



Texas Department of Insurance

General Counsel and Chief Clerk, Mail Code 113-2A
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-463-6326 telephone • 512-475-2025 fax • www.tdi.state.tx.us

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AUG 25 2006

OPINION COMMITTEE

August 23, 2006

FILE # RQ-0502-GA

I.D. # 44964

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0502-GA

Re: Amended Request for Opinion – RQ-0502-GA; Whether information that identifies specific insurers as writing commercial property insurance in the Texas coastal area is subject to disclosure

Dear Attorney General Abbott:

On behalf of the Commissioner of Insurance for the Texas Department of Insurance (TDI), I am writing to amend his request for opinion. I seek your opinion on whether the disclosure of the identities of insurers writing commercial property insurance along the Texas coast is permitted under the Insurance Code and the Government Code.

Background

As of June 1, 2006, the hurricane season officially began. As a result of Hurricanes Katrina and Rita in 2005, it became increasingly important for TDI, in the performance of its regulatory duties, to determine which insurers were writing insurance in a particular area of the State of Texas. Accordingly, in an effort to maintain an understanding of market conditions and availability of commercial property insurance along the Texas coast, TDI sent an inquiry to twenty-five groups of Tier 1 and Tier 2 commercial property insurers by letter dated May 5, 2006. Tier 1 and Tier 2 refer to specific counties along the Texas coast. Tex. Ins. Code art. 21.49 §3 (l) and (m). TDI asked the insurers to provide the responses to the following questions:

- Whether insurers were writing new business and renewal in Tier 1 and Tier 2;
- What deductibles were available in Tier 1 and Tier 2;
- Whether insurers were providing wind coverage in Tier 1; and
- Whether insurers had any special restrictions on coverage.

Further, TDI requested that the insurers identify all answers that were changes in underwriting guidelines since September 1, 2005. TDI asked that insurers provide data to TDI by May 19, 2006.

TDI informed the insurers that, if the insurers deemed any of the responsive information to be privileged or of a confidential nature, the insurers needed to designate and label the document or particular text and identify the applicable statutory citation or common law privilege applicable to particular text. As a result, several of the insurers identified their responses as proprietary and confidential.

Applicable Statutes

Section 38.001 of the Insurance Code authorizes TDI to submit inquiries to insurers and seek data. Section 38.001(b) provides as follows:

The department may address a reasonable inquiry to any insurance company, including a Lloyd's plan or reciprocal or interinsurance exchange, or an agent or other holder of an authorization relating to: (1) the person's business condition; or (2) any matter connected with the person's transactions that the department considers necessary for the public good or for the proper discharge of the department's duties.

Tex. Ins. Code §38.001(b).

Section 38.001(d) states that "a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court." Tex. Ins. Code §38.001(d). Section 38.001 grants TDI the authority to make an inquiry of insurers and maintains confidentiality of information that is otherwise privileged or confidential by law. (emphasis added.)

The question next turns to whether the responses from the insurers are otherwise privileged or confidential by law. Section 38.003 of the Insurance Code addresses confidentiality of underwriting guidelines for insurance lines other than personal automobile and residential property. This section applies to commercial property insurance. It states that underwriting guidelines are confidential and that TDI may not make the underwriting guidelines available to the public. So, in the event that TDI received a public information request for an underwriting guideline under section 38.003, TDI would seek a ruling from your office and assert section 552.101, which protects from public disclosure information made confidential by law. In addition, section 38.003(h) provides that a violation of section 38.003 is a violation of Chapter 552, Government Code.

As a result of TDI's survey and inquiry of the twenty-five groups of insurers, TDI requested that insurers allow TDI to identify the names of those insurers writing in Tier 1 and Tier 2 along the Texas coast. Nine insurers writing commercial property insurance voiced objections to TDI releasing information that identified them as writers of insurance in Tier 1 and Tier 2. The insurers claimed that where insurers were writing or not writing was proprietary, confidential, a trade secret and a part of the insurer's underwriting guidelines.

Section 38.002(a)(4) defines an underwriting guideline as follows:

a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or its agent to decide whether to accept or reject an application for coverage under a personal automobile insurance policy or residential property insurance policy or to determine how to classify those risks that are accepted for the purpose of determining a rate.

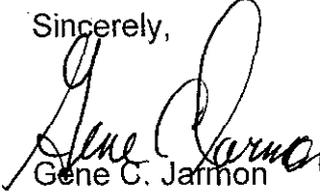
Tex. Ins. Code §38.002(a)(4).

Question Presented

Here, TDI seeks to provide general information to consumers about the availability of insurance along the Texas coast to assist them in engaging in insurance related transactions, i.e. whether a company is writing or not. TDI believes that the disclosure of the information indicating where an insurer is or is not writing would be beneficial to insurance consumers in the State of Texas. It is not the goal or intent to release specific underwriting criteria or formulas. TDI, however, is mindful of the provisions of Chapter 38 of the Insurance Code and of Chapter 552 of the Government Code. As such, TDI respectfully requests your opinion on whether the release of the information identifying which insurers are writing along the Texas coast may be released to the public.

Thank you for your attention and consideration of this matter. If you have any questions, please contact me at (512) 475-2001.

Sincerely,


Gene C. Jarron
General Counsel

cc: Mike Geeslin, Commissioner of Insurance