

January 17, 2012

VIA EMAIL

John Rohde
General Counsel
Workers' Compensation Board
27 State House Station Augusta ME 04333-0027
EMAIL: john.rohde@maine.gov

Re: Proposed amendment to Chapter 1(1), 14-day rule

Dear Mr. Rohde:

I am pleased to present the views of the National Association of Mutual Insurance Companies regarding the proposal of the Workers' Compensation Board to modify the 14-day rule. NAMIC is the largest and most diverse national property/casualty insurance trade and political advocacy association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has been advocating for a strong and vibrant insurance industry since its inception in 1895.

NAMIC applauds the Board for recognizing the need to modify the 14-day rule in recognition of the concerns raised the Maine Supreme Judicial Court in *Doucette v. Hallsmith/Sysco*, 2011 ME 68. As the Board is aware, that decision resulted in an unreasonable award of \$140,000 for a claim that involved no incapacity and no lost earnings, and for a rule violation that was evidently technical in nature. As Justice Levy noted in his concurring opinion, the result of that decision was "unfair, possibly punitive, and contrary to some of the policy objectives of the Workers' Compensation."

Justice Levy observed in his opinion that it was beyond the authority of the Court to remedy the unfairness and suggested that the Board "examine the circumstances and outcome in this case to determine whether further development of the fourteen-day rule is needed."

In light of that admonition, NAMIC would urge the board to fully consider whether its proposed modification of the rule sufficiently minimizes the chance that such an inappropriate outcome takes place.

Part of that consideration should include whether other statutory penalties are sufficient to achieve the apparent intent of the rule, to ensure prompt responses from insurers to claims of incapacitation.

NAMIC would also suggest that the *Doucette* decision demonstrates a need to ensure that awards under the rule are in line with equitable principles of fairness and reasonableness. Consequently, we would urge the Board to consider whether the proposed rule language gives the Board sufficient means to avoid arbitrary and improper decisions in the future.

Again, NAMIC is supportive of the Board's effort to modify the rule and urges consideration of whether the proposed modifications are sufficient to avoid unfair and unreasonable outcomes. Thank you for your consideration of NAMIC's views on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul T. Tetrault". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul T. Tetrault, JD, CPCU, ARM, AIM
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