates between 1995 and 2000 underestimated by 20% to 60%, and the post-reform recommendations between 2004 to 2006 overestimated by 30% to 50%. Despite the difficulty in doing such forecasts, based upon the Department's analysis, it appears that greater levels of accuracy can and should be achieved. The failure to be more accurate adversely impacts the workers' compensation marketplace.

[1] My powers as Insurance Commissioner with regard to workers' compensation insurance rates are limited to issuing only an advisory decision on workers' compensation insurance pure premium rates and examining the rates filed by insurers for inadequacy and unfair discrimination. California insurance law requires the WCIRB to analyze past cost trends and advise me on the pure premium rates necessary to pay the anticipated claims in the next year or within the next six months for an interim rate. I am required to conduct a hearing on the proposed rate change and then render a decision on the proposal. This decision then becomes an advisory rate increase or decrease for the workers' compensation insurance industry. However, I have no power to require insurers to increase or decrease their rates, and the insurance companies are free to set their rates at any level so long as those rates are not so low as to adversely affect their financial stability or unfairly discriminatory.

The WCIRB must evaluate its own performance in forecasting, and must determine how it can do a better job. Therefore, I am ordering the WCIRB to follow the recommendations discussed in the Proposed Decision in re-evaluating its methods when recommending Pure Premium Rates. Specifically, the WCIRB must do the following:

a. The WCIRB shall establish a standing committee consisting of claims and legal experts, in addition to the actuarial and statistical experts that it already utilizes, to regularly review and evaluate developments in workers' compensation claims trends and changes to workers' compensation law;

b. The WCIRB shall evaluate and utilize different methodologies and review alternate viewpoints in making its recommendations to me; and

c. In the future, along with its own final recommendation and underlying rationale, the WCIRB shall consider alternative calculations for the Pure Premium Rates adjustment, based upon its evaluation of all available and pertinent studies and evidence, all which shall clearly be set forth in its filings.

Finally, because frequency and severity of claims play an important role in evaluating Pure Premium Rates, WCIRB filings must pay more attention to these factors. I am therefore ordering the WCIRB to undertake a study of the effects of these factors and how they may be better evaluated and used in making recommendations for Pure Premium Rate changes.

3. Data Integrity

Some insurers have failed to comply with their data reporting requirements to the WCIRB, which has resulted in less than 90% of insurer data being available. This is unacceptable and must be addressed. I am investigating those insurers that have not complied with their data obligations and will take appropriate action to make sure that all data is properly reported, all taxes and assessments are paid by those insurers, and appropriate penalties brought against them for their noncompliance.

The WCIRB's standards and procedures must be evaluated from top to bottom to improve its data collection, development of forecasts, and its Governing Committee oversight. I shall be performing a comprehensive evaluation of the WCIRB to identify improvements that can be made in its role as California's sole rating organization and as my designated statistical agent.

4. Improving Workplace Safety and the Experience Rating Plan

From the evidence provided on Expected Loss Rates, it is clear that the Experience Rating Plan is not easily understood and therefore presents problems for both employers and insurance brokers and agents. The requirements of an Experience Rating Plan are reasonable eligibility standards, adequate incentives for loss prevention, and provisions for sufficient premium differentials so as to encourage safety. I am ordering the WCIRB to establish a Special Task Group to include the WCIRB, my staff, and representatives of employer groups, labor groups, agents and brokers, and insurers to review the current Experience Rating System and to make specific recommendations on how to simplify the system, maximize the incentives for loss prevention, and better promote workplace safety in a comprehensible program. Such a system

cannot promote safety unless it is clearly understood by the employers it affects. I am specifically directing the WCIRB to provide quarterly progress reports on its effort and to have a plan prepared to present to me by July 1, 2008, which includes objective milestones for incremental changes to the Experience Rating System to achieve these goals.

5. Workers' Compensation Goals of the Department of Insurance

The workers' compensation system must be efficient and effective in providing benefits to injured workers and, at the same time, provide affordable coverage for employers. In order to make sure that I am doing everything under my power to accomplish these goals, I have established the following priorities for the Department of Insurance:

a. Insurance Fraud

Fraud adds an unacceptable surcharge to the cost of insurance and must be dramatically reduced. I have established the Advisory Task Force on Insurance Fraud to look at all aspects of insurance fraud and determine the most effective ways to combat insurance fraud, including workers' compensation fraud. Additionally I am supporting efforts that assist in identifying those employers that do not have workers' compensation insurance and am urging the legislature to pass, and the Governor to sign SB 869 (Ridley-Thomas), a bill that allows the Department of Industrial Relations to use the insurance policy data of the WCIRB and the payroll data of the Employment Development Department, along with appropriate funding, to determine which employers are not insured for workers' compensation.

b. Insurer Claims Handling

Insurers are required to develop both standards for claims adjuster training and utilization review process to promptly and properly provide benefits to injured workers. I have directed the Department to evaluate insurer compliance with these requirements through market conduct examination of insurers and make sure those benefits to injured workers are delivered promptly. I will be working closely with the Division of Workers' Compensation in coordinating our review.

c. Workers' Compensation Insurance Competition and Rates

Workers' compensation insurance has again become a profitable business in California, thanks in large part to the reforms of the past several years. In such a vibrant environment, abundant opportunities exist for insurers wishing to enter, or re-enter the market. In order to encourage more insurers to return to California, I will hold a Workers' Compensation Summit to underscore these opportunities and to determine how to provide continuing stimulation to California's Workers' Compensation Insurance market and to increase the level of healthy competition between workers' compensation carriers to provide to California employers affordable workers' compensation insurance.

ORDER

I hereby adopt the attached Proposed Decision and Proposed Order of Hearing Officer Christopher A. Citko as my Decision in the above entitled matter in addition to those items ordered above.

IT IS SO ORDERED THIS 29th DAY OF May, 2007.

STEVE POIZNER
Insurance Commissioner