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Date: June 6, 2008

From: Beaman Floyd
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To: Texas Sunset Commission

Re: Sunset Commission Draft Report on the Texas Department of Insurance
and the Office of the Public Insurance Counsel

Thank you for the opportunity to respond to the Sunset Advisory Commission Staff Report on the Texas Department of Insurance and the Office of the Public Insurance Counsel. We appreciate the work of the Sunset staff, and look forward to hearing its presentation at the upcoming Commission hearing.

The Texas Coalition for Affordable Insurance Solutions (“TCAIS”) focuses primarily on issues related to homeowners’ and personal auto insurance. Since the founding of our coalition, we have maintained consistent principles with which to judge policy initiatives. Those principles include the importance of a healthy competitive market, the value of consumer choice, and the elimination of insurance fraud. Because of our focus on personal lines insurance, we will confine our comments to sections of the report that might affect the regulation of these lines, or sections that involve entities that in turn affect the personal lines marketplace. In the interest of clarity, we will comment on the sections in order, and then provide a brief conclusion. All citations of the Staff Report will include page numbers as they appear on the copy of the report posted on the Sunset Commission website.

Issue 1- Rate Regulation for Homeowners’ Insurance Lacks Clarity, Predictability, and Transparency.

In general, TCAIS agrees with the key findings of the staff (p. 9). The report provides a good historical summary of the Texas insurance market in recent years and a very useful “snapshot” of the current marketplace (p. 15). The information is valuable both as a status report and as a background for recommendations to improve the market. In

particular, we agree with the staff's emphasis on the lack of transparency and predictability in the rate review process.

Staff did not offer a detailed interpretation of the current market, instead stating that "the Legislature cannot judge the shift to file-and-use rate regulation because the system has not been fully implemented (p. 15)." We agree that the file-and-use system is nowhere near full implementation. However, TCAIS observes that both the value and the potential of file-and-use can clearly be seen in the snapshot. The declines in rates and premiums, even with partial implementation, have already demonstrated the value of the system (one is hard pressed to name any other good or service in the Texas economy that has decreased in price on average in the last five years). The significant declines in the population of the market of last resort (FAIR Plan) is also a clear indication of an improved voluntary market.

Further, the new policy approvals and company writings indicate the immediate value of establishing a competitive system. We also note, however, that more companies filed new forms than are currently writing business with them. In addition, the new companies represent only 3.7% of the total homeowners' market. The snapshot illustrates optimism from these new companies that Texas has at last modernized its regulation to allow for a healthy competitive market. However, it also clearly shows hesitation to commit capital because of lingering worries over implementation. The question is not whether true market-based file-and-use is the right direction for Texas regulation, particularly since the system has clearly proven itself in other states and in private passenger auto and commercial lines here in Texas. The question is rather how much potential we are losing as a result of the key findings of unpredictability, uncertainty, and lack of full implementation (p. 9).

TCAIS supports recommendations 1.2 (better definition of the process for and tracking of information request by TDI), 1.3 (definition of factors for placing a company in prior approval), and 1.4 (evaluation of the need for a company to remain under prior approval) found on pages 16-17, which partially address the issues of uncertainty and unpredictability. These recommendations could improve the nuts and bolts of interaction between insurers and the department in rate review and disputes.

TCAIS has concerns about recommendation 1.1 (p. 16), the deemer date system for rate reviews. We agree that the department should not hold the possibility of a rate disapproval over a filing indefinitely. A deemer system, however, is traditionally a tool used in prior approval systems, and can be seen as a call to engage in the review of every filing instead of letting the market be the prime controller of rates. Past deemer systems used in Texas have resulted in heavy disapprovals by TDI based on lack of time for approval, or mass requests by TDI for companies to wave deemer dates to avoid such automatic disapprovals. TCAIS is concerned that the deemer concept, if implemented as in the past, could be a step away from the file-and-use competitive market sought by the Legislature.

TCAIS recommends that, instead of a deemer system, the Legislature institute an objective threshold that the department must meet before engaging in administrative

efforts to control the rates of individual companies. Such a threshold would better address the general concern expressed by Sunset staff over the implementation and predictability of the file-and-use system. The Commissioner would maintain full rate regulation authority in the case of insufficient competitive pressure, but would not be expected to intervene when the market is operating properly. This structure would preserve proper consumer protections while emphasizing the market as the primary regulator of rates. Further, it would allow companies to offer a full range of value to consumers in the marketplace, whether low rates, high levels of service, varying levels of coverage, or other values, without maintaining a single-minded focus on rates. Customers could then choose from the values offered that best suit their needs and preferences, as they do in other segments of the economy.

Issue 2: TDI's Involvement in TWIA Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.

TCAIS recognizes, as does the Sunset staff, that TWIA stands at a "critical juncture (p. 19)." The faults in the TWIA structure, and the financial dangers they pose to the marketplace and the state are well documented. TCAIS makes the following observations about the TWIA situation, which in turn inform our policy opinion:

- TWIA operates under a flawed, insufficient statutory structure that makes it extremely vulnerable to both weather losses and political pressures, and prevents the board from employing many sound business practices.
- The TWIA board and staff have historically had the expertise to operate TWIA efficiently and mitigate some of the policy flaws.
- The TWIA board and staff have not had the proper authority to implement the sound business principles available under the statute because of the arcane system of hearing and approval by TDI.
- TWIA is operating as a market competitor, in many ways a privileged competitor, rather than as a market of last resort.

In the context of the observations above, TCAIS generally agrees with staff recommendations 2.2 (replacement of the commissioner's current authority to adjust TWIA recommendations with a more traditional administrative approval process), 2.3 (transfer of inspection authority to TWIA), 2.4 (removal of unnecessary rate restrictions from TWIA), and 2.5 (TWIA requirement for two declinations). These recommendations will allow the TWIA board and staff authority to employ their insurance expertise with proper oversight but without duplicative hearings, negotiation, and non-actuarial political wrangling. Recommendation 2.5 will help properly focus the mission of TWIA as a residual market.

TCAIS has some concern over Recommendation 2.1 (change in the makeup of and appointment process for the TWIA board). Our support of the other recommendations is predicated on the historical expertise of the TWIA board. The changes to the board recommended by staff go beyond what is necessary to satisfy the concerns of the Internal Revenue Service concerning TWIA's tax exempt status. We cannot predict how the change in board composition will affect the board in the future. We urge careful consideration lest the change render the other recommendations ineffective.

Issue 6: Most of TDI's Advisory Committees No Longer Need to Be in Law.

Sunset staff makes a good case for the restructuring of advisory committee formation and activity. TCAIS supports the recommendations found on page 55 of the report.

Issue 9: The State Has a Continuing Need for the Texas Department of Insurance.

TCAIS agrees with the findings and recommendations on this issue. We urge the Commission and the Legislature to be precise in any statutory language defining the purpose of the department. The role of TDI is regulation of the marketplace to ensure company solvency, ensure proper market conduct, prevent fraud and abuse, and, when necessary, punish bad actors. Since the reforms of 2003 and before, it is not to write policies or set rates. Any statement of purpose should reflect the goal of a competitive market, and the balance and restraint necessary to regulate such a marketplace. The statement should in no way support the false paradigm that insurers and consumers are competing with one another. Rather, the statement should support the fundamental concept that, in a competitive marketplace, the competition is between insurers and benefits consumers.

Office of the Public Insurance Counsel Issue 1: Texas Needs Consumer Representation in Insurance Regulation, But No Longer Needs a Separate State Agency to Advocate on Behalf of Consumers.

TCAIS generally agrees with both the recommendations and findings concerning OPIC. The concerns raised by Sunset staff over the incomplete implementation of a competitive market structure have been exacerbated by the de facto dual regulation of individual rate filings by OPIC. In fact, the OPIC workload summary (p. 108) includes the negotiation of 32 rate filings and 24 form filings, which suggests far more active interference with market-based filings than what is asserted by the department. The authority for general regulation should lie with the department, with the more focused role of consumer advocacy as a subset of that authority. To best employ state resources, OPIC should focus on consumer education, advancing consumer choice in the marketplace, and individual consumer issues.

Conclusion

The Sunset review of the Texas Department of Insurance is occurring at a crucial moment in the development of our state's competitive market. As demonstrated in the staff analysis of the current condition of the market, we have the structures for more investment in the Texas market, but must encourage more capital to be invested in those structures. The Commission's final report and subsequent support of those recommendations in the coming legislative session will be key determiners of the future of insurance in Texas. At the end of the process, Texas needs a regulatory system that allows both companies and consumers to participate in the marketplace with the faith that they will be treated fairly and find good insurance values, whether they are buying the product or selling it.

We have the potential to establish a true market system, with consumer choice, rating and forms freedom, less TWIA exposure, and focused regulation for solvency, market conduct, and fraud. Such a market will encourage confidence, attract capital, and provide stability necessary for consumers and the broader Texas economy.