

Report of Birny Birnbaum

American Security Insurance Company v. State of Florida Office of Insurance Regulation

Case No. 2013 CA 1701

In the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

July 15, 2015

1. Purpose of Report

I am a consulting economist, specializing in insurance rates, regulation, policy with particular expertise and experience in analysis of insurance markets and competition and the type of insurance involved in this proceeding – lender-placed home insurance. I am also the requester of the information at issue in this proceeding in my capacity as Director of the Center for Economic Justice, a non-profit consumer organization advocating on behalf of consumers on insurance, credit and utility matters before administrative agencies.

The purpose of this report is to demonstrate that American Security Insurance Company's ("ASIC") trade secret claims on large portions of the company's 2013 rate filing, which have prevented the public release of these documents, are frivolous and defeat the purpose of Florida's Public Information Law, to secure public release of these non-trade secret documents and to provide guidance to the OIR that similar information in future rate filings shall be treated as public information.

CEJ is pursuing this action because public access to these documents is essential for the public to review the basis for the ASIC rate request and, consequently, to assist the OIR in and to hold the OIR accountable for review of the rate filing to meet Florida statutory requirements for rates. By declaring huge portions of the rate filing as trade secret – when significant portions of these documents are clearly not trade secrets – ASIC has thwarted the public purpose of the Florida public information law and the ability of the public to review the key assertions supporting the ASIC rate request.¹

¹ As my attached resume indicates, I have served as an insurance regulator – Chief Economist and Associate Commissioner for Policy and Research at the Texas Department of Insurance – and consultant to state insurance departments. I have also provided expert witness testimony in over 40 insurance litigations, many of which were lender-placed insurance litigations. The request for ASIC's rate filing documents has nothing to do with any of these or other litigations. As an expert witness in litigation against ASIC, I would have access, through discovery, to the documents at issue in this case if they were relevant to the issues in the litigation. The purpose of CEJ pursuing this matter is to stop ASIC from abuse of the trade secret exemption in Florida public information lawp

My report will demonstrate, ASIC has claimed trade secret for documents that are clearly not trade secrets because

- ASIC has subsequently released the information 12 to 18 months after submitting “trade-secret” documents to the OIR;
- ASIC has claimed trade secret for documents and information ASIC has not kept secret and has, in fact, released to the public in other ways, including press releases and statutory financial statements; and
- ASIC has not demonstrated and cannot demonstrate that the public release of the requested documents will benefit competitors or harm ASIC. In support of its trade secret claims, ASIC has provided only conclusory statements without evidence to support its claim of competitive harm from public release of the requested documents.

The documents that remain at issue are listed in Section 3 of my report:

I am not being compensated for my time in this matter as I provide my services to the Center for Economic Justice on a pro-bono basis.

2. Qualifications

I am a consulting economist and former insurance regulator specializing in insurance rates, regulation and policy, with particular expertise in credit-related insurance, generally, and in lender-placed insurance, specifically. I have over 20 years of experience analyzing insurance markets as a regulator, consultant to public agencies and expert witness. I have extensive experience with evaluating trade secret claims and have provided expert testimony in proceedings on such claims. I also have regulatory experience enforcing public information laws, including trade secret exemptions from public disclosure. I have extensive experience in the review of rates and have, among other assignments, served as the then-Florida Department of Insurance designated member of arbitration panels for homeowners insurance rate filings. It is, in large part, due to my work and analyses on behalf of the CEJ on LPI that prompted state insurance regulators to take action on LPI.

I have served as Chief Economist of the Texas Office of Insurance Counsel, a state agency dedicated to representing insurance consumers before the Texas Department of Insurance. I also served as Chief Economist and Associate Commissioner for Policy and Research at the Texas Department of Insurance where I had a broad set of responsibilities, including the review and approval of rate filings in many lines of insurance. I have consulted with numerous state and federal regulatory and enforcement agencies on insurance issues.

I received my formal training at Bowdoin College and at the Massachusetts Institute of Technology (MIT). I received two Masters Degrees from MIT. The first degree was a Master of Management from the Sloan School with a concentration in applied economics and finance. The second degree was a Master of City Planning from the Department of Urban Studies and Planning with a concentration in community and regional economics.

Appendix A includes a copy of my resume and list of expert testimony in litigation. Appendix B is the presentation I gave to the OIR on the ASIC LPI rate filing, which demonstrates my knowledge and expertise on LPI.

3. Documents at Issue

ASIC submitted a rate filing for LPI rates to the Florida OIR on or around March 1, 2013. The OIR filing number is 13-04125. ASIC claimed trade secret on large portions of the initial filing. Over the next six months, ASIC submitted additional documents related to the filing to the OIR, claiming almost all of these additional documents as trade secret. On or about October 7, 2013, OIR and ASIC entered into Consent Order (Case No. 141841-13) in which OIR disapproved the ASIC filing and ASIC agreed to re-file with 10% lower rates and to stop certain practices of paying kickbacks to mortgage servicers.

Shortly following the original submission of the Filing 13-04125, I made a public information request to the OIR for the documents in the filing withheld from public disclosure.

On or about April 17, 2015 – at least 18 months after submission to the OIR as trade secret documents – ASIC withdrew the trade secret claim for ASIC (FL OIR) 001378 – 1380: Cost of Reinsurance Support Exhibit E

On July 14, 2015 – at least 21 months after submission to the OIR as trade secret documents – ASIC withdrew the trade secret claim for the following documents:

ASIC (FL OIR) 000007:	Exhibit 8.5 2012 FHCF Estimated Premium
ASIC (FL OIR) 00001941	Exhibit 1.2 Explanation of Rate Level Indications
ASIC (FL OIR) 00001942:	Exhibit 2.1 Development of Two-Step Premium Trend
ASIC (FL OIR) 00001943:	Exhibit 2.2 Development of One-Step Premium Trend
ASIC (FL OIR) 00001944:	Exhibit 2.3 Explanation of Premium Trend Factor Derivation
ASIC (FL OIR) 00001947:	Exhibit 2.3 Explanation of Premium Comparison
ASIC (FL OIR) 00001950:	Exhibit 2.1a Development of Prospective Trend Factor

On July 14, 2015, ASIC also withdrew its trade secret claim for portions of the following documents, among others:

ASIC (FL OIR) 000001:	Exhibit 7.2 Support of Commission Expense Provision
ASIC (FL OIR) 000003:	Exhibit 8.1 Derivation of Reinsurance Cost
ASIC (FL OIR) 000004:	Exhibit 8.2 Cost of Replacing TICL
ASIC (FL OIR) 000008:	Exhibit 8.6 2012 FHCF Sample Calculations
ASIC (FL OIR) 000009:	Exhibit 8.7 Assurant US Hurricane Risk Link Analysis
ASIC (FL OIR) 000012:	Exhibit 10 Premium Comparison RMSP to MIP
ASIC (FL OIR) 000013:	Exhibit 12 Territorial Rate Relativity
ASIC (FL OIR) 000014:	Exhibit 13 Derivation of Wind Only and Wind Exclusion Credits
ASIC (FL OIR) 001520:	Exhibit 26 Comparison of Historical and Actual Expected Losses
ASIC (FL OIR) 001524:	Exhibit 25 Territorial Rate Relativity
ASIC (FL OIR) 001945	Exhibit 3.1 Premium Comparison

Documents Remaining at Issue

I have withdrawn my request for all documents claimed as trade secret by ASIC with the exception of the following, which are the documents at issue in this proceeding:

ASCI (FL OIR) 000058 to 1109 and 1181 to 1233	“County Payout Factors”
ASIC (FL OIR) 000001:	Exhibit 7.2 Support of Commission Expense Provision
ASIC (FL OIR) 000002:	Exhibit 7.3
ASIC (FL OIR) 000003:	Exhibit 8.1 Derivation of Reinsurance Cost
ASIC (FL OIR) 000004:	Exhibit 8.2 Cost of Replacing TICL
ASIC (FL OIR) 000005:	Exhibit 8.3
ASIC (FL OIR) 000006:	Exhibit 8.4
ASIC (FL OIR) 000008:	Exhibit 8.6 2012 FHCF Sample Calculations
ASIC (FL OIR) 000009:	Exhibit 8.7 Assurant US Hurricane Risk Link Analysis
ASIC (FL OIR) 000010:	Exhibit 9.1
ASIC (FL OIR) 000011:	Exhibit 9.2
ASIC (FL OIR) 000012:	Exhibit 10 Premium Comparison RMSP to MIP
ASIC (FL OIR) 000013:	Exhibit 12 Territorial Rate Relativity
ASIC (FL OIR) 000014:	Exhibit 13 Derivation of Wind Only and Wind Exclusion Credits
ASIC (FL OIR) 000015:	Exhibit 14 Amount of Insurance Relativity Curve Support
ASIC (FL OIR) 001520:	Exhibit 21
ASIC (FL OIR) 001520:	Exhibit 26 Comparison of Historical and Actual Expected Losses
ASIC (FL OIR) 001521:	Exhibit 22
ASIC (FL OIR) 001522:	
ASIC (FL OIR) 001523:	Exhibit 24 RMSP Rate Multiplier
ASIC (FL OIR) 001524:	Exhibit 25 Territorial Rate Relativity
ASIC (FL OIR) 001866:	Exhibit 29
ASIC (FL OIR) 001867:	Exhibit 30
ASIC (FL OIR) 001868:	Exhibit 31

ASIC (FL OIR) 001869:	Exhibit 32
ASIC (FL OIR) 001870:	Exhibit 33
ASIC (FL OIR) 001871:	Exhibit 34
ASIC (FL OIR) 001924:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001925:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001926:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001927:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001928:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001929:	Exhibit 29 Client Expense Rate Agreements
ASIC (FL OIR) 001930:	Exhibit 35
ASIC (FL OIR) 001931:	Exhibit 36
ASIC (FL OIR) 001940:	
ASIC (FL OIR) 001946:	Exhibit 3.2 Rating Examples
ASIC (FL OIR) 001947:	Exhibit 3.3 Explanation of Premium Comparison

4. Lender-Placed Insurance (LPI) and the Unique Nature of LPI Markets

Mortgage contracts include a requirement that borrowers maintain insurance to protect the property serving as collateral for the mortgage loan. The mortgage contract also provides that the lender or servicer may place insurance on the property and charge the borrower for the cost of that insurance in the event the borrower fails to maintain required insurance. This lender-placed insurance (LPI) is the insurance for which ASIC made a rate filing in 2013. The documents at issue are part of that rate filing for LPI.

LPI markets are not normally competitive. The consumers who are ultimately charged for the LPI coverage exert no market pressure on the price of LPI. Instead, LPI markets are characterized by reverse competition. LPI markets are characterized by reverse competition, which means that the insurers compete for the lender's or servicer's business because these entities have the market power to steer the ultimate consumer to the insurer. In a reverse-competitive market, the insurers compete for the lender's or servicer's business by offering a variety of considerations to the lender, the cost of which drives up the cost of the insurance to the ultimate consumer.

Reverse competition is a well-accepted insurance regulatory concept and is defined in a model law created by the National Association of Insurance Commissioners.²

“Reverse competition” means competition among insurers that regularly takes the form of insurers vying with other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to the persons overwhelms any downward pressure consumers may exert on the price of insurance, thus causing prices to rise and remain higher than they would otherwise.”

Evidence from regulatory and journalist investigations, as well as discovery in this case, demonstrate that reverse competition in LPI markets has inflated the LPI premium charges from LPI insurers to mortgage servicers far above the reasonable cost of providing LPI coverage to protect the properties serving as collateral for the mortgage loans. A significant amount of the inflated LPI premiums charged by the LPI insurer to the mortgage servicer is kicked back to the mortgage servicer through a variety of mechanisms, including, for example, “commissions” to insurance agents or brokers affiliated with the mortgage servicer, the provision of free or below-cost services and outright cash payments. The mortgage servicer typically charges borrowers the same amount for LPI as the mortgage servicer paid in premium to the LPI insurer, thereby causing borrowers to pay for the kickbacks.

The fact that LPI rates are excessive – with the ultimate result that borrowers, many of whom are already in financial distress, are charged unreasonable and excessive amounts by mortgage servicers for LPI. The tables below show historic loss ratios for homeowners insurance and LPI in Florida and all states other than Florida

² NAIC Credit Personal Property Insurance Model Act, Section 3 (X).

**Table 4: Homeowners and LPI Loss Ratios
 Florida Only and All States Ex Florida, 2004-12³**

<u>Year</u>	<u>FL HO</u>	<u>FL LPI</u>	<u>All State Ex FL HO</u>	<u>All States EX FL LPI</u>
2004	303.0%	75.2%	52.2%	28.0%
2005	153.6%	102.5%	60.2%	47.9%
2006	32.6%	29.6%	58.7%	28.9%
2007	25.6%	11.4%	63.0%	22.2%
2008	33.9%	10.6%	86.6%	26.7%
2009	38.4%	11.7%	72.5%	24.7%
2010	38.1%	7.2%	72.5%	23.1%
2011	35.9%	9.9%	90.8%	32.6%
2012	31.6%	13.3%	72.2%	40.3%
2004-2012	61.4%	13.6%	70.9%	30.0%

Due to advocacy by the Center for Economic Justice and other consumer organizations, several state insurance departments, including the Florida Office of Insurance Regulation, initiated investigations of LPI rates and market practices. The ASIC filing, documents from which are at issue in this proceeding, occurred during this period. The OIR investigation included a settlement with ASIC to stop certain practices of kickbacks from LPI premiums paid by mortgage servicers back to those mortgage servicers.

There are several key aspects of LPI and LPI markets relevant for analysis of claims of competitive harm from release of the requested documents.

LPI is a group master policy sold to mortgage servicers which provide coverage as needed automatically if and when a borrower's voluntary insurance lapses. There is no underwriting or risk evaluation of individual properties for the issuance of coverage. Rather, LPI insurers underwrite the mortgage servicer's portfolio, based on characteristics of the mortgage loans.

³ Data Sources: Homeowners 2004-2012, *NAIC Report on Profitability by State by Line in 2012*, page 149, Countrywide-Direct, Percent of Direct Premiums Earned Losses Incurred. Homeowners 2004-2012 average is the simple average of annual values by Birnbaum. LPI Home, NAIC Credit Insurance Experience Exhibit data compiled by Birnbaum.

Another key aspect of LPI markets is that mortgage servicers typically outsource the servicer responsibility to track insurance on serviced loans to the LPI insurer (or its affiliate). ASIC and its affiliates will provide LPI and servicer-outsourced insurance tracking services.

The implications of these characteristics for competitive analysis include:

- There is no risk evaluation of individual properties, so an LPI insurer's historical experience does not reveal any underwriting guidelines or marketing strategy.
- The LPI policy requires the LPI insurer to insure all properties in the servicer portfolio whose voluntary insurance has lapsed, so an LPI insurer's historical experience does not reveal underwriting guidelines or marketing strategy.
- The insured policyholder on LPI policies are mortgage servicers and the LPI policy covers any property in the servicer's portfolio whose insurance has lapsed, so historical experience is not a guide to the insurer's future portfolio of LPI-covered properties. Stated differently, the LPI policy provides coverage as needed for any property serving as collateral for a serviced loan as needed. The number and types of properties requiring LPI coverage in the future will be different from today because borrower's voluntary insurance circumstances change (resulting in a different mix of LPI coverages in force) and because mortgage servicers purchase and sell mortgage servicing rights (changing the loans in the servicing portfolio). The historical experience of an LPI insurer cannot reveal the marketing or underwriting strategy of the LPI insurer because those strategies are directed at and evaluate mortgage servicing portfolio characteristics. For example, the fact that ASIC had, for illustration, 1,000 coverages in force for a rating territory in 2012 provides no intelligence to a competitor because the existence of the 1,000 coverages was not a result of ASIC employing a marketing strategy in that rating territory or the use of geographic underwriting guidelines. *Further, the historical experience is of no greater use to a competitor than ASIC's published rates. If the competitor wanted to rely on ASIC's experience, it would copy the ASIC rates. Information about ASIC's experience by rating territory provides no additional competitive intelligence because there is ASIC geographic-specific or property-specific underwriting or marketing strategy to copy.*

5. ASIC Has Claimed Trade Secret for Documents ASIC Does Not Consider Trade Secret and For Which the ASIC Trade Secret Claims Were Frivolous

As indicated in section 3, ASIC claimed trade secret in 2013 on documents it does not consider to be trade secret because ASIC released such trade secret claims in 2015. Appendix C includes the documents ASIC originally claimed trade secret for and subsequently withdrew the trade secret claim. It is clear that these documents do not contain trade secrets and reflect an abuse by ASIC of the trade secret claim to exemption from public disclosure.

Pages 1378 to 1380 are brief responses to questions by the OIR. The document shows that ASIC claimed trade secret to the following:

(Question from OIR): The cost of reinsurance must be included as a “net” expense factor
(ASIC): The cost of reinsurance is included as a net expense factor.

(Question from OIR) The cost of private reinsurance must be split into two components.
(ASIC): We have complied with this requirement.

(Question from OIR) The cost of reinsurance must include the “FHCF Reins. Cost.”
(ASIC): Not applicable

The trade secret claim for this document was clearly frivolous. The information ASIC provided are simply acknowledgements of requirements for rates. Public release of this information could have provided no harm to ASIC or benefit to competitors.

ASIC’s claim of trade secret on non-trade secret documents for 18 to 21 months after submission to OIR is an abuse of the trade secret exemption to public information and thwarts the ability of the public to review and comment on the rate filing during the OIR review process.

The remaining pages in Appendix C are explanations and exhibits of standard rate components – explanation of rate level indications, premium trend analyses and explanation of premium comparison. These are the types of exhibits routinely available to the public not only in prior ASIC filings but in voluntary homeowners insurance filings.

In fact, ASIC even relies upon a competitor’s filing to justify portions of its filing claimed as trade secret. ASIC relied upon rates filed by and rate filing information from Praetorian Insurance Company, yet it claimed such information as trade secret.

6. ASIC Has Claimed Trade Secret for Documents Containing Information ASIC Has Publicly Revealed

ASIC (FL OIR) 00145 and 01526 are mostly-redacted exhibits of “2012” Assurant Excess Cat Program and included in Appendix D of this report. The exhibits show the components of the catastrophe reinsurance program by type of reinsurance and catastrophe bond, but ASIC has redacted the graphs showing the composition of the program.

Assurant, Inc., ASIC’s ultimate parent, has publicly released the information contained in these exhibits in press releases. Appendix D also includes press releases from 2012, 2013 and 2014 in which Assurant, Inc. discloses its catastrophe insurance program, complete with the same type of graphics as in ASIC (FL OIR) 00145 and 01526.

In addition, ASIC, like any other admitted insurance company, must file a list of every reinsurance agreement it has as part of the Statutory Annual Financial Statement filed with state insurance regulators and available to the public. Schedule F of the Annual Statement includes lists of all reinsurance agreements of the insurer with information about those agreements.

Information is even publicly available about Assurant's catastrophe bonds. Appendix E show a description, including pricing, of the Assurant cat bond downloaded from the internet.

ASIC (FL OIR) 00145 and 01526 are yet additional examples of frivolous and abusive trade secret claims made by ASIC.

7. ASIC Has Provided Only Conclusory Statements, But No Evidence in Support of Its Trade Secret Claims

In ASIC's motion for summary judgement in this proceeding, it reiterated its claims of trade secret (including claims on documents ASIC subsequently withdrew the claim), but provided no evidence in support of the claims. Rather, ASIC provided only conclusory statements and claims. These conclusory statements are not only factually incorrect but do not demonstrate that public release of the documents will benefit competitors or harm ASIC.

Consider ASIC's description of and justification for trade secret of 15 documents, pages 00001 to 00015 in ASIC's motion:

Exhibits, 7.2, 7.3, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 9.1, 9.2, 10, 12, 13, and 14

ASIC MIPP - Support of Commission Expense Provision, Fixed Expense Allocations, Derivation of Reinsurance Cost, Cost of Replacing TICL Coverage, 2012 Wind season Catmetrics Summary, FHCF Estimated Premiums, FHCF Sample Calculations, Probability Loss Comparison with Loss Net of Deductibles, Deviation of Contingency Provision, Support of No Loss Adjustment in Contingency Provision Calculations, Premium Comparison, Territorial Rate Relativity, Derivation of Wind Only and Wind Exclusion Credits, Amount of Insurance Relativity Curve Support.

These subsets of documents contain trade secret and confidential information regarding ASIC's reinsurance premiums, including how its reinsurance premiums are calculated, the number of layers of reinsurance ASIC provides to its clients, ASIC's loss adjustment rates and ratios, and the movement and structure of ASIC's reinsurance policies. This information is, and has always been, subject to strict confidentiality and security protocols, and is not generally known throughout the industry. Many of the documents contained in this subsection are not of the type typically filed with the OIR, and are not usually included by ASIC during its annual rate filings. Here, these documents were included because of a specific requested by the OIR. As a result of the OIR's unusual requests, ASIC's filings with the OIR contain confidential or trade secret information that would not normally be disclosed to the OIR.

The information contained in these documents has been developed by ASIC, for the exclusive use of ASIC and its affiliates, over the course of many years and at a considerable expense. The information directly concerns ASIC's confidential business practices, and, if released, would cause ASIC to lose its competitive advantage in the marketplace. Allowing the information to be made public would also cause ASIC to become susceptible to having its reinsurance rates and layers disrupted by competitors.

Further, the release of these documents would constitute a major benefit to ASIC's competitors, and would allow ASIC's competitors to enjoy an overview of many key aspects of ASIC's business, business practices, and market strategies. It would also allow ASIC's competitors to compete with ASIC for reinsurers and favorable rates with an unreciprocated knowledge of ASIC's confidential business practices, including how ASIC structures its reinsurance agreements, and the terms ASIC employs to effectuate its business.

Further, ASIC has entered into mutually beneficial confidentiality and non-disclosure agreements with its reinsurers that require both ASIC and its reinsurers to keep information regarding the rates, terms, and reinsurers' identities confidential. If such information were released, and the terms of its agreements, and the identities of ASIC's reinsurers became public, not only would ASIC's reinsurers be injured, but ASIC would also have great difficulty obtaining reasonable reinsurance rates in the future. This type of disruption would make it very difficult for ASIC to properly manage its risk and conduct its business in the future, and would severely disadvantage ASIC. Additionally, much of the information contained in these documents is derived from modeling information that is subject to its own confidentiality and non-disclosure agreements. Were the information contained in these documents released, ASIC would not only lose its competitive advantage in the marketplace, but would also be in breach of contract with the company or companies that provide ASIC its models. As such, and for the foregoing reasons, the redacted information contained within these subsets of documents is, and should remain, protected under the trade secret exemption to Florida's Public Records Act.

This explanation does not meet an insurer's burden of demonstrating harm from public release of the documents for several reasons. First, the explanation deals only with reinsurance documents, yet several of the documents are unrelated to reinsurance, such as support for expense provisions and commissions. Support for expense provisions and commissions are routinely included in rate filings and always public information.

Second, the claims are conclusory with no evidence in support of the claims. Such conclusory claims provide no evidence that ASIC would suffer harm from release of the documents or competitors would gain benefit.

Third, the claims are demonstrably false. ASIC claims release of the reinsurance documents would reveal

- how its reinsurance premiums are calculated
- the number of layers of reinsurance ASIC provides to its clients
- the movement and structure of ASIC's reinsurance policies

Yet, this information is already available to competitors as explained and demonstrated in Section 6, above. ASIC's claim that "this information is, and has always been, subject to strict confidentiality" is blatantly false –ASIC reveals this information in press releases and other public documents.

ASIC's claim of harm – it would allow ASIC's competitors to compete with ASIC for reinsurers and favorable rates with an unreciprocated knowledge of ASIC's confidential business practices, including how ASIC structures its reinsurance agreements, and the terms ASIC employs to effectuate its business – is clearly wrong. ASIC has been able to compete and thrive in the LPI market – it is the largest LPI writer and has grown market share since 2012 – despite this reinsurance information already available to competitors. These claims by ASIC are examples of conclusory claims without empirical support and contradicted by actual evidence.

Finally, it is critical to point out that the key information in the rate filing is not the overall cost of the ASIC reinsurance program, but the portion of that cost ASIC proposes to allocate to Florida for purpose of Florida rates. Public release of this allocation methodology allows the public to comment on the reasonableness of the allocation, but provides no benefit to a competitor. Information on how ASIC proposes to allocate its reinsurance cost to Florida does nothing to assist a competitor in competing with ASIC – it does nothing to assist the competitor in obtaining reinsurance or deciding how much reinsurance to obtain or change the competitor's reinsurance costs or substitute for the competitor's information requirements in rate filings.

8. Public Release of the Documents at Issue Will Not Harm ASIC or Benefit Competitors

ASIC has claimed trade secret on rate filing exhibits routinely filed by other insurers and available to the public. These exhibits include the justification for rates by geographic rating territory, justification of expense and commission provisions, explanation how historical premiums charges for one LPI program translate into premium charges for the new LPI program how proposed premium charges compare with premium charges of a competitor.

Exhibits justifying territorial rating differences are routinely part of insurer rate filings and available to the public. There is no benefit to competitors or harm to ASIC from public release of these exhibits because such exhibits provide no information to competitors more useful than the actual territorial rates charged by ASIC, which are public information. As explained above, exhibits of historical experience – even by rating territory – do not reveal any underwriting or marketing strategy of ASIC because ASIC LPI does not underwrite individual properties or market to individual consumers but underwrites mortgage servicer portfolios and markets to mortgage servicers whose portfolios are changing constantly.

Exhibits regarding expense and commission justification provide no benefit to competitors because a competitor must provide its own justification based on its own expense and commission experience. If a competitor wanted to rely on the expense and commission provisions of ASIC for purposes of a rate filing – there is no other purpose for using the expense and commission information in the ASIC filing – the competitor has the actual amounts of commission and expenses provisions ASIC has proposed in its filing. The documents ASIC has claimed trade secret for are the documents that the public needs to evaluate whether the proposed expense and commission provisions are reasonable. And it is particularly important in the case of ASIC LPI because of the history of kickbacks from ASIC to mortgage servicers in the forms of “commissions” and expenses for activities unrelated to LPI, but included in LPI rates.

Exhibits showing how premium collected under an existing LPI product (“MSP”) would translate into premiums under the proposed LPI product (“MIP”) are basic information to enable the regulator and the public to evaluate whether the new rating plan is revenue-neutral or whether the new rating plan produces more or less premium for the same set of exposures used to project expected claims. If a comparison of the difference between old and new rates was of interest to a competitor, a competitor could make the comparison by utilizing the actual rates from the existing program (public information from an earlier filing) and the proposed rates in the new ASIC filing. Again, public release of the information provides no benefit to a competitor beyond that of other publicly available information. The ASIC trade secret claim thwarts the public purpose of the public information laws.

Similar to exhibits showing comparisons of premium under the old MSP program to the new MIP LPI program, exhibits comparing ASIC’s proposed premium charges to those of competitors are clearly not a trade secret. The OIR requested, and ASIC provided information comparing premium charges under the proposed MIP rates to premium charges by a competitor, Praetorian Insurance Company, for examples of certain property characteristics. Appendix F shows pages 0001945 – 1947. ASIC has withdrawn the trade secret claim for 1947, redacted most of 1945 and redacted a portion of 1946. ASIC continues to claim trade secret on premium at current MSP rates, premium at proposed MIP rates and premium estimated for Praetorian rates on page 1945. Again, this is a frivolous trade secret claim. The information, if released does not harm ASIC or benefit a competitor. The competitor has the information and resources to perform a comparison of rates and to do so at a more meaningful level for the competitor. The competitor has information on individual LPI coverages that the competitor insures so it can take the public rates of the old MSP, the publicly proposed rates of the new MIP and perform the comparison in the ASIC trade secret exhibits on a more accurate level.

The absurdity of the ASIC trade secret claim grows with the redaction on page 1946, where ASIC actually gives three examples of premium calculations under the proposed MIP rates, but redacts the ZIP Code location of each of the three examples. There is no harm from public release of the ZIP Code locations of the three rating examples, because any competitor could figure out the rating territory location of the ZIP Code example by simply looking at territorial relativity. Again, there is no benefit to a competitor from public release of this information because a competitor already has all the information necessary to perform a comparison of rates between the competitor and ASIC. Finally, page 1947 is a brief description of a premium comparison between ASIC's proposed rates and those of a competitor. There is no discernable reason why ASIC claimed this document as a trade secret for over 21 months.

9. Conclusion

My report has shown that

- ASIC has made frivolous trade secret claims and thereby thwarted the public policy of Florida public information law. ASIC claimed trade secret for documents it determined were not trade secret, but unnecessarily delayed the public release of these documents by over 18 months and thereby deprived the public of the opportunity to meaningfully comment on ASIC's rate filing.
- ASIC has claimed trade secret for documents and information that is either publicly available, provides no benefit to competitors if released and/or causes no harm to ASIC if released.
- ASIC has not remotely met its burden of demonstrating the documents are trade secrets. ASIC has provided only conclusory assertions without evidentiary support and which are refuted by available evidence.

As the requester of the information at issue in this proceeding, I respectfully ask the Court to deny ASIC's trade secret claims on the documents that remain at issue and to order that such documents and substantially-similar documents submitted in the future by ASIC for LPI rate filings are not trade secrets.



Birny Birnbaum