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Mr. Lee Barclay  
Chair, Statistical Issues Group  
NAIC Casualty Actuarial and Statistical Task Force  
Office of the Insurance Commissioner  
PO Box 40256  
Olympia, WA 98504-0256

SUBJECT: Draft Guidelines for MPLI Closed Claim Model Law  
Reporting of Economic and Non-Economic Damages

Dear Mr. Barclay:

This letter is written in response to your invitation for comments made during the December 16, 2008 teleconference meeting of the Statistical Issues Group of the Casualty Actuarial and Statistical Task Force (CASTF).

### **Reporting of Economic and Non-Economic Damages**

Our primary concern remains with the proposed guideline language for the reporting of indemnity payments for non-economic damages, as found in section 7K of the draft guideline. As addressed in our September 9, 2008 letter, the current draft directs that insurers use information that might be available to them to estimate the economic and non-economic portions of settlement amounts.

The PIAA strongly opposes this process, which would require insurance company employees to literally make their best guess. Non-economic damages are not quantifiable, and are awarded based on the demands of the plaintiff and the subjectivity of a judge or jury, a process which insurance company employees cannot replicate for individual claims.

With regard to economic damages, we find that the draft guidelines are contradictory. Part A, Section 7K(1) requires the reporting of economic damages "based on documented evidence obtained during the claim resolution process." This is language we support. However, Section 7K(2) suggests that the reporting entity should make "a best estimate of economic damages," and "use reasonable judgment to estimate the ...elements of losses incurred by the injured party..." We ask how the insurer is supposed to make these estimates absent documented evidence as required by Section 7K(1)?

Rather than force the manufacture of unreliable estimates of economic and non-economic damage amounts of individual claim payments, the PIAA suggests that an allocation of total indemnity payments only be reported when such actually exists. Economic damage data is often available for both settlements and verdicts, and we suggest that these amounts, when known, should be reported. However, non-economic damage values are only available for verdicts, where actual apportioned amounts are specified by the court. This would provide reliable data which could be used by qualified researchers to estimate this effect on the total population of paid claims. To do otherwise is simply setting the stage for the classic “garbage in – garbage out” situation.

Section 7K(3) would require insurers to discount future economic damage payments prior to their being reported. At present, this practice is done only for the valuation of verdicts, and is usually not applied in the settlement process. Paid verdicts represent only one percent of all MPLI claims. Thus, this new discounting requirement would force insurers to incur considerable expense in applying hypothetical discounting methodology to the other 99% of claims. We do not feel that this would be a useful practice. In addition, the lack of a standardized discounting mechanism would provide inconsistent results among carriers and across jurisdictions.

Finally, Section 7K(2) stipulates the reporting of economic damages by category, with seven individual categories being identified. We question the value of this detail. For example, what is the public policy value of knowing burial expenses for an individual claim, or in aggregate for that matter? In many cases, these individual amounts are not known. We suggest that the specificity of this data be limited to the major categories of expense, which are medical expenses, lost wages, and “all other.”

### **Additional Comments**

Section 7A. Policy Limits – This section is written in the context of the standard per occurrence/annual aggregate format most MPLI policies are issued under. However, it does not provide for instances where policy limits might span multiple years, as in the case of claims made tail coverage. While there are multiple ways of issuing tail coverage, the most prevalent is for the reporting endorsement to have a per-incident limit and also an aggregate limit for the entire extended reporting period.

Section 7E. City – City is not a universal identifier. In addition, unlike auto or homeowners claims, MPLI claims do not happen at random locations. They usually arise in the hospital setting, or in doctors’ offices, which are often located near hospitals. As such, we do not see any value in requiring the codification of the location where the incident occurred at lower than the county level. Most insurers use county as the most discrete geographical identifier.

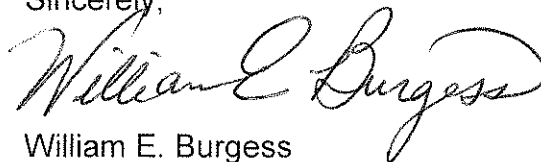
Section 7J(2). Excess Damages – We suggest changing the word “damages” to “verdict or settlement amount.” The value of the damage, real or alleged, may be different than the amount actually paid.

Section 7J(7). Overhead Expenses – This section requires the reporting of unallocated overhead expenses which are required to be allocated to each individual claim. This is a contradiction of the purpose for the establishment of the unallocated categorization, as it is very difficult to unbundle these costs and assign them to individual claims. As these overhead claims handling costs are a minor portion of total claim costs, we question the value of apportioning this to individual claims for the purpose of the Model Law. The individual claim values resulting from this exercise, which would amount to the “counting of paper clips,” would be impossible to reconcile with the insurer’s annual total outlay for ULAE.

Part D. Internal Consistency – An example of internal inconsistency is provided here which concludes that if a payment is made above the policy limit, something is incorrect. This example is not necessarily accurate, as excess policy limit payments are made which include post and pre-judgment interest and also payment made for extra-contractual obligations and excess policy limits, such as in a bad faith judgment.

Thank you for this opportunity to comment. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "William E. Burgess". The signature is written in a cursive, flowing style.

William E. Burgess  
Vice President – Association Services