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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

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December 19, 2011

Department of Legislative Services
90 State Circle
Attn: Sarah T. Albert
B-100 Legislative Services Building
Annapolis, Maryland 21401-1991

Dear Ms. Albert:

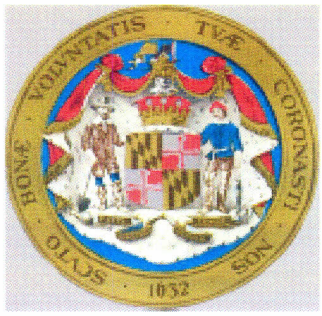
The Annual Report of the People's Insurance Counsel Division in the Office of the Attorney General is required to be filed each year before January 1. Due to an unusual number of large matters over the past two months, our office of only two attorneys has not been able to complete the Annual Report for FY 2011. We would like to have an additional two weeks following the January 1 deadline to file the Report. If this request does not present a problem, please let me know at your earliest convenience and advise whether there are any other offices that need to be notified of this request for an extension of the filing date for our Report.

Your attention to this request is most appreciated.

Very truly yours,

People's Insurance Counsel

Susan Cohen PK
Assistant Attorney General
People's Insurance Counsel Division



State of Maryland
OFFICE OF THE ATTORNEY GENERAL

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2011

Submitted to the Governor and General Assembly

I. INTRODUCTION

The People's Insurance Counsel Division in the Office of the Attorney General (hereinafter referred to as "PICD" or "Division") submits this annual report as required by the Maryland General Assembly.[1] On or before January 1 of each year, PICD reports on the activities of the Division in the prior fiscal year. This report covers the time period from July 1, 2010 through June 30, 2011.

A. Statutory Basis and Funding

The Division was created in 2005 with the enactment of the Maryland Patients' Access to Quality Health Care Act of 2004 (hereinafter referred to as "Act").[2] The provisions of the Act relating to the Division have been codified in Md. Code Ann., State Government §§ 6-301 through 6-308.

Funding of the Division is provided through a People's Insurance Counsel Fund consisting of funds collected by the Maryland Insurance Commissioner (hereinafter referred to as the "Commissioner") through an annual assessment from each medical professional liability insurer and homeowners insurer issuing policies in the State. The purpose of the Fund is to pay the costs and expenses of the Division in carrying out its duties.[3]

B. Statutory Duties

The duties of the Division include evaluation of each medical professional liability insurance and homeowners insurance matter pending before the Commissioner to determine whether the interests of insurance consumers are affected.[4] The Division also reviews any rate increase of 10% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer. If the Division determines that a rate increase is adverse to the interests of consumers, its representative shall appear before the Commissioner at any hearing on the rate

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[1] Md. Code Ann., State Government § 6-308.

[2] The Act was introduced as an emergency measure as House Bill 2 in a 2004 Special Session of the Maryland General Assembly convened on December 28, 2004. The Bill passed and was enacted in 2005 over the Governor's veto with an effective date of January 11, 2005. The Act was amended in 2005, effective March 31, 2005, by another emergency measure, House Bill 836.

[3] Md. Code Ann., State Government §§ 6-304 and 6-305. Because the duties of the Division only involve two types of insurance, homeowners insurance and medical professional liability insurance, the insurers who are assessed for the Fund are limited to the insurers issuing those types of policies in Maryland.

[4] Md. Code Ann., State Government § 6-306(a). The Act defines insurance consumers as those insured under homeowners policies or medical professional liability insurance policies.

filing. At any time, the Division may conduct investigations and request the Commissioner to initiate an action or proceeding to protect the interests of insurance consumers.[5]

In any appearance before the Commissioner or the courts, the Division has the rights of counsel for a party to the proceeding, including summonsing witnesses, cross-examination of witnesses, presenting evidence and argument.[6] The Division may also take depositions in proceedings before the Commissioner and in proceedings in court, in accordance with applicable law and procedure.

The Division "shall have full access to the Commissioner's records," including rate filings, and shall have the benefit of all other information of the Commissioner.[7] The Division is entitled to the assistance of the Commissioner's staff provided that the assistance is consistent with the staff's responsibilities and with the respective interests of the staff and the Division.[8]

The Division may recommend legislation on matters that promote the interests of insurance consumers in Maryland.[9]

II. DIVISION STAFF AND BUDGET

In Fiscal Year 2011, the Division was staffed by the People's Insurance Counsel, Peter K. Killough,[10] an Assistant Attorney General, an analyst/investigator, and a management associate.

Three actuarial firms provided consulting services to the Division reviewing rates and other documents that were filed by insurers issuing policies in Maryland. The following consultants were selected for their expertise in property and casualty rate filings: AMI Risk Consultants, Inc., Kufera Consulting, Inc. and Madison Consulting Group.

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[5] The Division's duties are described in Md. Code Ann., State Government § 6-306.

[6] Md. Code Ann., State Government § 6-307. See page 6 for a discussion of the 2009 Decision of the Court of Appeals interpreting "the rights of counsel to a party" in *People's Insurance Counsel Division v. Allstate Insurance Co.*, 408 Md. 336, 969 A.2d 971 (2009).

[7] Md. Code Ann., State Government § 6-307(c). The Division's access to information is only limited by applicable statutes in the Insurance Article and the Maryland Public Information Act, State Government Article, §§ 10-611 to 10-630.

[8] Md. Code Ann., State Government § 6-307 (c)(2).

[9] Md. Code Ann., State Government § 6-307(d).

[10] The People's Insurance Counsel was appointed by Attorney General Douglas F. Gansler and the appointment was confirmed by the Senate on February 16, 2009, as required by Md. Code Ann., State Government § 6-302(a)(2).

III. DIVISION RESPONSIBILITIES

The Division concentrates its efforts in four areas:[11]

- Review of consumer complaints filed with the Maryland Insurance Administration (hereinafter "MIA") relating to homeowners insurance and medical professional liability insurance;

- Review of rate, rule and form filings in those two lines of insurance; [12]

- Review of proposed legislation and participation in the legislative process, as required, to represent consumer interests; and

- Review of "lack of good faith complaints" under Ins. Art. § 27-1001. [13]

A. Division Review of Complaint Determination Letters

After a consumer has initiated a complaint with the MIA regarding the action of an insurance company, the MIA conducts an investigation and issues a determination letter to the complainant and insurer at the completion of its investigation. The Division reviews all complaint determination letters to identify new issues and to assess the existence of patterns of insurer conduct contrary to the insurance laws. The complaints primarily relate to the cancellation or non-renewal of coverage, increase in premiums, modification of coverage, claim denial or claim settlements. [14]

It has become the practice of the Division to issue its own explanatory letter and printed materials to the majority of individuals who have received an MIA determination letter. [15] The

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[11] The Division has interpreted its statutory authority to include the review of any matter before MIA that impacts homeowners and medical professional liability policyholders. This decision derives from the Division's broad mandate to review "each medical professional liability insurance and homeowners insurance matter pending before the Commissioner". Md. Code Ann., State Government § 6-306(a). Rate filings are reviewed pursuant to a specific mandate to "review any rate increase of 10% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer". Md. Code Ann., State Government § 6-306(a).

[12] In this Report, references to "Rate Filings" shall mean all filings made under Insurance Article, Title 11, including new and revised rates, rating rules, policy forms and supplementary rate information.

[13] Md. Code Ann. Insurance § 27-1001, Effective October 1, 2007.

[14] In Fiscal Year 2011 MIA's Property and Casualty Consumer Complaint Section handled thousands of complaints from consumers relating to personal automobile insurance, homeowners insurance and other property and casualty lines of insurance. The total number of complaints that did not involve automobile insurance was 2,456. Homeowners and medical professional liability insurance complaints are included in this total.

[15] PICD letters are not sent to individuals whose complaints have been resolved in their favor, who have withdrawn their complaints, or who have replaced their coverage resulting in an MIA letter stating that the issue is rendered moot and no remedy is available.

Division's letter explains that a staff member is available to discuss a consumer's right to an administrative hearing and explain applicable statutory and regulatory frameworks for hearings. Through calls from consumers who have received the Division's letter, the Division obtains additional information about company practices beyond the information detailed in the determination letters themselves. The Division's review of the determination letters has provided an opportunity to understand the procedures and policies of insurers in making underwriting and claim decisions that, at times, appear to adversely affect consumers generally. The Division routinely advises consumers that it does not provide legal representation for individuals in their disputes with insurers, although the Division attorneys will give guidance to consumers about the administrative hearing process.

As in the past fiscal year, the Division has found that there are significantly more homeowners insurance complaints than medical professional liability insurance related complaints. Most homeowners insurance complaints involve either consumer dissatisfaction with the handling or payment of a claim or with the action taken by an insurer to cancel insurance coverage or decline to renew coverage.

The Division reviewed 519 homeowners insurance complaint determination letters and 2 medical professional liability insurance complaint determination letters issued by MIA between July 1, 2010 and June 30, 2011. (See Appendix A). Of the 519 complaint matters, MIA found 15 insurance company violations of the insurance laws. This represents a significant increase in the number of violations found in previous fiscal years.

Each year, the Division investigates consumer complaint matters that appear to involve insurance law violations. Most matters are addressed informally through discussions with the MIA, the insurer and the consumer. In FY 2011, the Division requested a hearing on the complaint filed by Gregory and Moira Taylor (Determination Letter dated November 12, 2010, MIA 167889-P-2010-JSJ-C). A discussion of this matter is below, under IV. Investigations.

B. Division Review of Rate Filings

Insurance companies issuing homeowners policies in Maryland are required by Title 11 of the Insurance Article to file with the Commissioner all rates, supplementary rate information, policy forms, endorsements and modifications of any of these documents. [16] Homeowners insurance is subject to the competitive ratings laws. Insurers are allowed to use the filed rates without obtaining the prior approval of the Commissioner. [17] All policy forms must be approved by the Commissioner before use in Maryland. [18]

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[16] Md. Code Ann., Ins. Art. § 11-206.

[17] Md. Code Ann., Ins. Art. § 11-307.

1. Homeowners Insurance

The Division reviewed 414 homeowners rate filings made with the MIA during the fiscal year. (See Appendix B) These filings included rate increases and decreases, new rating rules, rule changes, new policy forms, and revisions to policy forms. [19] The services of three actuarial consulting firms, each under contract with the Division, were used to analyze each filing that included actuarial data. In some instances, the Division's consultants determined that filings did not include adequate supporting actuarial data and the Division's consultants generated questions on the filed documents and requests for additional supporting information. Following review and approval by the Division, these questions and requests were forwarded to the filing insurer. The Division, through its consultants, advised the MIA of inquiries being forwarded to the insurers. With only a few exceptions, the PICD consultants received responses from the insurers' actuaries.

Availability of Homeowners Insurance in Coastal and Bay Areas

In FY 2011 the Division reviewed numerous filings affecting homeowners insurance coverage in Coastal Maryland and along the Chesapeake Bay and its tributaries, including filings establishing hurricane deductibles and filings under Md. Code Ann., Ins. Art. § 19-107. Still under review by the Division are underwriting rule filings from past years, filed pursuant to Md. Code Ann., Ins. Art. § 19-107, providing that new homeowners policies will not be written in designated geographic areas, particularly coastal areas. The Division's consultants reviewed all supporting data initially supplied by these insurers and supplemental information provided to the MIA in response to MIA requests and requests from the Division. Some insurers did not permit the Division to obtain documents supporting these filings [20] but the Division is now able to review this information as the result of a 2011 law change. (See Report, page 9.)

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[18] In 2008 several new statutes were added to the Insurance Article requiring homeowners insurers to make filings with the Insurance Commissioner. One new law requiring policyholder notices applies to policies issued on or after October 1, 2008 that include a percentage deductible for damage caused by hurricanes and storms. See Md. Code Ann., Ins. Art. § 19-208. For policies issued on or after June 1, 2009, insurers are required to offer a premium discount for home improvements to mitigate loss from a hurricane or storm. See Md. Code Ann., Ins. Art. § 19-209. Although these provisions apply to policies issued in FY 2009 the Division began to see insurer filings made under these new laws in the last few months of FY 2008. These laws require advance submission to the Commissioner and, in some cases, approval, before use by the insurer.

[19] The effect of a rate, rule or form change on consumers is not easily ascertained without in-depth analysis of the filing.

[20] The provisions of §19-212 allow insurers to designate catastrophe models used to support a filing as confidential commercial information.

In FY 2011 the Division continued its challenge to two 2006 filings under § 19-107 by Allstate Insurance Company and Allstate Indemnity Company. Following the Insurance Commissioner's May 31, 2007 decision to allow Allstate to implement its underwriting plan effective June 4, 2007, the Insurance Commissioner granted the Division's request for a hearing on the filings. [21] The matter is still pending in the Maryland Courts. In FY 2012 a decision is expected from the Court of Appeals following a December 1, 2011 argument before that Court.

A brief history of the Allstate case follows: The December 2007 hearing before the Insurance Commissioner concluded with the issuance of a Final Order on February 2, 2008 in favor of Allstate. [22] The Division filed a Petition for Judicial Review with the Circuit Court for Baltimore City. [23] Allstate's Motion to Dismiss the Division's Petition, on the grounds that PICD lacked standing under its statutes to request judicial review of the Commissioner's Final Order, was granted. [24] The Division and MIA appealed the Circuit Court Order and the case was heard by the Court of Appeals on February 6, 2009. [25] On April 15, 2009 the Court of Appeals held that the Division had standing under its statutes to seek judicial review of an MIA decision on insurer filings.[26] Allstate's challenge to the Division's standing was resolved in the Division's favor by the Court's interpretation of §§ 6-306 and 6-307 of the State Government Article. The case was returned to the Circuit Court and on September 24, 2009 and Circuit Court Judge Sylvester B. Cox affirmed the Insurance Commissioner's February 2, 2008 Final Order allowing the Allstate filings to be implemented. The Division filed an appeal of the Circuit Court Order in the Court of Special Appeals. After argument on November 4, 2010, the Court of Special Appeals issued an opinion upholding the Insurance Commissioner's 2008 Final Order.[27] A Petition for Writ of Certiorari was filed by the Division for review by the Court of Appeals.

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[21] The filing enabled Allstate to discontinue writing new policies in all or parts of 11 Maryland counties. A hearing was held in this matter, In re Allstate Insurance Company, on December 13 and December 14, 2007 before Associate Deputy Commissioner Thomas Paul Raimondi, sitting on behalf of the Commissioner.

[22] On February 2, 2008, the MIA issued a Final Order in favor of Allstate, finding that the requirements of § 19-107 were met and there was no violation of § 27-501 of the Insurance Article.

[23] The Division's Petition was filed on February 29, 2008. Subsequently, Allstate filed a Cross Petition For Judicial Review on March 10, 2008 and a Motion to Dismiss Petition for Judicial Review on April 11, 2008.

[24] The Motion Hearing before Judge Carol Smith was conducted on June 4, 2008. The Division filed a Notice of Appeal on July 18, 2008 with the Court of Special Appeals and MIA filed its appeal on July 22, 2008.

[25] On August 6, 2008, Allstate filed a Petition for Writ of Certiorari with the Court of Appeals of Maryland and the Petition was granted on September 10, 2008.

[26] *People's Insurance Counsel Division v. Allstate Insurance Co.*, 408 Md. 336 (2009).

[27] *People's Insurance Counsel Division v. Allstate Insurance Co.*, 199 Md. App. 1 (2011).

The Petition was granted and argument was on December 1, 2011.[28] A decision is expected in FY 2012.

Significant Rate and Rule Filings

State Farm Fire and Casualty Company submitted two Homeowners filings on November 12, 2010 to MIA.[29] The filings were a rule change applicable to all homes located on a barrier island and stating that those homes are ineligible for coverage. The filings proposed to notify all existing policyholders, approximately 1600, that their policies would not be renewed. The Division conferred with the newly appointed Insurance Commissioner and analyzed the filing, including referral to an actuarial consultant. The MIA retained an independent actuary who published a report on August 23, 2011 which determined that the catastrophe models used by State Farm were acceptable. On September 30, 2011 MIA concluded that the filing did not violate 19-107 allowing State Farm to implement it with an effective date of March 1, 2012. The Division requested a hearing on October 21, 2011 which was granted on November 10, 2011. The hearing is scheduled for May 2012 PICD simultaneously requested a Stay of Implementation that was denied by MIA.

The Division conducts a review of all rate increase filings. Just after the close of FY 2011, a group of filings significantly increasing rates was submitted in July 2011 by Allstate Insurance Company, Allstate Property and Casualty Company and Allstate Indemnity Company. Each filed a large rate increase: Allstate P & C-- 38.7% ; Allstate Ins. Co and Allstate Indemnity Co.—13.2%. As of the date of this Report, these filings are still under review by the MIA. The Division's actuarial consultants and an actuarial firm used by the MIA have been asked to review these filings. Nearly 200,000 policies will be affected by this proposed change.

Other notable rate increase filings reviewed in FY 2011 from small insurers insuring 2,000 – 5,000 Maryland policyholders were: American Family Home Insurance Company-- 25% and Foremost Insurance Company-- 15%. These increases are significantly larger than two separate increases, 3.9% and 5.5%, filed during the fiscal year by Erie Insurance Exchange that affected 181,000 Maryland consumers.

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[28] *People's Insurance Counsel Division v. Allstate Insurance Co.*, September Term, 2008, No. 86. The May 10, 2011 decision of the court of Special Appeals held that Insurance Article § 27-501 did not apply to Allstate's filings under § 19-107. This decision was contrary to the Insurance Commissioner's interpretation of §27-501. The Division's Petition stated, in part, that the lower court erred in its holding on § 27-501 and the MIA's Answer to the Petition supported the Division's Petition on this point.

[29] SFMA-126875315 for Homeowners, Renters and Condos, and SFMA-126875475 for Mobile Homeowners.

Insurance companies issuing medical professional liability insurance policies in Maryland are required by statute to obtain the approval of the Commissioner before using rates, rules, policy forms and any modifications of such documents. [30] These filings may not take effect until thirty (30) working days after filing with the Commissioner. [31] There are significantly fewer medical professional liability insurance filings received each year by MIA as compared to homeowners insurance filings. The Division reviewed 124 filings made by medical professional liability insurers during the fiscal year. The Division's consultants reviewed the medical professional liability filings in the same manner as the homeowners filings, with requests for additional documentation being sent to insurers with copies to MIA actuaries.

The Division reviewed a total of 538 insurance filings for FY 2011 (See Appendix B). The Division requested rate hearings on a few filings and a hearing will be held in May 2012 on a State Farm filing. In all other cases, the Division's concerns with the filings were addressed by the filer resulting in no need for the hearing. In FY 2011 the Insurance Commissioner did not hold any rate hearings regarding medical professional liability insurance filings or homeowner's insurance filings.

C. Division Review of Filings Under § 27-1001

In 2007, the General Assembly amended the Insurance Article to provide policyholders, who believe that their insurer has failed to act with good faith, with a procedure for review of the matter. The provisions in §27-1001[32] and regulations adopted by the Insurance Administration in October 2007[33] require a policyholder to file a complaint with the MIA, with supporting documentation, stating the facts of the matter where the insurer is alleged to have acted without good faith. This procedure is only available to a policyholder. Injured third parties (e.g. a neighbor with damage to their home) may not file under §27-1001. After the insurer submits its opposition and supporting documentation, the MIA issues its finding based only on the documents. If the finding is adverse, the policyholder can either appeal the finding by requesting a de novo hearing at the Office of Administrative Hearings or file a request for judicial review with the appropriate circuit court. During FY 2011, MIA issued three §27-1001 decisions involving homeowners insurance policies. (See Appendix C). For the first time, the MIA found

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[30] Md. Code Ann., Ins. Art. § 11-206(a).

[31] Md. Code Ann. Ins. Art. § 11-206(g).

[32] Md. Code Ann., Ins. Art. § 27-1001.

[33] COMAR 31.08.11.

was the insurer's incomplete submissions to the MIA for the 27-1001 case, in violation of state law, and the lack of information supporting their position on the roof damage claim.

As an alternative to filing under §27-1001, consumers may file a complaint with MIA alleging that an insurer has failed to act in good faith. The list of unfair claim settlement practices in §27-303 was amended in 2007 to add "fail to act in good faith".[34] Like § 27-1001, an insurer can be found in violation of failing to act in good faith when the consumer who makes the allegation is the policyholder of that insurer (first party claims). An insurer cannot be held in violation of the law for failing to act in good faith if the person who suffered a loss and filed a claim (a third party claim) is not the policyholder of the insurer. Based on the Division's review of FY 2011 complaint determination letters issued by MIA, a small number of consumers have specifically alleged a failure to act in good faith.

D. 2011 Legislative Session

The Division brought three bills to the House of Delegates in the 2011 session of the General Assembly. (see Appendix D) Delegate Braveboy sponsored the Division's bills which are briefly described below:

House Bill 548 – Homeowner's Insurance – Notice of Underwriting Standards

This bill would require insurers to provide consumers with notice of their insurance company's underwriting standards and guidelines. The General Assembly authorized MIA to conduct a study on consumer notices and approved the PICD's involvement in the study.

House Bill 762 – Insurance – Unfair Claim Settlement Practices – Refusal to Pay a Claim

This bill amended §27-303(2) of the Insurance Article to change the standard of review, under the Unfair Claims Settlement Practices Act, for review of a consumer complaint concerning an insurer's action on a claim.

House Bill 1082 – Homeowner's Insurance – Model Information – People's Insurance Counsel

This bill amended §19-211 to allow the Division to review catastrophe model information submitted to MIA in support of filings. HB 1082 was passed and signed into law on April 12, 2011.

House Bill 762 received an unfavorable report from the House Economic Matters Committee and House Bill 548 was referred to "interim study" following discussions with the Acting Insurance Commissioner. During bill hearings, the Acting Commissioner stated that the MIA

[34] Md. Code Ann., Ins. Art. § 27-303(9). The full provision states: (9) fail to act in good faith, as defined in 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance."

would undertake consolidation of several statutory notice requirements applicable to homeowners policies and prepare for the 2012 session of the General Assembly a bill addressing all notice requirements, including the notice proposed in one of the Division's 2011 bills.

The Division reviewed the following bills making changes to the Insurance Article to determine the impact on insurance consumers:

House Bills: 457, 647, 679, 911, 924, 942, 982, 1157, 1159

Senate Bills: 5, 136, 317, 571, 656

For some of these bills, the Division testified before the House or Senate Committee assigned to the bill and provided written comments on the bill.

IV. INVESTIGATIONS

During FY 2011, the Division investigated 58 new matters. Investigations are commenced when the Division identifies an issue in an insurance complaint matter that potentially affects a broad number of consumers. These investigations are usually prompted by contact from the consumer who filed the complaint, but sometimes arise from consumers who contact the Division before a complaint is filed with the MIA. Details provided by the consumer that are not apparent from the determination letter are obtained and often the Division requests MIA's investigative file. Some investigations are commenced following contact from a consumer who has not filed a complaint with the MIA. A few investigations are commenced from a pattern or practice noted by the Division as a result of review of numerous determination letters from particular insurance companies.

Investigation of the complaint determination letter sent to Gregory and Moira Taylor resulted in the Division's request for a hearing on the complaint concerning a claim denial by State Farm Fire and Casualty Company. The company's position is that stated the policy did not provide coverage for the collapse of the Taylor's carport during the winter of 2010. The Taylors requested a hearing. The Division determined that the interests of insurance consumers were adversely affected by the actions of State Farm regarding the Taylor's claim; the policy provisions at issue included the terms "structure" and "building" but did not define those terms. The pertinent policy provisions did not dictate a clam denial for the loss of a carport and any personal property under a carport. MIA granted the Division's hearing request and the hearing has been scheduled in February 2012.

Following the 2010 legislative session, and as a result of a group of bills relating to water damage coverage, including HB 55, HB 1088 and SB 906, the MIA conducted a study on water damage coverage and issued a report in January 2011. The Division met with the MIA to discuss

the consumers who have not been able to get water damage claims covered and the need to change the current law. The MIA's report thoroughly describes the many problems with this coverage and the need to better inform consumers of the limitations of the coverage generally available in the standard homeowners policy. The Division will review MIA's changes to the notices provided to consumers issued homeowners policies and will address changes in the law that may be needed in the future.

V. CONSUMER ASSISTANCE EFFORTS

In addition to assisting the consumers who contact the Division, the Division maintained its website, added consumer alerts providing information about weather events that result in insurance claims and attended various community events in Baltimore City and surrounding Counties throughout the year.

VI. FY 2012 ACTIVITIES

The Division closes FY 2011 with several goals for FY 2012:

- Present information on recent changes in the availability and affordability of homeowners insurance at the MIA hearing on December 13 and 14, 2011. In October 2011 MIA issued a notice to all insurers that issue or deliver homeowners insurance policies in Maryland, producers for property and casualty insurance, surplus line brokers and interested parties. The stated purpose of the hearing was to receive information regarding the current availability and affordability of personal and commercial property and casualty insurance in Maryland's coastal areas.

- Represent Consumer interests at a hearing on May 2-3, 2012 challenging two State Farm homeowners filings making homes on barrier islands ineligible for coverage resulting in non-renewal of all existing policies on barrier islands (Ocean City, MD) (SFMA-126875315 and SFMA-126875475 filed November 12, 2010 and approved by MIA on September 30, 2011, effective March 1, 2012.)

- Continued litigation of judicial interpretation of Insurance Article sections 19-107 and 27-501 to challenge filings made by insurers to cease writing new policies in certain geographic areas of Maryland because of hurricane risk;

- Represent the interests of insurance consumers at the Taylor hearing scheduled for February 7, 2012. Issue: Is a claim denial arbitrary and capricious when the policy provisions do not specifically and clearly exclude coverage for the damaged property and the plain meaning of the policy provisions appear to cover the property.

- Continued review of insurer underwriting rules that designate coastal areas and other geographic areas for higher deductibles or as ineligible for coverage because of their location;

- Address underwriting discrimination through an investigation of insurer underwriting guidelines that are not clear and specific and involve, instead, use of underwriter discretion or review, in deciding to accept a risk.

- Aggressive review of rate increase filings, negotiation with the MIA on the filings that are not justified and representation of consumer interests at rate hearings requested by the Division;

- Encourage MIA to finalize proposed regulations on a consumer complaint procedure and to include the Division's recommended changes to ameliorate the harsh effect of the "arbitrary and capricious" standard in the Unfair Claim Settlement Practices Act in the Insurance Article.

- Review and advocate for consumer interests for all proposed bills filed in the legislative session and advocating for the legislation proposed by the Division.

- Production of additional educational materials, adding information to the website on specific topics relating to homeowners insurance, making brochures available in Spanish and including them on the Division's website;

- Participation in additional community programs to educate consumers about insurance topics and to address consumer misunderstandings that result in cancellation, non-renewal or claim denials;

- Outreach to the medical professionals who purchase medical professional liability insurance and review of any changes to the insurance necessitated by the health insurance reform measures that Maryland will be adopting.

VII. CONCLUSION

The Division will continue its efforts to advocate on behalf of consumers regarding homeowner insurance and medical professional liability insurance matters pending before the MIA. The Division will pursue in the courts challenges to § 19-107 filings approved by the Maryland Insurance Administration that identify geographic regions as ineligible for coverage due to hurricane risk. The Division will continue its review of all rate filings and analyze the changes made for their affect on consumers. As in past years, the Division will represent consumer interests before the House and Senate committees, reviewing insurance bills and supporting legislation that will protect consumer interests.

APPENDIX A

PEOPLE'S INSURANCE COUNSEL DIVISION REVIEW OF DETERMINATION LETTERS ISSUED BY MARYLAND INSURANCE ADMINISTRATION

DETERMINATION LETTER INFORMATION	
NUMBER OF DETERMINATION LETTERS REVIEWED BY PICD	519 Homeowners 2 Medical Malpractice
NUMBER OF TIMES MIA DETERMINED NO INSURANCE CODE VIOLATION **	398
NUMBER OF INSURANCE CODE VIOLATIONS CITED	15
NUMBER OF CONSUMERS WHO CONTACTED PICD AFTER RECEIVING PICD'S LETTER	76

** In One Hundred and Two (102) cases the insurance company changed its position vis-à-vis the complaint or the complainant withdrew his/her complaint. Four (4) cases were considered moot because the consumer purchased other insurance. In Three (2) cases, the MIA had no authority.

INSURANCE COMPANIES WITH THE MOST COMPLAINTS IN DETERMINATION LETTERS REVIEWED BY PICD	
NAME OF COMPANY	NUMBER OF COMPLAINTS
Allstate Insurance Company/Encompass Insurance Company	74/10
Standard Insurance Company/Travelers Insurance Company	71/11
State Farm Insurance Company	50
Erie Insurance Company	47
Nationwide Insurance Company	42
Hartford Insurance Company	20
United Services Automobile Association ("USAA")	14
Liberty Mutual Insurance Company	13

APPENDIX B

PEOPLE'S INSURANCE COUNSEL DIVISION'S REVIEW OF INSURER FILINGS

HOMEOWNERS INSURANCE FILINGS		
FORMS	RATES/RULES	TOTAL
190	244	414
MEDICAL PROFESSIONAL LIABILITY INSURANCE FILINGS		
FORMS	RATES/RULES	TOTAL
65	59	124

FORMS filings contain insurance policy forms, including endorsements and required policyholder notifications that insurance companies wish to introduce or use as replacements for previously approved forms.

RATE/RULES filings contain the insurer's proposed rating factors associated with numerous characteristics of risks. These factors are used in calculating the premium to be paid by individual policyholders. These filings generally include actuarial data to support the rating factors, supplementary rate information and underwriting guidelines or rules that explain the eligibility rules for different types of risks.

APPENDIX C

FY 2011

INSURANCE ART. § 27-1001 – LACK OF GOOD FAITH COMPLAINTS*		
Number of § 27-1001 Written Opinions Issued by the Maryland Insurance Administration	**Fiscal Year 2011** (7/1/2010-6/30/2011) 16	**Fiscal Year 2012** (7/1/2010-12/1/10) 7
Type of Policy (Homeowners or Automobile)	Homeowners – 3 Automobile – 13	Homeowners – 3 Automobile – 4
Number of Times MIA Determined Insurer Lacked Good Faith	Homeowners – 1 Automobile – 0	Homeowners – 0 Automobile – 1
Number of Times MIA Determined No Insurer Violation	Homeowners – 2 Automobile – 12	Homeowners – 3 Automobile – 4

* All data acquired from Maryland Insurance Administration website. The date of the decision is used to determine whether a matter falls within the Fiscal Year. (http://www.mdinsurance.state.md.us/sa/jsp/availPubInfo/LegalInformation.jsp?divisionName=Legal+Information%5EInsurer+Good+Faith+Requirements%5ECase+Decisions+%2827-1001%29&pageName=/sa/jsp/availPubInfo/LegalInformation.jsp#)

HOUSE BILL 548

C4 1lr1894

By: **Delegate Braveboy**
Introduced and read first time: February 8, 2011
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Homeowner's Insurance – Notice of Underwriting Standards

FOR the purpose of altering a certain annual statement that an insurer that issues or delivers policies of homeowner's insurance in the State must provide to policyholders to require the statement to summarize the insurer's underwriting standards for insurance eligibility; requiring the statement to include a certain disclosure that states that the policyholder should communicate with certain persons for additional information regarding the insurer's underwriting standards for insurance eligibility; providing for the application of this Act; and generally relating to providing notice to policyholders of underwriting standards for insurance eligibility under policies of homeowner's insurance.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 19–205
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19–205.

(a) (1) An insurer shall provide a policyholder with an annual statement that summarizes:

(I) THE INSURER'S UNDERWRITING STANDARDS FOR INSURANCE ELIGIBILITY;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

(II) the coverages and exclusions under the policy issued by the insurer.

(2) The insurer's statement shall be clear and specific.

(3) The insurer's statement shall state whether the coverages under the policy provide for replacement cost, actual cash value, or other method of loss payment for covered structures and contents.

(4) The insurer's statement shall include a disclosure that states:

(i) the policyholder should read the policy for complete information on coverages and exclusions;

(ii) the policyholder should refer to the declarations page for a listing of coverages purchased;

(iii) the policyholder should communicate with the insurance producer or the insurer for any additional information regarding the **INSURER'S UNDERWRITING STANDARDS FOR INSURANCE ELIGIBILITY AND THE** scope of coverages in the policy;

(iv) the statement does not include additional optional coverage purchased by the policyholder, if any;

(v) the statement is not part of the policy or contract of insurance and does not create a private right of action;

(vi) all rights, duties, and obligations are controlled by the policy and contract of insurance; and

(vii) the standard homeowner's insurance policy does not cover losses from flood.

(b) The statement under subsection (a) of this section:

(1) is not part of the policy or contract of insurance; and

(2) does not create a private right of action.

(c) The Commissioner may adopt regulations to implement the provisions of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies of homeowner's insurance issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

HOUSE BILL 762

C4 1lr1891

By: **Delegate Braveboy**
Introduced and read first time: February 10, 2011
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Insurance – Unfair Claim Settlement Practices – Refusal to Pay a Claim

FOR the purpose of altering the circumstances under which it is an unfair claim settlement practice and a violation of certain provisions of law for an insurer, nonprofit health service plan, or health maintenance organization to refuse to pay a claim; and generally relating to unfair claim settlement practices under insurance law.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 19–706(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 27–303
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

19–706.

(g) The provisions of § 27–504 and Title 27, Subtitle 3 of the Insurance Article shall apply to health maintenance organizations.

Article – Insurance

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets] indicate matter deleted from existing law.

27–303.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) **UNREASONABLY** refuse to pay a claim **[**for an arbitrary or capricious reason**]** based on all available information **FROM THE INSURED OR ANY OTHER SOURCE**;

(3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;

(4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;

(5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;

(7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;

(8) fail to comply with the provisions of Title 15, Subtitle 10A of this article; or

(9) fail to act in good faith, as defined under § 27–1001 of this title, in settling a first–party claim under a policy of property and casualty insurance.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Chapter 154

(House Bill 1082)

AN ACT concerning

Homeowner's Insurance – Model Information – People's Insurance Counsel

FOR the purpose of requiring ~~that the People's Insurance Counsel Division shall have access to certain information in certain insurer filings concerning rates, issuance, and renewal of homeowner's insurance~~ certain insurers to make arrangements for the vendor of a certain risk planning model to explain to the People's Insurance Counsel the data used in the model and the manner in which the output is obtained; requiring the ~~Division~~ People's Insurance Counsel to maintain the confidentiality of certain information; and generally relating to homeowner's insurance, risk planning models, and the People's Insurance Counsel ~~Division~~.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 19–211
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19–211.

(a) (1) If an insurer uses a catastrophic risk planning model or other model in setting homeowner's insurance rates or refusing to issue or renew homeowner's insurance because of the geographic location of the risk, the insurer shall:

(i) file with the Commissioner a description of the specific model used in setting the rate or refusing to issue or renew homeowner's insurance because of the geographic location of the risk; and

(ii) make arrangements for the vendor of the model to explain to the Commissioner **AND THE PEOPLE'S INSURANCE COUNSEL** the data used in the model and the manner in which the output is obtained.

(2) If at any time an insurer changes the catastrophic risk planning model or other model upon which it is relying, the insurer shall notify the Commissioner of the change and comply with paragraph (1) of this subsection.

(b) ~~IF THE PEOPLE'S INSURANCE COUNSEL DIVISION DETERMINES THAT THE INTERESTS OF INSURANCE CONSUMERS ARE AFFECTED BY AN INSURER FILING THAT USES A CATASTROPHIC RISK PLANNING MODEL OR OTHER MODEL, THE DIVISION SHALL HAVE FULL ACCESS TO FILINGS MADE UNDER SUBSECTION (A) OF THIS SECTION.~~

~~(C)~~ **(1)** The information filed under subsection (a) of this section is proprietary and confidential commercial information under § 10–617(d) of the State Government Article.

(2) THE PEOPLE'S INSURANCE COUNSEL ~~DIVISION~~ SHALL MAINTAIN THE CONFIDENTIALITY OF ANY PROPRIETARY AND CONFIDENTIAL COMMERCIAL INFORMATION TO WHICH THE ~~DIVISION~~ PEOPLE'S INSURANCE COUNSEL OBTAINS ACCESS UNDER SUBSECTION ~~(B)~~ (A) OF THIS SECTION.

~~[~~(c)~~]~~ ~~(D)~~ The Commissioner may adopt regulations to implement the provisions of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, April 12, 2011.