



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin PC-40 (formerly NF-54)

Issued December 15, 1978

Reissued December 20, 2000

SUBJECT: TERRITORIAL RATING SYSTEM

Gentlemen:

Enclosed herewith is a Memorandum of Decision and Declaratory Ruling pertaining to the territorial rating system which may be utilized by your company to compute its automobile rates in Connecticut. Please be advised that the deficiencies described therein should be addressed and corrected in any applicable rate filing submitted to the Department subsequent hereto.

We urge that an immediate review of your present automobile rates be undertaken with a view toward amendment thereto in the light of the attached Decision. The continued approval of any rates presently on file by your company is conditioned upon the filing by your company of such a correcting amendment to be effective not later than July 1, 1979. In the absence of such filing, review of your company's existing rates will be initiated under the applicable statutory procedures. Briefly, the major areas addressed in said Decision are:

1. The inappropriateness of relying entirely on each territory's loss costs to determine its rates.
2. The inappropriateness of allocating expenses (general, other acquisition and miscellaneous licenses, taxes and fees) by territory in proportion to loss experience.
3. The inappropriateness of allocating basic reparations benefits losses by territory.
4. The need to establish a statistical gathering system to test, on an ongoing basis, the validity of the territorial configurations.
5. The need to review the present method of allocating commission expenses.

Items 1 through 4 are covered in more detail in the accompanying appendices A and B.

With respect to Item 5, I am asking you as a member of the industry and the agents, by means of a separate letter to the agents' associations, to address this problem. The representatives of the industry and the agents must take it upon themselves to examine this situation and the alternatives available. Such action should be initiated not later than January 8, 1979. The Department requests monthly interim progress reports and a final report containing recommendations by July 1, 1979.

I am confident that the adjustments to statistical data called for by this Decision can be made with the same absence of market dislocation attending the myriad adjustments routinely made by the industry to such data and to indicated statewide rate levels even before rate filings are submitted to this Department.

I, and the staff of the Department, will be happy to assist your company in taking the steps necessary to assure equitable automobile rates for Connecticut residents.

Joseph C. Mike

Joseph C. Mike
Insurance Commissioner

APPENDIX A

THE ESTABLISHMENT OF CONNECTICUT STATISTICAL TERRITORIES AND THE REPORTING OF SUCH DATA

Every licensed insurance company shall confirm with the Connecticut Insurance Department not later than April 1, 1979 that it has adopted procedures to maintain its Connecticut Private Passenger Automobile experience identified by town, beginning with all policies written to be effective on or after July 1, 1979. The term "Town" is as defined in the State of Connecticut Register and Manual published annually. The reporting codes to be used are those used by the Tax Assessment List of Connecticut Motor Vehicle Department. A list of these codes is on Page 4.

Each company shall report, or use its designated statistical agent to report, such data on a calendar/accident year basis annually to the Connecticut Insurance Department.

The first report, due June 1, 1980, will be for the period July 1, 1979 through December 31, 1979 with losses valued as of March 31, 1980. Subsequent reports will be for twelve month periods. Each twelve month period must be reported for four consecutive years. For example, the report due June 1, 1984 will show data separately for 1980, 1981, 1982 and 1983, all with losses valued as of March 31, 1984.

These reports shall include, for each town separately, residual bodily injury liability, property damage liability, basic reparations benefits, comprehensive and collision: written premium and exposures, earned premium and exposures, incurred losses (for liability, limit losses to \$20/40 RBI and \$5,000 PD) and number of claims.

PRIVATE PASSENGER AUTOMOBILE (NON-FLEET)
CONNECTICUT -- TOWN STATISTICAL CODES

Code	Town	Code	Town	Code	Town	Code	Town
1	Andover	46	East Windsor	91	New Fairfield	136	Sterling
2	Ansonia	47	Easton	92	New Hartford	137	Stonington
3	Ashford	48	Ellington	93	New Haven	138	Stratford
4	Avon	49	Enfield	94	Newington	139	Suffield
5	Barkhamsted	50	Essex	95	New London	140	Thomaston
6	Beacon Falls	51	Fairfield	96	New Milford	141	Thompson
7	Berlin	52	Farmington	97	Newtown	142	Tolland
8	Bethany	53	Franklin	98	Norfolk	143	Torrington
9	Bethel	54	Glastonbury	99	N.Branford	144	Trumbull
10	Bethlehem	55	Goshen	100	North Canaan	145	Union
11	Bloomfield	56	Granby	101	North Haven	146	Vernon
12	Bolton	57	Greenwich	102	N.Stonington	147	Voluntown
13	Boxrah	58	Griswold	103	Norwalk	148	Wallingford
14	Branford	59	Groton	104	Norwich	149	Warren
15	Bridgeport	60	Guilford	105	Old Lyme	150	Washington
16	Bridgewater	61	Haddam	106	Old Saybrook	151	Waterbury
17	Bristol	62	Hamden	107	Orange	152	Waterford
18	Brookfield	63	Hampton	108	Oxford	153	Watertown
19	Brooklyn	64	Hartford	109	Plainfield	154	Westbrook
20	Burlington	65	Hartland	110	Plainville	155	W.Hartford
21	Canaan	66	Harwinton	111	Plymouth	156	West Haven
22	Canterbury	67	Hebron	112	Pomfret	157	Weston
23	Canton	68	Kent	113	Portland	158	Westport
24	Chaplin	69	Killingly	114	Preston	159	Wethersfield
25	Cheshire	70	Killingworth	115	Prospect	160	Willington
26	Chester	71	Lebanon	116	Putnam	161	Wilton
27	Clinton	72	Ledyard	117	Redding	162	Winchester
28	Colchester	73	Lisbon	118	Ridgefield	163	Windham
29	Colebrook	74	Litchfield	119	Rocky Hill	164	Windsor
30	Columbia	75	Lyme	120	Roxbury	165	Windsor Locks
31	Cornwall	76	Madison	121	Salem	166	Wolcott
32	Coventry	77	Manchester	122	Salisbury	167	Woodbridge
33	Cromwell	78	Mansfield	123	Scotland	168	Woodbury
34	Danbury	79	Marlborough	124	Seymour	169	Woodstock
35	Darien	80	Meriden	125	Sharon		
36	Deep River	81	Middlebury	126	Shelton		
37	Derby	82	Middlefield	127	Sherman		
38	Durham	83	Middletown	128	Simsbury		
39	Eastford	84	Milford	129	Somers		
40	East Granby	85	Monroe	130	Southbury		
41	East Haddam	86	Montville	131	Southington		
42	East Hampton	87	Morris	132	So.Windsor		
43	East Hartford	88	Naugatuck	133	Sprague		
44	East Haven	89	New Britain	134	Stafford		
45	East Lyme	90	New Canaan	135	Stamford		

APPENDIX B

GUIDELINES FOR THE REVISION OF CONNECTICUT PRIVATE PASSENGER AUTOMOBILE RATES

The Memorandum of Decision and Declaratory Ruling regarding the territorial rating system for automobile insurance requires that Connecticut private passenger automobile rates be revised. Areas which should be addressed immediately are outlined below. The necessary revisions must be implemented not later than July 1, 1979. Necessary revisions should include the following:

1. Loss Costs. Individual territorial loss cost data is not considered to be an absolute indication of the fair and proper rates to be used in each territory; therefore, such data should be weighted or otherwise moderated with reference to statewide average loss costs.

2. Expenses -- General, Other Acquisition and Miscellaneous Licenses, Taxes and Fees. Base rates should reflect the use of flat dollar amounts for the above captioned expenses for all territories. It is permissible, but not necessary, to vary expenses by classification within each territory. In the event that an individual company can demonstrate that there is a more fair or accurate way of allocating these expenses, such allocation will be reviewed. Variation from the use of a flat dollar amount in the base rates should be based on data which is credible (both as to volume and lack of bias) and shall not affect more than 25% of the above captioned expenses.

All supporting information must be submitted and must be auditable by the Insurance Department.

3. Basic Reparations Benefits Rates. Since the loss costs for this coverage are not usually reallocated to the territory of the vehicle at fault, the territorial base rates for this coverage should be equal to the statewide average rate for all territories.

APPENDIX C

Enclosed is a copy of my decision on the Petition for Declaratory Ruling filed by the City of Hartford and a bulletin (NF-54) setting forth procedures designed to implement the decision.

While the decision and bulletin respond to issues raised in the proceeding, there are a number of other issues related to automobile insurance that should be addressed. In the past, the insurance industry has directed its efforts toward defending past practices and overlooked opportunities to adjust its attitude to keep pace with the changing perceptions of regulators, legislative bodies and the public. Your ability to address these issues would provide an impressive indication of your willingness to participate in a real and practical way in attempting to relieve the burden placed on the insurance consumer today.

I. With respect to the rate classification system, the insurance industry is directed to undertake the following projects:

A. Re-evaluate existing classification of risks based on age, sex and marital status. It is apparent that these criteria are being subjected to increasingly intense scrutiny, both as to their statistical validity within a rating plan and to the social acceptability of using such criteria today. The insurance industry must seriously examine the factors for which these criteria serve as proxies and consider the practicality of improving the use of each of them.

B. Review the existing method of allocating expenses among rate classifications. This review can be undertaken concurrently with any examination of expenses begun as a result of the territorial decision.

II. The design of the product purchased by the consumer has a direct effect on the cost of such coverage.

A. Particular consideration should be given to the feasibility of some form of discount for elderly citizens who may not need additional protection from automobile insurance for lost income because they are retired. I plan to submit legislation next year to make Medicare primary over No-Fault. Consideration, therefore, should also be given to discounts for Medicare recipients which reflect their reduced medical expense needs.

B. The insurance industry must display greater innovation in product design. Particular emphasis must be placed on the preparation of products with higher deductibles, especially for comprehensive and collision coverages, which usually account for approximately one-half an individual's premium dollar. Companies should develop a basic insurance package which provides adequate, bare bones, no-frills coverage.

C. Cost containment, thus far, seems to have meant a tougher claim handling policy which too often means increased consumer dissatisfaction and an attendant Insurance Department complaint increase. The industry must focus its attention more intensely on reduction of the incidence of claims through more effective loss prevention techniques. Efforts designed to:

1. strengthen existing traffic safety programs,
2. develop effective anti-theft devices,
3. perfect and encourage the use of effective passive restraint systems, and
4. review the present traffic violation sanctions and their validity in an insurance rating mechanism, can be undertaken in conjunction with appropriate private and governmental agencies in an effort to reduce the occasion and severity of automobile accidents and injuries.

III. Finally, and perhaps most importantly, a program designed to assist and educate the consumer is needed.

A. Each company should establish a toll-free telephone number to permit ready access for its Connecticut policyholders and agents.

B. Increased efforts should be made to provide meaningful consumer educational material to policyholders. The Insurance Department has available a concise explanation of automobile insurance which each company should consider forwarding to all policyholders periodically with their billings.

I would like to receive your acknowledgement to this letter and a proposed timetable for the delivery of a final response to the issues I have raised by January 31, 1979.

It must be understood that the development of a fair and affordable automobile insurance pricing system requires recognition of societal pressures and public concern, as well as traditional approaches to insuring economic stability. The automobile insurance industry is being called on to meet, in a real and practical way, the challenges I have raised. It is essential that these issues be addressed now; it is probably the last opportunity the industry will be given to voluntarily resolve these problems. I hope you are equal to the challenge.

STATE OF CONNECTICUT
INSURANCE DEPARTMENT

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IN THE MATTER OF:

:
A PETITION FOR DECLARATORY RULING
PERTAINING TO THE TERRITORIAL
RATING SYSTEM FOR AUTOMOBILE
INSURANCE RATES

BEFORE THE INSURANCE
COMMISSIONER, STATE OF
CONNECTICUT

MEMORANDUM OF DECISION
DECLARATORY RULING

DECEMBER 14 1978

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INTRODUCTION

A. THE PETITION FOR DECLARATORY RULING

This proceeding was initiated as the result of a filing by the City of Hartford (City) on September 28, 1977, of a petition for declaratory ruling (Petition) pursuant to Section 4-176 of the General Statutes. The Petition requested that the Insurance Commissioner a declaratory ruling that:

"the present territorial system for charging rates for automobile casualty and no fault insurance, which system establishes the City of Hartford as a separate territory, is unfairly discriminatory, in violation of Sections 38-201c(a) and 38-343(a)(4) of the General Statutes, Article I, Section 20 of the Constitution of Connecticut and the Thirteenth and Fourteenth Amendments to the United States Constitution."

In accordance with Sections 38-4-6(1) and 38-4-6(5) of the Regulations of State Agencies, the Petition included a "Factual Background" and "Petitioner's Position" which respectively outlined the features of the "territorial system", so-called, of automobile rate setting, and the City's claim respecting the ways in which this; system violated the cited Constitutional and statutory provisions. As evidence of its compliance with Section 38-4-6(3) of the Regulations of State Agencies, the Petition indicated service by first class mail of its' contents upon a number of persons and entities who had been contacted or who had previously attended a public hearing at Hartford City Hall.

The "Factual Background" and "Petitioner's Position" portion of the Petition were subsequently amended by the City to include

additional claims regarding the faults of the territorial system and to move that the ". . . Commissioner . . . reject rate structures based on the territorial concept as it presently exists and to require the companies under his jurisdiction to produce rates which are fair, equitable and just, according to law."

B. THE HEARING PROCESS

In response to the City's Petition, the Department directed the City to serve copies of the Petition upon the chief executive officer of each of the towns ". . . within the Greater Hartford SMSA" since "some or all of the municipalities . . . (therein] . . . may have an interest in this proceeding within the ambit of Section 38-4-6.3 of the Regulations of State Agencies."

By Notice of Hearing dated October 6, 1977, and in accord with Section 4-177 of the General Statutes, this matter was legally noticed as a contested case and assigned for a public hearing to be held on November 14, 1977. The Notice of Hearing which was published in the October 18, 1977, issue of the Connecticut Law Journal contained the following statements regarding the designation of parties to this proceeding:

"In accordance with the provisions of Section 4-166(5), the City of Hartford is designated as a party to these proceedings. Additionally, each insurer writing or authorized to write automobile insurance in Connecticut is designated a party to these proceedings. All Interested persons are invited to attend this public hearing and to participate therein in accordance with the applicable provisions of the Uniform Administrative Procedures Act."

In addition to publication of the Notice of Hearing, each insurer writing or authorized to write automobile insurance in Connecticut was mailed a copy of the Notice of Hearing by certified mail.

At the outset of the public hearing, counsel for several of the insurance companies so designated as parties, as well as for several groups and associations of such companies, filed appearances. In addition to such parties, and the City of Hartford, the following persons and entities were designated as parties to this proceeding:

- A. The Connecticut Commission on Human Rights & Opportunities,
- B. The Municipalities of West Hartford and Wethersfield,
- C. Jessie L. Pierce and Llewellyn Watson

In terms of diversity of interests or positions, the following shorthand designation of the parties to this proceeding will be utilized throughout this memorandum:

"The City" with reference to the City of Hartford;

"The Industry" with reference to the companies and company associations and organizations designated as parties;

"The Commission" with reference to the Connecticut Commission on Human Rights and Opportunities;

"The Municipalities" with reference to West Hartford and Wethersfield; and

"Pierce and Watson" with reference to Jessie L. Pierce and Llewellyn Watson.

Hearings on this matter commenced on, November 14, 1977, and terminated on September 22, 1978, encompassing twenty-four days of testimony. In addition, two quasi legislative hearing sessions were held in order to afford an opportunity to members of the public to comment without the legal

formalities which attended the evidentiary hearings. The weight given to this public comment portion of the record of these proceedings will be equivalent to that weight accorded the legal arguments of counsel.

In addition to the participation of the foregoing parties, the staff of the Insurance Department, through its counsel, was permitted to participate as though a party and to exercise all of the rights of a party by way of examination and cross-examination of witnesses and the introduction of evidence.

II

THE POSITIONS OF THE PARTIES

A. GENERAL

The various parties to the proceeding coalesced into two distinct groups, the proponents and the opponents of the Petition. The proponents included the City, the Commission and Pierce and Watson. The opponents consisted of the Industry and, to some undefined extent, the Municipalities. The Municipalities introduced no direct evidence and filed no memoranda of law, however, and are therefore presumed to have abandoned or waived any claims respecting this proceeding.

B. THE PROPONENTS

The City, the Commission and Pierce and Watson all seek to have the present territorial system, which establishes geographical differentiation of automobile insurance rates, declared unfairly discriminatory as a matter of statutory and Constitutional law. As these terms are used herein, the "present territorial system" refers to the present configuration of eighteen rating territories which together aggregate the entire state, and the method by which

statistical data from these eighteen territories is used by virtually all automobile insurance companies to develop the rates charged in Connecticut. The proponents presented expert testimony describing the automobile insurance rate making process in Connecticut and defining the present territorial boundaries. Premium comparison charts using rates in effect for selected groups of companies were introduced to demonstrate wide variations in such rates by territory. The pertinent aspects of the rate' making process which emerged from the testimony may briefly be described as follows:

An automobile insurance premium is composed of:

- (1) the pure premium component, which is an amount representing the expected loss cost for which the insurer is at risk including claims and claims disposition expenses which are allocated to particular claim and claims disposition expenses which can not be allocated to particular claims;
- (2) the operating expenses component, which is an amount representing the costs associated with the production of business generally, such as home office overhead and agents' commissions; and
- (3) a profit and contingency component which is an amount allocated for profits and contingencies. The second and third components are a direct function of the pure premium component and vary in direct proportion to the pure premium component. These latter components are usually expressed, however, as a percentage of total premium. Thus the operating

2. The utilization by the Industry of geographical territories as such, and in the abstract, does not appear to be under challenge. Both the proponents, and opponents' expert witnesses acknowledged the use of territories as a valid rate making device under appropriate conditions.

2. Unallocable disposition expenses are computed as a percentage of claim and allocable disposition expenses..

expenses component is generally equal to 28% of the total premium and the profit and contingency component generally equal to 5% of the total premium.

The pure premium component is based upon the relationship between the average loss cost per insured car statewide and the average loss cost per insured car within each territory, subject to adjustments to reduce the severity of fluctuation in premium and to reflect trends expected to impact on losses prospectively, such as inflation.

The data used to compute the average loss cost per insured car within each territory is based upon all of the losses, or claim, associated with the cars which are garaged in each territory. The Industry, in a study on traffic congestion which it submitted into evidence, explained the rationale for this procedure as follows:

"In accordance with this rating procedure, losses paid on behalf of or to an insured are charged to the territory where the vehicle is principally garaged. Thus, losses caused by drivers who are outside of their territory are taken care of by the present system of charging a loss back to the territory of principal garaging of the at-fault driver. In this way, the loss costs generated directly by drivers from outside a territory does (sic) not affect the loss costs used as the basis of rates within a territory."

Significantly, however, the territorial average loss costs used to compute premiums include loss cost experience arising out of payments made to insureds both when the insured is responsible, i.e. at-fault, and when the insured is not responsible, i.e. not at-fault, for the damage or injury giving rise to the claim. Thus, bodily injury liability and property damage liability claims are charged to the territory of the at-fault driver, but basic reparations benefits payable under Connecticut's no-fault law (See. 38-319 et seq. C.G.S.) are charged to the territory where the insured garages his automobile, regardless

of fault.³ Claim paid under comprehensive and collision coverages are similarly charged to the territory where the vehicle is garaged irrespective of fault.³ Following the computation of base rates for each territory, policyholders are classified by such criteria as age, sex, marital status, use of vehicle, type and age of car, daily commutation distances and driving record. Each of these characteristics is translated into an adjustment to the base rates for each territory in order to arrive at a specific premium for each prospective insured. Against this backdrop of the methodology by which premium are computed, the proponents have pursued an array of claims respecting its alleged discriminatory impact. The principal claim may be summarized as follows:

- (1) The territorial rating system has a discriminatory impact on black, Hispanic and poor residents of Connecticut. In support of this claim, the proponents introduced statewide and local population and demographic data indicating the location and extent of minority and poverty distribution amongst the population. This data indicated higher than average proportions of minority and lower income persons residing within the State's larger cities, which tend to be single town territories. The proponents introduced substantial evidence of higher than average rates within these same urban rating territories.
- (2) Certain rating territories, such as the territory consisting of the City of Hartford, cannot be justified as a separate rating territory in the light of its

³The ultimate impact of a particular claim on a territory may vary, however, due to the subrogation right of the insurer and the litigation of claims in excess of the no-fault threshold.

various relationships to its surrounding towns. In support of this claim, the proponents introduced evidence which described the economic interdependence of Hartford and the Hartford Region. The City was portrayed as the educational, cultural, employment and governmental center of the region, having a role inextricably related to and not justifiably segregated from the Hartford Region as a whole for rate making purposes.

- (3) Certain rating territories, such as the territory consisting of the City of Hartford, were subject to distortion in their loss experience due to the substantial presence of non-resident drivers who operate their cars in the City, thereby creating an increased risk of loss for city residents. The proponents introduced a variety of data and testimony pertaining to congestion, accident involvement, daily commutation and loss experience in support of the claim that the present territorial system inadequately reflects the causes of high average loss rates in urban territories, such as the City of Hartford, in an equitable manner by -not in some way discounting for the impact of non-resident drivers on the City's loss experience and making up the difference by surcharging the territory of origin of such nonresident drivers.
- (4) There are more equitable methods to develop rates for the existing territories. The thrust of the proponents' claims herein center on the "class average pricing" technique above described by which territorial base rates are particularly derived from the average of each territory's loss costs, The proponents

contend that the failure of this technique actually to identify those persons generating losses within each territory unduly penalizes those persons in the high average loss territories ("higher rated territories") who do not in fact contribute to such losses. The suggested response to this phenomenon is to temper or flatten the rates in the higher rated territories, on the theory that it is preferable to avoid large dollar "overcharges" for such persons, even if this results in widespread minor "overcharges" paid by the persons in the lower rated territories. The proponents also question the method by which other classification factors, such as age, sex and marital status, are combined with the territorial base rates in a multiplicative fashion which translates each such classification into a factor which is multiplied by such base rates. Finally, the proponents question the equity of the "proportional loading" of expenses earlier described, by which certain company expenses such as home office overhead are computed as a function of average loss costs. The proponents contend that this allocation of company expenses unfairly burdens insureds in the higher rated territories with a disproportionately high share of such company expenses.

Based on all of the foregoing claims respecting the territorial rating system, the proponents claim that It results in rates which are "unfairly discriminatory" within the meaning of said terms as they appear in Section 38-201e(a) and 38-343(a)(4) of the General Statutes, and in violation of Article 1, Section 20 of the

Constitution of Connecticut and the Thirteenth and Fourteenth Amendments to the United States Constitution. In addition, the Commission claims that based on the evidence presented in this proceeding, the Insurance Commissioner is not only authorized but required by law to eliminate such alleged discrimination, in accordance with the "State Code of Fair Practices" (Section 4-61e C.G.S.) which pertinently prohibits State agencies from sanctioning discriminatory practices and mandates that State regulatory agencies in particular exercise their powers in ways which assure equality of treatment and the elimination of discrimination. The Commission also claim that the provisions of the State Code of Fair Practices relating to places of public accommodation, the provision of financial assistance to private institutions which engage in discriminatory practices, and the requirement that all State agencies cooperate with the Commission in furtherance of the State's policy against discrimination, all compel the Insurance Commissioner to eliminate the discrimination alleged. Finally, the Commission claims that the State, through its Insurance Commissioner, has a duty not to place the imprimatur of the State on the conduct of the Industry resulting in the alleged discrimination lest such conduct may be deemed "state actionable within the ambit of certain federal civil rights statutes (42 USC 1983 and 42 USC 1985) which proscribe State officials from subjecting citizens of the various states to deprivations of rights, privileges or immunities secured by the Constitution and laws of the United States.

C- THE OPPONENTS

The Industry's defense of the present territorial system against the foregoing claims may be summarized thus:

- (1) As to the claim that the territorial system violates the Thirteenth Amendment to the United States Constitution, the Industry contends that there is no evidence that such system results in either involuntary servitude or imposes badges or incidents of slavery.
- (2) As to the claim that the territorial system violates Article I, Section 20 of the Connecticut Constitution and the Fourteenth Amendment to the United States Constitution, the Industry contends that under applicable judicial precedent, this system passes muster under these constitutional guarantees of equal protection of the law. The Industry contends that the territorial system, as authorized by the pertinent provisions of the General Statutes, does not impinge upon any "suspect class" or "fundamental right" purposefully and intentionally or otherwise, thereby triggering the use of the "strict scrutiny" test under which this system would have to be demonstrated to be necessary to further a compelling State interest. The Industry concludes its argument against these claims by contending that under the applicable constitutional test, the territorial system "rationally furthers" the legitimate State purpose of establishing automobile insurance rates and therefore does not violate either constitutional prohibition.
- (3) The Industry contends that the alleged violations of the federal civil rights statutes are not properly before the Insurance Department since the City's Petition did not include said claims.
- (4) The Industry's major defense of the territorial system against the claim that it results in rates which violate the applicable statutory standards prohibiting "unfair

discrimination is that the system is grounded upon a valid and unchallenged statistical data base. The Industry points out that the City admits that it has a higher loss experience than its surrounding territories, and that the City's chief expert witness believed that territories as such are valid, should not be eliminated, and that the utilization of town lines was appropriate. The Industry points out-the absence of any evidence to show that the present territorial lines were delineated in order to group people by race or income, and to the evidence which indicates that such territorial lines were originally delineated at a time when the distribution of minority and poor persons was significantly different than at present.

The Industry introduced evidence pertaining to the genesis of the territorial concept in the fire insurance system which recognized that the physical environment in which an insured risk is located varies with locational characteristics. In response to the proponents' claims regarding the relationships between the City of Hartford and its surrounding towns, the Industry contends that the differences in loss data for these different geographic locations demonstrates the soundness of the present territorial differentiation between such areas. The Industry further contends that the mechanism for charging the cost of an automobile accident back to the town of garaging of the at-fault driver responds to the criticism that the City's losses are in part attributable to the congestion caused by the influx of drivers and commuters from other territories. The Industry concludes its defense by characterizing the criticisms of the territorial system as the promotion of the idea that the proponents seek to have the residents of "lower rated territories"

subsidize the residents of the "higher rated territories" a function not properly assignable to the private sector.

In its presentation of evidence, however, and in a memorandum of law filed by the Industry, the Industry states that the territorial system is 'evolutionary' and not beyond improvement. The Industry presented a plan under which the State would be divided into thirty-seven rating territories (up from the present eighteen) and into 143 "statistical territories", the latter in order to collect data on a more refined basis. The Industry claims that such a plan would respond to two criticisms of the present territorial system by providing a statistical data base refined enough to justify separation of urban centers from their contiguous suburban towns and to be certain that changes in the sociological make-up of urban centers be reflected in the rating territories. The Industry estimates that it would take approximately two years to gather "meaningful data" from the new statistical territories which would provide the basis for changes to the present delineation of territories.

III

CONCLUSIONS

A. CONCLUSIONS REACHED

Based upon all of the evidence introduced and a review of all of the claims made by the parties to these proceedings as set forth in their respective pleadings and memoranda of law, the following conclusions are reached:

- (1) The present territorial system does not result in either Involuntary servitude or impose badges or incidents of slavery in violation of the Thirteenth Amendment of the United States Constitution.

The present territorial system does not result in discrimination based upon race, national origin or income as the same may be prohibited by Article I, Section 20 of the Connecticut Constitution and the Fourteenth Amendment to the United States Constitution.

- (2) For the reasons set forth in conclusions (1) and (2) above, the present territorial system does not result in violation of the federal civil rights statutes (42 USC. 1983 and 42--USC 1985).
- (3) The present territorial system does not meet the standards set forth in Sections 38-201c (a) and 38-343 (a) (4) of the General Statutes, which prohibit "unfairly discriminatory" rates for automobile insurance.

B. DISCUSSION

The present territorial system exists as the result of the provisions of the General Statutes which permit insurance companies to group risks by classifications for the establishment of rates to be charged policyholders. Section 38-201c, 38-343 (a) (3) C.G.S. The statutory test which the rates produced by this system must pass is that such rates should not be excessive, inadequate or "unfairly discriminatory" Id. This standard contemplates and condones some degree of discrimination between different risk classifications and only prohibits such discrimination when it is unfair. The applicable statutes do not define "unfair" in the context used herein, but it is obvious that the rates in question must, at minimum, treat insureds posing similar exposure to hazards in similar fashion and appropriately differentiate the rates of insureds presenting different exposures to the hazards insured against. It is claimed by the Industry that the present system of classification by rating territory properly produces such rate differentials, and does so in a fair manner.

None of the proponents claim that the present territorial system resulted from any purposeful attempt by the industry to classify risks in such a way as to discriminate against persons on account of their race, ancestry or relative wealth. The configuration of the existing eighteen territories in Connecticut has been in use and unchanged since 1962. It has not been demonstrated that these lines have been drawn in order to segregate policyholders based upon such criteria as race, ancestry or relative wealth, at least not beyond the extent to which such characteristics are maldistributed within the several communities of this State, the town lines of which are coterminous with rating territories. Several urban areas of this State were shown to have higher than average proportions of minority and lower income residents, which areas in several cases coincided with rating territories having higher than average loss costs, and therefore higher rates based thereon. Based on the record as a whole, such disproportionate impact, standing alone is insufficient support for a finding that, in particular, and as a matter of law, the present territorial system discriminates against minority and lower income persons.

To the extent that the relatively higher prevailing rates which the present territorial system causes to be charged in several urban rating territories adversely affects the residents of such territories, such adverse effect is borne by all of the residents therein without regard to their race, ancestry or relative wealth, in a relentlessly uniform fashion. For these reasons, the territorial system does not give rise to the constitutional violations alleged or to violations of the pertinent federal civil rights statutes.

The territorial system is on significantly less sure ground when analyzed in the light of the applicable state statutory standards, however. While we can not require empirical perfection, the considerable range in rates for the same coverage within the various rating territories naturally raises the question of how such a wide variation in rates is possible and whether it is wholly justified.

Attached hereto as Appendix A is a tabular display of the rates which would be paid for basic liability limits of 20/40/5, basic reparations benefits, 20/40 uninsured motorist coverage, comprehensive and collision coverage. The rates are for a policyholder claiming that no youthful operator or operator over sixty-five will drive the car, that the car is not used for business, nor driven more than three miles one way to work. The policy contains a \$100. deductible on its physical damage coverage (comprehensive and collision) . The rates shown are for a "clean risk" meaning that the insured has not been involved in an at-fault accident nor convicted for any moving violations within the past three years. As a matter of law, these rates reflected the average standard, voluntary market rates used by Licensed insurers effective October 1, 1977, for these coverages and the risk described. See Section 38-185I C.G.S.

The range in rates shown in Appendix A, from \$273 per year in Territory No. 20 (Hartford County Balance) to \$466 per year In Territory No. 32 (New Haven) , for precisely the save coverage, has not been sufficiently demonstrated to be the result of fair discrimination amongst the policyholders of the different territories.

This range in rate levels becomes much greater when the nonterritorial classifications such as age, sex, use and type of car and driving record are factored in to produce the rates that the general population within each of the indicated territories is

required to pay. In other words, the variation in and range of rates indicated in Appendix A is roughly the minimum indication of such variation and range.

The Industry defense of this wide fluctuation in rates by territory for identical coverage against the claim that it evidences unfair discrimination is that the loss data for each of these territories, which is the statistical basis of such rates, contains similar variations. This defense is doubly flawed in that:

- (1) it does not justify the present configuration of each of the existing rating territories within which loss data is collected, and
- (2) it does not justify the methodology by which such loss data is used in the computation of the total premium, or rates.

With respect to the first flaw, the Industry has virtually admitted that it does not know whether any of the existing rating territories is homogeneous. In its "Territorial Boundary Report" submitted into evidence, the Industry states on page one thereof as follows regarding the role of homogeneity in the delineation of rating territories:

"Since it is Impossible to predict each individual's loss potential, it is highly desirable to form territories where the combination of the average size of a claim and the average number of claim per car are similar. When these objectives are met, it can be said that a territory is homogeneous."

On page two of its "Territorial Boundary Report" , the Industry candidly states that "[t]he current territorial system does not provide a mechanism to insure that the eighteen territories are homogeneous, which is one of the criticisms of the system." (emphasis added) Moreover, the Industry indicates, by the tenor of its proposed plan to divide the state into thirty-seven rating territories and 143 statistical territories, that it would take at least two

years to generate the data necessary to "validate" the homogeneity or lack thereof, of the existing rating territories.

These admissions by the Industry clearly operate to undermine, if not refute, the credibility of any claim that the present territorial lines represent a homogeneous delineation of risks. When coupled with the widely variant rates directly resulting from the use of such territorial lines, the Industry's explanation for such variation falls far short of demonstrating the fairness thereof. In effect, the Industry is requesting that it be given a period of two years in order to perform such demonstration. While it is obvious that there is a need to verify or validate that the present delineation of rating territories in Connecticut is fair from the standpoint of homogeneity, it is just as obvious that further rate adjustments submitted by Connecticut licensed companies, based upon such rating territories, should not accord the loss data predicated thereon the deference and degree of credibility -presently the case.

With respect to the second flaw above referred, several components of the premiums charged are unduly and unjustifiably distorted by the way in which they are distributed directly in proportion to the territorial loss cost data, with the result that policyholders in the higher rated territories are subject to unfair discrimination in rates. The most obvious example of such unfair discrimination is the allocation of company overhead expenses. The result of this allocation method is that the insureds subject to the rates in the higher average loss territories are required to pay a greater dollar contribution to offset such expenses than the insureds in the lower average loss territories.

Industry witnesses admitted that there is no evidence that any such relationship exists between losses and expenses. A variety of such expenses, such as home office overhead expense and certain fees and acquisition expenses, are clearly malapportioned to the extent that they are mechanically deemed to slavishly mine losses. Again, the effect of this presumed and undemonstrated relationship is to discriminate unfairly, against the insureds subject to the rates in the presently higher rated territories, most notably the single town urban rating territories.

A filing related to that of the allocation of expenses by territory is the inclusion in territorial average loss costs of such losses as basic reparations benefits, which are allocated without regard to fault if the salutary feature of the territorial rating system is, as the Industry claims, that the rates in each territory reflect the responsibility for at-fault losses of only its resident insureds, the allocation of basic reparations benefits claim to the territory of garaging without regard to fault is a practice which refutes the rationale of such system altogether. The accident frequency data clearly suggests that the impact of this allocation of losses would disproportionately bear on the urban territories having higher than average accident frequency, again resulting in unfairly discriminatory rates therein.

C. CONCLUSION

The common thread underlying the several criticisms of the territorial rating system described herein is its impact on the urban rating territories. The uncertainty of the fairness of the delineation of the present territorial boundaries and the inclusion

of various Losses and allocation of various expenses in the computation of territorial base rates, all operate to push up rates in the urban rating territories. Substantially greater justification for the resulting higher rates therein is warranted, especially in the light of the legislature's determination that automobile insurance shall be required as a matter of State law to be purchased by every Connecticut driver.

In reaching the conclusions expressed herein, we are not unmindful of the ongoing process by which Connecticut licensed insurance companies subject to this proceeding periodically seek to file new or amended rates for the insurance coverage discussed herein. The limitations of this proceeding, coupled with the statutory procedures which must be followed, require that the rates actually or proposed to be charged by each such company be reviewed on an ad hoc basis. Accordingly, the steps necessary to rectify the deficiencies in the territorial rating system described herein will be initiated by separate Insurance Department actions herefrom.

I V

DECLARATORY RULING

The present territorial systems by which is meant the present configuration of eighteen rating territories which together aggregate the entire State and the method by which statistical data from these eighteen territories is used by virtually all automobile insurance companies to develop the rates charged in Connecticut, does not meet the standards set forth in Sections 38-201c (a) and 38-343 (a) (4) of the General Statutes, which prohibit "unfairly discriminatory" rates for automobile insurance.

Dated at Hartford, Connecticut, this fourteenth day of
December, 1978,

Joseph C. Mike

Joseph C. Mike, Insurance Commissioner

Appendix A

Careful Driver Rate Comparison by Territory

Liability Limits 20/40/5 and 20/50 Uninsured Motorists

Physical Damage \$100 Deductible - Comprehensive and Collision (Symbol 5. Age Group 2)

Driver Classification - 4A. No Youthful Operators, Automobile Not Used For Business Nor

Driven to Work More Than Three Road Miles, One Way and There is No Operator Age 65 or Over

Territory	Careful Driver Rates		
	Liability	Physical Damage	Total
32 New Haven	\$224	\$242	\$466
1 Hartford	217	216	433
25 Bridgeport	186	210	396
33 New Haven Suburban	170	176	346
14 Waterbury-	165	174	339
31 Stamford	145	186	331
15 New Britain	149	164	313
21 New Haven County Balance	145	162	307
18 Waterbury Suburban	140	163	303
28 Westport	136	163	299
26 Fairfield-Stratford	245	151	296
19 Hartford Suburban	146	143	289
24 Remainder of State	126	162	288
23 New London, Norwich, Torrington	126	160	286
17 Fairfield County Balance	126	157	283
27 Norwalk	126	156	282
30 Darien-Greenwich	229	155	274
20 Hartford County Balance	129	144	273

Territories are listed in order of total rate from highest to lowest.

The "Careful Driver plan rates effective October 1, 1977, were taken from the Connecticut Automobile Insurance Plan manual. These rates are for any person insured in the Connecticut Automobile Insurance Plan, licensed at least three years, has had no at-fault accidents nor been convicted of an 7 moving traffic violation in the preceding three-year period. The rates are based on the average standard voluntary market rates used by, licensed insurers in Connecticut for persons not insured in the Plan.