

December 1, 2014

The Honorable Adam Hamm
Commissioner of Insurance
State of North Dakota
North Dakota Insurance Department
600 East Boulevard Avenue
Bismarck, North Dakota 58505

Re: Comment Letter on Proposed Rule to Create New Chapter 45-05-09 of the North Dakota Administrative Code “Defense Expenses With the Limit of Liability Provisions,” File Number RU-14-486, October 8, 2014

Dear Commissioner Hamm:

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country’s largest national insurers. The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. In North Dakota, we have 142 member companies, including 18 domiciled companies, which underwrite 39% of the state’s insurance coverage.

NAMIC reviewed the above proposed rule and surveyed our members on how they think the rule will affect the insurance market in North Dakota. There were many comments questioning the need for the rule or at least for a rule of such expansiveness. In addition, there were numerous comments that addressed administrative and technical areas where the proposed rule needs to be changed.

Comments on Sections 45-05-09-01 and 45-05-09-02

NAMIC and our members have the following suggestions:

- There is confusion within the regulated community as to how these two sections are to be applied. Definitions for the terms “primary coverages” and “secondary coverages” and how endorsements are to be treated are needed.
- There should be a blanket exception in the rule for policies sold to large commercial risks. For instance, Minnesota’s law on defense within the limits does not apply to policies sold to firms with over \$10,000,000 in revenue.

- The proposed rule should be applied only to admitted carriers.
- Subsection 10 should be changed to read “Umbrella **and excess** policies.”
- As new products are developed, how will subsection 11 be expanded?
- The \$100,000 minimum for secondary coverages should be reduced to at least \$50,000, if not lower.
- There should be an exception in the rule for policies that are sold for the purpose of providing only defense costs, such as those sold to farmers and small businesses who want to protect themselves from activists who file frivolous lawsuits for harassment purposes.

Comments on Sections 45-05-09-03 and 45-05-09-04

NAMIC and our members are very concerned about the administrative and technical burdens mandated by these sections. The input we received included strong objections to the requirements for adding to applications an acknowledgement that must be initialed and also putting specific, mandatory language in twelve point bold print on the declaration page. Our members see these requirements as being antiquated and found nowhere else in the U.S. commercial market. The following points/suggestions were offered.

- Building on the previous comment urging a blanket exception to the rule for large commercial insureds, it is unusual in that market for there to be an application to initial. The usual process in this market is for there to be a broker submission, negotiation and then a binder.
- The requirements will clutter the declaration page and mandate expensive IT changes. Some of our members suggested that if there has to be a document evidencing the insured’s knowledge of the defense within the limits term, that it be a separate document and not part of the declaration page.
- Members questioned the requirement to use on the declaration page the exact language “defense expenses within the limit of liability,” particularly when the policy may express the concept differently.
- There were concerns expressed about the ramifications of a lost or incorrectly completed acknowledgement, both for the insurer and for the producer.

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- The requirement to place the language on the declaration page raises the question as to at what point the document becomes so cluttered with special notices on exclusions and limits that it loses its value and is glanced over. What will be the next item that is ordered to be added to the declaration page?

In summary, our concerns boil down to two issues. First, the proposed rule does not account for the diversity of coverages that are demanded by the market. Second, the cumbersome ink and paper mandates to implement the rule are not in keeping with the direction the market is moving and will make North Dakota an outlier.

If you have any questions or comments about this letter or other matters, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Johnston', with a stylized flourish at the end.

Mark Johnston
Director, State Affairs – Midwest Region

cc: Mr. Pat Ward
Mr. Rob Hovland
Mr. Barry Townsend