



**Department of Community  
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**Division of Insurance**

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**ORDER NUMBER R 00-10**

**September 26, 2000**

**DECISION REJECTING EXCLUDED DRIVER RATING RULES**

**ADOI #41796**

**Cascade National Insurance Company**

**Background**

On June 29, 2000, Cascade National Insurance Company (CNIC) filed proposed rates and rating rules for personal auto insurance offered in Alaska, requesting an effective date of September 1, 2000. The division designated the filing as # 41796. In an explanatory cover letter, CNIC noted that the submission replaced an earlier filing (# 41100) made on May 12, 2000, and disapproved by the division on June 9, 2000. The cover letter set out CNIC's responses to the division's questions and comments on the previous filing.

The division replied to CNIC's filing with a letter of July 18, 2000 with comments and requests for more information. CNIC replied to this request in a letter dated July 28, received by the division on August 2, 2000. On August 18, 2000, the division notified CNIC that the filing was disapproved. However, by August 18, the filing had already become effective in accordance with the last sentence of AS 21.39.040(d), commonly known as the "deemer clause."<sup>1</sup>

In a letter addressed to Director Robert A. Lohr, dated August 23, 2000, but received September 5, CNIC pointed out its belief that the filing was deemed effective and requested a review of the filing. The director determined to conduct a review and issued a notice of hearing on September 8, 2000.

The hearing was held by teleconference on September 20, 2000 at 1:30 p.m. Director Robert A. Lohr presided at the hearing. John Ference appeared telephonically for CNIC. Sarah McNair-Grove and Assistant Attorney General Signe Andersen appeared for the division staff. Mr. Ference and Ms. McNair-Grove presented testimony explaining the positions of CNIC and the division staff respectively, and the following exhibits were admitted into evidence:

Exh 1. Filing # 41576 with cover letter of 6/29, and additional correspondence between CNIC and ADOI dated July 18, July 28, and August 18, 2000.

<sup>1</sup> The pertinent portions of AS 21.39.040(d) provide: "...each filing shall be on file for a waiting period of 15 days before it becomes effective. . . . A filing shall be considered to meet the requirements of this chapter unless disapproved by the director within the waiting period."

**The disputed issue and the parties' positions**

The issue in dispute between the division and CNIC is whether portions of CNIC's rating rules that relate to exclusion of drivers from coverage on a policy with a SR-22 filing comply with statutory rate standards in AS 21.39.030. This question arises because of AS 28.20.440(1), an amendment to the motor vehicle safety responsibility laws adopted in 1997. This subsection provides:

Notwithstanding any other provisions of law, a person who resides in the same household as the person named as insured or a person who is a relative of the person named as insured shall be excluded from coverage under a motor vehicle liability policy if the person named as insured requests that that person be excluded from coverage.

At hearing the division and CNIC agreed that the portions of CNIC's filing at issue included Rule 1 under the heading Auto Coverage Rating and Premium Determination Procedures on page 2<sup>2</sup>, and Rule 8 under the heading General Guidelines on page 5<sup>3</sup>. These rules would apply only where a named insured requests exclusion of a driver as permitted by AS 28.20.440(1) and an SR-22 filing is involved. An SR-22 filing is the certificate submitted by an insurance carrier to show that a motor vehicle liability policy is in effect for the benefit of a person who is required to furnish proof of financial responsibility. *See* AS 28.20.410 and Exhibit 3.<sup>4</sup> AS 28.20.440 details what is required in a motor vehicle liability policy to qualify as proof of financial responsibility. This section provides for either an "owner's policy" or an "operator's policy," and spells out coverage requirements and minimum policy limits for each type, along with other applicable rules.

The effect of Rule 1 is that, if the person named as insured requests that a relative or resident of the same household be excluded from coverage by a policy for which CNIC has filed

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<sup>2</sup> This provision (referred to as Rule 1 in this order) says:

1. For rating purposes, each resident of the applicant's household and all non-resident dependents of the applicant who are or will become 16 or more years of within six-months of the policy effective date and who are not specifically excluded, and all other persons to who use a covered vehicle on a regular basis shall be treated as either principal or occasional operators. For rating purposes, **drivers may not be excluded on a policy with a SR-22 Filing.** (*emphasis in the original.*)

This provision (referred to as Rule 8 in this order) says:

8. Drivers may be excluded upon written request of the policyholder. The policyholder must sign the exclusion endorsement. We require the excluded drivers' name, date of birth, last known address and relationship to insured. **Requests to exclude drivers on policies with SR-22 Filings must be referred to the company for approval.** (*emphasis in original.*)

<sup>4</sup> A person may be required to furnish proof of financial responsibility after being involved in an accident, or in other circumstances set out by statute, including AS 28.20.230, AS 28.20.240, AS 28.20.250, AS 28.20.340. A person required to prove financial responsibility may do so by obtaining a bond under AS 28.20.470, or a certificate of self-insurance under AS 28.20.400, as well as by a motor vehicle liability policy.

the SR-22 certificate, CNIC will disregard the exclusion in calculating the premium for that policy. In other words, though CNIC will *exclude from coverage* as required by AS 28.20.440(1), it will, *for ratemaking purposes*, apply the factor just as if no exclusion had been requested. The effect of Rule 8 is that, where an SR-22 filing is involved and the named insured requests the exclusion of a named driver, CNIC attempts to reserve discretion about whether to issue the policy with the requested exclusion.

The division argued that these two rules are inconsistent with and contrary to the intent of AS 28.20.440(1). According to the division, the legislative history shows that the purpose of AS 28.20.440(1) was to reduce the cost of insurance by not providing coverage for the excluded person, and that the legislature made a policy choice in order to achieve this result. The division argued that, when a driver is excluded but the factor for that driver is applied anyway, the resulting rate is excessive, and therefore a violation of AS 21.39.030.

CNIC contended that AS 28.20.440(1) requires the insurer to honor an insured's request to exclude a named driver *from coverage*, but does not require the insurer to exclude the named driver *for ratemaking purposes*. CNIC asserted that Rule 1 complies with AS 21.39.030(4)<sup>5</sup> because, when an SR-22 filing is involved, the insurer is unable to avoid exposure to the risk of liability for damage caused by the excluded driver even though the named insured has requested that coverage be excluded. CNIC explained that, under AS 28.20.440(b)(2), it is required to cover the named insured for liability arising out of the ownership, maintenance or use of the vehicle. It is CNIC's belief that, even where the policy excludes a named driver, this provision could be interpreted to require an insurer to cover the named insured's liability for damages caused by the excluded driver. CNIC acknowledged that it is aware of no court interpretation on this question. CNIC asserted that its underwriting judgment is to take a pessimistic view of how the courts are likely to resolve this coverage issue, and that, because of its underwriting judgment on the issue, Rule 1 complies with AS 21.39.030(4).

Regarding Rule 8, CNIC argued that the discretion expressed there permits it to comply with AS 28.20.440(1), but also to have the opportunity to counsel policy holders on the effect of a choice to exclude a particular driver. The division staff responded that it did not object to this concept, but did not believe that the language of the rule has the effect CNIC described.

### Decision

Legislative discussion of AS 28.20.440(1) is well documented in the minutes of House Labor and Commerce committee hearings in Exhibit 2. Based on this discussion, I am persuaded that the legislature understood that an insured may be liable for damage caused by a driver excluded from coverage on the insured's policy, and that there is a possibility that the insurer might be required to pay in spite of the exclusion. Even though it understood the uncertainty, the legislature made the policy choice to enact this provision into law for the reason that it was

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<sup>5</sup> This subsection provides:

(4) risks may be grouped by classifications for the establishment of rates and minimum premiums; classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both; the standards may measure nay differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

expected to give an insured the opportunity to reduce the cost of insurance. CNIC's Rules 1 and in this filing do not produce the result the legislature intended when it adopted AS 28.20.440(1).

For this reason, I find that the division staff has met its burden of setting aside the presumption that Rules 1 and 8 comply with AS 21.39.030. I therefore examine whether the rate CNIC proposes to charge under Rule 1 is excessive, and whether Rule 8 is inconsistent with AS 28.20.440(1).

CNIC contends that the rate is not excessive because it reflects CNIC's underwriting judgment that an insurer is likely to be required to pay damages caused by an excluded driver for the reason that the named insured for whom CNIC has made an SR-22 filing may be held responsible for the excluded driver's actions.

I acknowledge CNIC's point that a *possible* outcome of litigation on this issue is that it may be found liable for a risk that it does not intend to take on. **However, because this question has not been litigated in the courts in Alaska, one can only speculate about the ruling that might result. Though CNIC asserts its underwriting judgment pessimistically anticipates liability, the statutory standards for rates require more than mere speculation. One test set out in AS 21.39.030(4) is "any differences among risks that can be demonstrated to have a *probable effect* upon losses or expenses." But I cannot agree that exposure for the actions of an excluded driver is a *probable effect* within the meaning of AS 21.39.030(4). It is simply unknown. Therefore, I conclude that a rate including this cost is not in compliance with AS 21.39.030(a) which requires the division to approve only rates that are "not inadequate, excessive or unfairly discriminatory."**

With respect to Rule 8, I find that the rule provides for unfettered discretion on the part of CNIC. This language does not comply with the mandatory requirement of AS 28.20.440(1). If CNIC intends to apply Rule 8 in a way that conforms to the statute, it must show this through the language of its rules.

### **Findings and Conclusions**

1. Though CNIC's filing is deemed to be in compliance with statutory ratemaking standards under AS 21.39.040(d), the division staff has made a sufficient showing that CNIC's Rules 1 and 8 are contrary to AS 28.20.440(1) to set aside any presumption of statutory compliance.
2. In computing the rate for a policy involving an SR-22 filing where the insured requests that another person be excluded from coverage, CNIC's Rule 1 applies the factor attributable to the excluded person. This rating rule permits an excessive rate. There is some risk to the insurer because of the possibility that a court might require the insurer to pay damages caused by the excluded driver if the named insured becomes liable, but CNIC's evidence does not show that this is a "probable effect" as required to comply with AS 21.39.030(4).
3. CNIC's Rule 8 provides for the company to exercise discretion with regard to an exclusion that is mandatory under AS 28.20.440(1). Though CNIC might exercise its

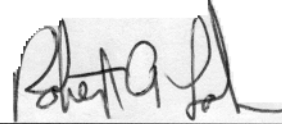
discretion only in a benevolent way, nothing in the rule requires it to do so, or imposes any standards on its exercise of discretion. Therefore this rule does not comply with AS 28.20.440(1).

4. With respect to all other matters in filing #41796, CNIC's filing is deemed to be in compliance with AS 21.39.030.

**ORDER:**

CNIC's filing is disapproved for the reasons and to the extent set out in this order.

This order is effective September 26, 2000.



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Robert A. Lohr  
Director