

December 6, 2016

Mr. Tom Zuppan
Arizona Department of Insurance
Phoenix, Arizona

via email

RE: NAMIC Comments to Proposed Regulatory Bulletin 2016-05

Mr. Zuppan:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to comment on the proposed bulletin referenced above.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. In Arizona, 176 member companies do business here, comprising a market share of 44.9%.

A.R.S. § 20-103(B) excludes from the definition of "insurance" the term "private fire protection service contracts." Unfortunately, there is no Arizona case law explicating the scope of what constitutes a "private fire protection service contract."

The proposed regulatory bulletin 2016-05 proposes to clarify the scope of "fire protection service" as contained in A.R.S. § 20-103(B). After reviewing the statutory language, the bulletin concludes that "private insurance policies/contracts may not contain "fire protection service" terms or provision." The proposed bulletin goes on to note a distinction between fire protection services and services that attempt to mitigate the risk of fire damage.

It goes on to describe "fire risk mitigation services" as actions that moderate the severity of a fire hazard or risk, are designed to prevent or reduce a compensable loss resulting from a fire under the insurance contract covering the property, and do not include fire suppression activities. It concludes that fire risk mitigation services fall within the definition of insurance and are subject to review and approval by the department. Troublingly, in the delineating appropriate/necessary policy language, the bulletin mandates that the policy "clearly state that

reimbursement for fire department response or active fire suppression or control is not covered.”

Some NAMIC members issue property policies that provide coverage for liability for fire department services either assumed by contract or required by local ordinance. In other words, this coverage helps defray costs associated with fire department service charges (presumably arising pursuant to a private fire protection service contract or local ordinance). Suffice it to say that a broad reading of the draft bulletin would appear to prohibit policy provisions allowing reimbursement for fire department response or active fire suppression or control.

NAMIC is concerned the draft bulletin misinterprets the controlling statute to the extent it appears to prohibit insurance policy provisions that reimburse for fire department response or active fire suppression. **We believe the statute, on its face, only excludes from the definition of insurance “private fire protection service contracts” themselves, as opposed to policy provisions reimbursing for charges incurred in association with these contracts.** This is in keeping with the general approach of the statute, which excludes from the definition of insurance certain contracts, annuities, waivers, and health care plans. Nothing within the statute provides a basis for prohibiting policy provisions insuring against liability for fire department service charges arising either by private contract or otherwise.

We would further add that the proposed bulletin’ policy language mandate that the policy “[c]learly state that reimbursement for fire department response or active fire suppression or control is not covered.” This language would have to be added, and defining the difference between “fire department response or active fire suppression or control” – which wouldn’t be covered – and “fire risk mitigation services” – which would be covered, is ambiguous.

The proposed bulletin goes on to state that “Fire risk mitigation services are actions that moderate the severity of a fire hazard or risk, are designed to prevent or reduce a compensable loss resulting from a fire under the insurance contract covering the property, and do NOT include fire suppression activities.” On the other hand, “[f]ire suppression activities involve attempting to extinguish or control fires....” We are unclear where the distinction lies between extinguishing a fire (fire suppression) and “actions to moderate the severity of a fire hazard” / “prevent or reduce a compensable loss resulting from a fire.” Trying to properly carve out what’s covered and what is not would be extremely difficult and ambiguous in the policy.

Finally, we note that property coverages provide a plethora of benefits to property owners, and these benefits are not always in the form of property damage coverage.¹ Coverages for personal liability coverage and medical payments coverage are not property damage specific, yet insurers provide them as part of the homeowners’ policy. It is neither a logical nor a legal

¹https://insurance.az.gov/sites/default/files/documents/files/2014_Homeowners_Guide_w_Prem_Final_Web.pdf

stretch to read the Arizona statute to so as to allow insurers the ability to continue to provide reimbursement for fire suppression activities.

We hope you will contact us if you have questions. Thanks for the opportunity to share our thoughts.

Sincerely,

A handwritten signature in black ink that reads "Paul Martin". The signature is written in a cursive style, with the first name "Paul" and the last name "Martin" clearly legible.

Paul Martin
Director – State Affairs
Southwest Region