

## **Consumer Representative Request for Improved SERFF Public Access Functionality:**

### **Identification of Documents Withheld from Public Disclosure**

#### **Presentation to NAIC Speed to Market Task Force**

**September 4, 2014**

On behalf of a number of consumer representatives, the Center for Economic Justice appreciates the opportunity to present our request for improved SERFF Public Access Functionality to the Speed to Market Task Force.

**The Issue:** Current SERFF Public Access functionality does not indicate whether any documents submitted by the insurer with the filing were withheld because the documents were claimed by insurers or determined by the regulator to be non-public information. Consequently, a member of the public obtaining a filing through SERFF Public Access has no way to determine if the filing provided is the complete filing or if documents were withheld because of, for example, trade secret claims.

**The Proposal:** Improve SERFF Public Access Functionality to indicate which documents, if any, of the filing were withheld from public disclosure. Attached please find a screen shot of the proposed functionality currently available with the Florida Office of Insurance Regulation filing public access system. Documents withheld from public disclosure are indicated along with the reason for determining the document as non-public, which is typically a trade secret claim by the insurer or determination by the regulator.

**The Benefits:** Under the current SERFF Public Access Functionality, members of the public must send an inquiry to the insurance department to learn if the public access filing is complete or if portions of the filing were withheld. With the proposed SERFF Public Access Functionality, the public information burden on insurance departments would be reduced by eliminating the public's need for such inquiries.

A second benefit is the greater ability of the public to hold insurers accountable for trade secret claims resulting in withholding of documents from the public. For example, if an insurer claims a document as trade secret and that type of document has historically and routinely been available as public information, the member of the public can challenge the trade secret claim. Absent, the proposed SERFF Public Access functionality, the member of the public might never find out a portion of the filing has been withheld because of a frivolous trade secret claim.

May 1, 2014

Commissioner Scott Kipper  
Chair, NAIC Speed to Market Task Force

Commissioner Mike Rothman  
Chair, SERFF Advisory Board

By Electronic Mail

**Re: Request for Additional Functionality in SERFF Public Access Technology:  
Identification of Filing Documents Withheld from Public Disclosure**

Dear Commissioners Kipper and Rothman,

The undersigned write to request that NAIC/SERFF staff be asked to add functionality to SERFF related to public access. Specifically, we ask that the public access filing identify documents that are part of the filing but not included in the public access file with the reason for withholding the document from public disclosure.

At the request of consumer representatives, NAIC and SERFF staff kindly presented a demonstration of the public access tool being developed for SERFF filings. The functionality is excellent. Staff demonstrated how a public access filing request will provide a list of public documents in the filing as part of a zip file containing the public documents in their native format. We support the transition from the creation of a single PDF file to the new ZIP (compressed archive) format approach because it produces a user-friendly experience and better system performance than PDF file creation. We provided some suggestions to NAIC and SERFF staff for improving the user interface, including search capability options and help.

During the call, staff explained that current SERFF technology will produce a public-access file containing all public documents and only public documents associated with the filing. We learned that the public access filing does not identify documents that are part of the filing but not public information. A document may be designated by an insurer as non-public and accepted as non-public by the regulator. With current SERFF public access technology, the public access filing does not indicate that there are any additional non-public documents associated with the filing, but which have not produced to the public requestor.

We ask that the SERFF public access technology be enhanced to indicate that non-public documents, if any, that are part of the filing be listed with the reason for exclusion for public disclosure. The Florida Office of Insurance Regulation I-File Rate and Form Filing Search Tool includes this feature. When a member of the public identifies a filing, the screen shows a list of documents and exhibits to the filing and which documents are not available to the public with the reason for non-disclosure.<sup>1</sup>

A consumer's ability to identify portions of the filing which have been withheld from public disclosure along with the reason for the non-disclosure is an essential component of public access and public accountability. In our experience, insurers routinely claim documents as "trade secret" even when those documents have historically been routinely public information. Consumers cannot challenge frivolous claims of trade secret or other misapplication of exemptions from public disclosure unless consumers know that certain documents from the filing have been withheld.

In summary, we respectfully request that additional functionality be added to the SERFF public access technology to provide for a public access filing listing all documents that are part of the filing including the documents excluded from public access with the reason for such exclusion from public disclosure.

Thank you for your consideration,

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SERFF Advisory Board

Timothy Jost, NAIC Consumer Representative

J. Robert Hunter, Consumer Federation of America

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<sup>1</sup> To see how a filing with non-public documents appears in the Florida I-File Forms and Rate Filing Search tool, go to <https://apps8.fldfs.com/IFileExternalSearch>. Click on the Quick Search tab and type "13-04125" (without quotation marks) into the search box. The following will appear (it may take a minute): FCC 13-04125 American Security Insurance Company (Filing). Click on it and a results page will appear showing the filing. Click on the right-pointing triangle in the left-most column and summary information will appear about the filing. At the bottom of the summary information, click on the page icon below "Filing Actions." The list of documents associated with the filing will appear, including non-public documents which have been labeled "trade secret."

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