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SUBCHAPTER 20. REPORTING FINANCIAL DISCLOSURE AND EXCESS PROFITS

11:3-20.1 Purpose

This subchapter sets forth the financial disclosure and excess profits reporting requirements pursuant to N.J.S.A. 17:29A-5.6 to 17:29A-5.16.

Amended by R.1996 d.58, effective February 5, 1996.
Sec: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Case Notes

Insurance commissioner failed to utilize statutory rule-making procedures in changing evaluation of excess profits. American Employers' Ins. Co. v. Commissioner of Ins., Dept. of Ins., State of N.J., 236 N.J.Super. 428, 566 A.2d 202 (A.D.1989).

11:3-20.2 Scope

The provisions of this subchapter apply to all insurers authorized to transact private passenger automobile insurance business in this State.

11:3-20.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Actuarial gain” means the remainder obtained by subtracting the allowance for profit and contingencies from underwriting income, which remainder may be positive or negative.

“Allowance for profit and contingencies” means the amount that is determined by the Return on Equity formula in accordance with N.J.A.C. 11:3-16.10(a)1.

“AIRE Allocation” means the amount received exclusive of the company's share of Investment Income from the New Jersey Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39A:6A-22.

“AIRE Assessment” means the amount paid to the Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39:6A-22.

“AIRE Investment Income” means the company's share of Investment Income received from the New Jersey Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39:6A-22.

“ALAE” means Defense and Cost Containment Expense as stated on the statutory annual statement, formerly identified as Allocated Loss Adjustment Expense.

“AY” means Accident Year.

“CY” means Calendar Year.

“Calendar-accident year” means the period from January 1 to December 31, during which, in the appropriate context:

1. Premium or investment income was earned;
2. Expenses were incurred; or
3. Accidents occurred which resulted in losses, loss adjustment expenses, and/or net AIRE compensation (allocation and investment income or assessments).

“Car year” means the unit of exposure equivalent to the insuring of one automobile for 12 months, or two automobiles for six months each.

“Combined profit report” means the excess profit report consisting of the aggregated results of all members within an insurance holding company system.

“Commissioner” means the Commissioner of Banking and Insurance.

“Development adjustment” means the difference obtained by subtracting:

1. Loss and loss adjustment expenses for that calendar accident year, developed to an ultimate basis and evaluated as of March 31 of the year preceding the year in which the profit report required by N.J.A.C. 11:3-20.5 is due, plus net AIRE compensation for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year in which the profit report is due; from
2. Losses and loss adjustment expenses for the calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year in which the profit report is due, plus net AIRE compensation for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year in which the profit report is due.

“Direct business” means policies written by the insurer as the primary carrier, and does not reflect premiums ceded to or losses recovered from other carriers on account of reinsurance ceded, premiums received from or losses paid to other carriers on account of reinsurance assumed, or any expenses paid or incurred as a result of a reinsurance transaction.

“Excess liability” means personal catastrophe endorsements that may be purchased to cover excess personal automobile and homeowner's losses.

“Exempted types” are those kinds of coverage arising out of a specialty program which uses its own rates, rules, and policy forms which have been filed with and approved by the Department and does not include private passenger automo-

bile insurance coverage. "Exempted types" include, but are not limited to, motorcycles, "off-road" vehicles, motor homes, antique automobiles and excess liability.

"Extraordinary loss" means that portion of the loss above five percent of earned premium, determined over three calendar-accident years on an all coverage combined basis.

"IBNR" means Incurred but Not Reported.

"Insurance holding company system" for the purpose of the excess profits report means two or more insurers under the same ultimate common ownership each of whom writes private passenger automobile insurance in New Jersey.

"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance in New Jersey. Insurer does not include any residual market mechanism for automobile insurance for the purposes of this subchapter.

"LAD fees" mean a buy-out fee as defined in the New Jersey Personal Automobile Insurance Plan, Plan of Operation, Article 5, D8.

"Non-excessive subsidization" means the number of dollars of excess profit, as calculated pursuant to this subchapter, for an individual insurer within an insurance holding company system, that is less than or equal to .5 percent (one half of one percent) of its earned premiums for the three calendar-accident years immediately preceding the year in which the excess profit report is due to the extent that this excess profit has not been refunded or credited to policyholders.

"Page 14" means statutory Page 14 from the insurer's annual statement for New Jersey.

"Private passenger automobile insurance business" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.

"Subsidization" means the number of dollars of excess profit as calculated pursuant to this subchapter, for a member of an insurance holding company system, which has not been refunded or credited to policyholders.

"Total actuarial gain" means the sum of the actuarial gains for the seven calendar-accident years immediately preceding the due date of the profit report required by N.J.A.C. 11:3-20.5, less the development adjustments submitted at the option of the insurer for the calendar-accident years beginning with the 11th calendar-accident year immediately preceding the due date of the profit report and ending with the eighth calendar-accident year immediately preceding the due date of the profit report.

"UCJF" means the Unsatisfied Claim and Judgment Fund.

"ULAE" means Adjusting & Other Expense as stated on the statutory annual statement, formerly identified as Unallocated Loss Adjustment Expense.

"Underwriting income" means the remainder obtained by subtracting the sum of all losses developed to an ultimate basis, all loss adjustment expenses developed to an ultimate basis, and all other expenses exclusive of UCJF assessments, from the sum of premiums earned and net AIRE compensation developed to an ultimate basis, which remainder may be positive or negative.

"UCJF assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgment Fund pursuant to N.J.S.A. 39:6-63.

"UCJF reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgment Fund as a result of excess medical expense benefit payments by the insurer pursuant to N.J.S.A. 39:6-73.1.

Amended by R.1991 d.17, effective January 7, 1991.

See: 22 N.J.R. 2082(b), 23 N.J.R. 106(a).

Definitions added for "combined profits report", "non-excessive subsidization" and "subsidization".

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Revised "Insurer" definition by deleting NJAFIUA reference and added "... any residual market mechanism for automobile insurance ..." to text.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended "Anticipated investment income" and "Development adjustment".

Amended by R.1996 d.312, effective July 15, 1996.

See: 28 N.J.R. 1616(a), 28 N.J.R. 3627(b).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Amended by R.2002 d.386, effective December 2, 2002.

See: 34 N.J.R. 1093(a), 34 N.J.R. 4053(a).

Rewrote the section.

Amended by R.2004 d.97, effective March 15, 2004.

See: 35 N.J.R. 3098(a), 36 N.J.R. 1426(a).

Rewrote the section.

11:3-20.4 General reporting requirements

(a) The data in the reports required by this subchapter shall be for New Jersey voluntary private passenger automobile insurance and the Personal Automobile Insurance Plan only.

(b) Each private passenger automobile insurer, except as provided in (e) and (f) below, shall annually file with the Commissioner the data and information required by this subchapter on or before July 1 of each year. Filings shall be sent to the following address:

ATTENTION: Excess Profit Report
New Jersey Department of Banking and Insurance
Office of Property and Casualty
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

3. Insurers with less than 1,000 automobile inforce exposures as of December 31, 1983 and as of September 30, 1988. Insurers newly authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter until such time as the insurer has 1,000 or more automobile inforce exposures;

4. Insurers transacting automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal;

5. Insurers transacting automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-19 or 20, but only to the extent provided by the terms of the order;

6. Insurers transacting automobile insurance business subject to an order of administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., but only to the extent provided by the terms of such order; or

7. Insurers subject to any limitation on premium volume set forth as a condition of authorization or admission pursuant to N.J.A.C. 11:1-10.8(e) and (f) or 11:1-28.10(f) and (g), as applicable, but only to the extent of such limitation set forth in the authorization or admission or as modified thereafter.

8. Those territories in which an insurer is permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles or antique automobiles) shall comply with the requirements of (a) above, but only for the particular types of automobiles currently being insured.

(d) Insurers that currently provide, or have provided since December 31, 1983, only limited coverage (for example, physical damage coverage) shall comply with the requirements of (a) above, but only for the limited coverages being written.

(e) Insurers that are required to insure eligible persons, but that do not have a current personal lines automobile insurance rating system on file with the Department, shall file such a system with the Department in accordance with N.J.S.A. 17:29A-1 et seq. within 90 days of the effective date of this rule.

(f) Insurers identified within the provisions of (b), (c) or (d) above, shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the date of adoption of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC number and NAIC group number;

ii. A statement that the insurer is not required to comply fully with N.J.S.A. 17:33B-15;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with N.J.S.A. 17:33B-15;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

Division of Licensing, Enforcement and Consumer Protection
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 328
Trenton, NJ 08625-0328

Amended by R.1995 d.604, effective November 20, 1995.

See: 27 N.J.R. 2854(a), 27 N.J.R. 4717(c).

Administrative Correction.

See: 27 N.J.R. 4894(a).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

Added (b)8.

11:3-40.4 Penalties

(a) The Commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile business in this State of any insurer failing to comply with the provisions of this subchapter requiring that the insurer provide automobile insurance in accordance with N.J.S.A. 17:33B-15.

(b) In addition to or in lieu of the penalty set forth in (a) above, the Commissioner may impose a fine as provided in N.J.S.A. 17:33B-21 for any violation of the provisions of this subchapter.

(c) The Department shall follow the procedures set forth at N.J.A.C. 11:17D-2.1 in imposing the penalties set forth at (a) or (b) above.

SUBCHAPTER 41. (RESERVED)

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. (RESERVED)

SUBCHAPTER 44. SPECIAL RULES FOR
EFFECTING COVERAGE FOR PRIVATE
PASSENGER AUTOMOBILE INSURANCE**11:3-44.1 Purpose and scope**

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-15 and 18 which prohibit insurers, both individually and through their agents, from attempting to channel away eligible persons, with the effect of avoiding an insurer's obligation to provide private passenger automobile insurance coverage to eligible persons.

(b) This subchapter applies to all persons that are licensed and authorized to transact the business of personal private passenger automobile insurance in this State and all producers.

(c) This subchapter also implements the provisions of N.J.S.A. 17:29A-46.1 et seq., to afford insurers the opportunity to acquire and consider all relevant information necessary to rate policies properly and adequately.

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Added (c).

11:3-44.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common ownership and management with, another insurer.

"Business days" means all days other than weekends and official New Jersey State and Federal holidays.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Completed written application" means a signed written application that contains:

1. The minimum information necessary to determine if the applicant is an eligible person pursuant to N.J.A.C. 11:3-44.3(a);
2. The minimum information necessary to determine the appropriate rate and underwrite the policy;
3. A signed and completed coverage selection form as required by N.J.A.C. 11:3-15.6;

4. A copy of the motor vehicle registration of all vehicles insured under the policy;

5. A copy of one additional proof of New Jersey residency;

6. An acknowledgement of the requirement for insurance inspection form, where a physical damage inspection is requested; and

7. A copy of the applicant's driver's license, and the name and driver's license numbers of all regular operators of all vehicles insured under the policy, when authorized by the insurer's filed and approved rating plan.

"Days" means calendar days.

"Eligible person" means a person as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4.

"Insurer" means a person authorized to transact the business of personal private passenger automobile insurance in this State including insurers organized pursuant to N.J.S.A. 17:50-1 et seq.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

"Regular operator" means any person or persons, whether or not a member of the household of the primary insured, whose usage of the vehicle or vehicles may be considered in rating the policy as permitted by the insurer's approved rating plan.

"Transmit" means to mail or deliver by any means including, but not limited to, third class mail, certified mail, overnight delivery or express delivery, hand delivery and any transmission by wire, including, but not limited to, facsimile transmission or computer modem.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Deleted "Market Transition Facility".

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Rewrote "Completed written application"; added "Regular operator".

11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) The minimum information necessary to determine whether an applicant is an eligible person and to rate and underwrite the policy is as follows:

1. The desired effective date of policy;