

# In The Circuit Court for Baltimore City **CIVIL**

*1-2681*  
*02-11-3-17*

In the Matter of

*Terry Troy* Plaintiff

*vs*

*Allstate Insurance Company* Defendant

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*X*



IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 89184050/CL99747

PAGE 1 of     

PARTIES	ATTORNEY(S)
<p>TERRY TROY</p> <p>VS.</p> <p>ALLSTATE INSURANCE COMPANY</p> <p>INSURANCE COMMISSIONER</p>	<p>P.P.</p> <p><i>Joseph A. Schwartz, III - 467376</i>  <i>Steven L. Krawski - 911051 914224</i>  <i>Joseph A. Schwartz, IV - P.A.</i></p> <p><i>Meg L. Rosenthal 912950</i></p>

DATE	DOCKET ENTRIES	NO.
7-3-89	Order for Appeal	1
"	Motion to Stay	2
"	MEMO: Stamped copies taken to Judge Ross	
7-10-89	Order of Court dated 7/6/89 staying decision of the Insurance Commissioner	3
7-7-89	<i>Appearance of atty Joseph A. Schwartz, III, Steven L. Krawski, Joseph A. Schwartz, IV for the defendants (Allstate Ins)</i>	<i>2A.</i>
7-17-89	<i>Plff's petition</i>	<i>4</i>
7/24/89	<i>App. Meg L. Rosenthal for defnt (Ins. Comm) answer</i>	<i>5</i>
7/31/89	<i>Defnt (allstate) answer to petition</i>	<i>6</i>
8-889	<i>Manuscript of record for type set in accordance to Md Rule B-12 Bill TF</i>	<i>7.</i>
*10/16/89	<i>Defnt. (Ins. Commissioner) motion to Dismiss Appeal.</i>	<i>8</i>
*10/16/89	<i>Plff's memorandum.</i>	<i>9</i>
*10/16/89	<i>Plff's opposition to motion to Dismiss Appeal.</i>	<i>10</i>



## II. Factual Summary

On December 14, 1988, Allstate sent a "Notice of Nonrenewal" to Troy informing him that it did not intend to renew his automobile liability insurance policy. R.21-24.<sup>2</sup> In lieu of nonrenewal, Allstate offered to continue the policy in force, provided that Troy's son, Richard, was excluded from coverage under the policy. R.21.<sup>3</sup> Troy exercised his right to protest Allstate's proposed nonrenewal, and requested an administrative hearing before the Commissioner. R.22, 25.

At the hearing on May 18, 1989, Allstate's representative, Steven L. Kreseski, Esq. ("Kreseski"), recounted the reasons for Allstate's proposed action of nonrenewal. Kreseski explained that the insurer's decision was based on four incidents in 1988 involving Richard. R.10, 23. On August 9, 1988, a vehicle operated by Richard sideswiped another car, requiring Allstate to pay \$705.00. On March 31, 1988 and April 30, 1988, Richard was ticketed for speeding. On August 8, 1988, Richard received a ticket for failing to stop at a stop sign or to yield at a yield sign. R.10, 23, 35. All three traffic tickets resulted in convictions. R.10, 35.

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2. The letter "R" stands for reference to the Record which has been numbered in this case.

3. The policy in question actually covered a total of six drivers and six vehicles. Richard Troy was one of the drivers under the policy, and the only one that Allstate sought to exclude from coverage. See R.27.

Kreseski testified that Allstate's underwriting guidelines, set out in the nonrenewal notice, precluded continued insurance coverage for any operator who has received, within a three year period, two or more traffic convictions, or who has a frequency of combined losses and traffic convictions of two or more per operator. R.10-12, 23. This approved underwriting guideline is on file with the Commissioner. R.10,11.

Kreseski also explained the process by which Allstate established its underwriting policy. According to Kreseski, the average Allstate driver insured by Allstate is involved in an at-fault accident only once every 15 to 17 years. R.12, 23. However, according to the field's leading independent research study, conducted by the State of California (the "Study"), where a driver's past record contains traffic conditions or accidents, "there is an increased likelihood that a driver will be involved in an accident in the future with a greater frequency compared to a driver that has a clean record." R.12-13. From this data, Allstate calculated that a driver with as many traffic convictions as Richard had over a three year period would be 3.61 times more likely to have an accident in any given future year than a driver who had no traffic violations. R.13-14. Thus, a driver with Richard's record would, on average, be involved in an accident approximately every four years, instead of only once in 15 to 17 years. R.14.

Although Allstate can charge for certain at-fault accidents, the insurer has chosen not to have the ability to surcharge in Maryland for traffic convictions.<sup>4</sup> R.12. Consequently, the significantly higher expected accident frequency for a driver such as Richard would have an adverse effect upon the company's ability to profit, according to Kreseski. It would require the insurer to incur substantially higher costs, without the ability to surcharge those drivers who are responsible for them. R.14.

Allstate also offered the Affidavit of Matthew Stegle ("Stegle"), the Territorial Underwriting Manager for Allstate assigned to the Maryland region. R.15, 36-43. Stegle's Affidavit discusses the Study, and the validity of the data and conclusions drawn from it.<sup>5</sup>

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4. Kreseski stated that under its underwriting guideline, Allstate can surcharge for certain at-fault accidents and could surcharge for Richard's August 9, 1988 at-fault accident. Kreseski indicated that he believed a surcharge may have been applied to the instant policy. Kreseski explained that "[a] surcharge is a means by which the company can take in additional premium dollars in this particular year to compensate it adequately for anticipated greater frequency of accidents and possible pay-out in the future, not necessarily the next year, but in the future." R.12.

5. According to Stegle, the validity of the California Study results can be tested by determining their correlation coefficient, which is a statistic indicating how strongly two variables are related. R.42. A correlation coefficient of 1,000 indicates a perfect relationship between variables. R.43. The correlation coefficient associated with the relationship between prior conviction history and subsequent accident frequency is .994, indicating highly significant results, according to Stegle's Affidavit. R.42-43.

According to Stegle, Allstate draws statistical data from the Study with regard to accident frequencies for drivers with prior accidents and/or convictions within a three year period. R.36<sup>6</sup> Allstate uses the most recent updated statistics utilized by the Study. R.37. Stegle compared the Study's results with the results of Allstate's in-house analysis of the frequency of accident involvement by the average Allstate insured, and explained the resulting statistical analysis derived by the insurer. R.36-38. Allstate calculated the average claim payout and administrative costs associated with an at-fault accident sustained by one of its Maryland insureds and, based on this calculation, coupled with the expected accident frequency, the insurer's current rating plan is established. R.38-39. See also, R.12, (testimony of Kreseski). Stegle emphasizes that:

Allstate's premium and surcharge rating plan does not adequately compensate the Company for the increased loss potential projected by the California Study (December, 1987) for drivers with two or more non-surchargeable occurrences. The additional loss potential projected for this insured is not adequately covered by Allstate's present premium and surcharge rate filing.

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6. According to the Affidavit, the Study is based on accident involvement without regard to fault. It notes that Allstate, in contrast, relies only on at-fault accidents in determining to nonrenew or cancel a policy of automobile liability insurance. "[T]herefore the statistical data selected from the California Study would be the most conservative estimate of future accident involvement for that driver." Affidavit at 2. R.37.



R.39 (emphasis in original). Consequently, Stegle concluded that if Allstate were required to continue to insure the entire Troy family, it would suffer a resulting loss which would have a "direct and substantial adverse effect upon Allstate's business and economic purpose which is to provide low cost automobile insurance to as many drivers as possible, while making a reasonable profit." R.39.

Kreseski emphasized that Allstate's proposed nonrenewal decision in this case was purely a function of the application of Allstate's underwriting standards as determined by the legitimate and supported underlying statistical analysis. The decision, he indicated, was in accord with the insurer's uniform policy. Kreseski explained:

Allstate seeks to exclude Richard from [the] policy, since everyone else conforms with the underwriting guidelines and has fewer traffic convictions or at-fault accidents than would necessarily cause them to be excluded. But, if any other driver eventually exceeded the underwriting guidelines and the company found out about it, the company would seek to exclude them and in the event [the] policyholders did not agree to go along with the exclusion, then the entire policy would be cancelled which is what's occurring here.

R.15.

Only Mrs. Troy appeared at the Hearing. No evidence was offered by the Appellants, and the insurer's evidence was never disputed or contradicted at the Hearing.

Based upon the testimony and exhibits, the Hearing Examiner found that Allstate's application of its underwriting standards to Troy's policy was based on valid statistical

data. R.1-2. Furthermore, the Hearing Examiner found that Allstate's application of its underwriting standards in this case was reasonably related to its economic and business purpose, and that continued coverage for Richard under Allstate's underwriting guideline would adversely affect Allstate's losses and expenses. R.2. As a result, the Hearing Examiner concluded that Allstate was not in violation of any of the pertinent sections of the Insurance Code, and authorized Allstate to effect its proposed action on or after July 6, 1989. R.2. Troy noted a timely appeal and obtained a stay of the Commissioner's Order.

### III. Scope of Review

Section 40(5) of the Insurance Code governs the standards of judicial review of decisions of the Commissioner. It provides:

The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (i) In violation of constitutional provisions; or
- (ii) In excess of the statutory authority or jurisdiction of the Commissioner; or
- (iii) Made upon unlawful procedure; or
- (iv) Affected by other error of law; or
- (v) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (vi) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or
- (vii) Unsupported by the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or
- (viii) Arbitrary or capricious.

Miller v. Ins. Comm'r, 70 Md. App. 355, 365 (1987); Ins. Comm'r v. Allstate Ins. Co., 268 Md. 428, 442-43 (1973).

Section 40(5), and the case law interpreting it, make clear that "the basic standard for reviewing an administrative finding by the Insurance Commissioner is whether the finding is supported by "substantial evidence." Lumbermen's Mut. Casualty v. Ins. Comm'r., 302 Md. 248, 266 (1985). The test is not how this court would resolve a factual dispute, or questions of credibility. On review, this court is only to determine whether "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Id. (citations omitted).

In applying the substantial evidence test, the appellate courts have emphasized that this court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. See Miller, supra, 70 Md. App. at 366. Furthermore, the decisions of administrative agencies must be viewed in the light most favorable to the agency, since such decisions are prima facie correct. Id.; Nationwide Mut. Ins. Co. v. Ins. Comm'r, 67 Md. App. 727, 737 (1986). See generally, Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978).

The insurer had the burden of persuasion to satisfy the Commissioner that the cancellation or nonrenewal of the policy was justified, Sec. 234A(a). But, on appeal, the burden shifts

to the Petitioner to show that the administrative proceedings prejudiced any of his substantial rights. See Miller, supra, 70 Md. App. at 365; Gov't Employees Ins. v. Ins. Comm'r, 273 Md. 467 (1975); Nuger v. Ins. Comm'r, 238 Md. 55, 61 (1965).

#### IV. Discussion

The Commissioner's decision approving Allstate's proposed action is supported by substantial evidence and is correct as a matter of law.

Section 234A of the Insurance Code sets forth the substantive underwriting requirements and limitations for insurance risks, including automobile insurance risks. Lumbermen's, supra, 302 Md. at 253. Originally enacted to proscribe discriminatory underwriting, it has been expanded to provide that no insurer may cancel or refuse to underwrite or renew an insurance risk except by the application of standards which are reasonably related to the insurer's economic and business purposes. Id. at 253-255; Miller, supra, 70 Md. App. at 366-67.<sup>7</sup>

In Lumbermen's, Judge Eldridge discussed the expansion of Sec. 234A by Chapter 752 of the laws of 1974. Like the instant case, Lumbermen's dealt with the attempted cancellation of automobile liability insurance of drivers with more than one accident or traffic violation within a three year period. The

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7. See Section 234A (a)-(d).

Court affirmed the decision of the Commissioner that the insurers failed to prove that surcharges under their approved rating plans would not compensate them for their insured risk. The Court further found that the real complaint of the insurers was over the adequacy of the approved rating plans, and held that such a controversy is not encompassed by Sec. 234A. Id. at 267-69.

The Court in Lumbermen's gave notice that it would require a close examination of the specific factual basis provided by the insurer to justify its underwriting decisions. The Court emphasized the importance of the preamble to the revision of Sec. 234A, which states that insurers' underwriting decisions must

be made solely on the basis of a reasonable application to relevant facts of underwriting principles, standards and rules that can be demonstrated objectively to measure the probability of a direct and substantial adverse effect upon losses or expenses of the insurer in light of the approved rating plan or plans of the insurer then in effect....

Id. at 254, 267 (emphasis supplied by the Court of Appeals).

The Court found the factual bases necessary to justify the underwriting decisions proposed by the insurers to be sorely lacking in the cases before it in Lumbermen's. The Court stated that there was no evidence introduced concerning the amount of premium revenue which would likely be produced from the companies' Maryland insureds in the rating classifications

having surcharges for two or more violations or accidents over a three year period. Id. at 266. Moreover, no evidence was offered concerning additional compensation the companies would receive from the surcharges, except for the "bald conclusory statement" by the underwriters that it would be insufficient. Id. The Court also pointed out that there was no evidence introduced regarding the loss experience of the two companies with insureds having more than one traffic violation or accident over a three year period. Id. Finally, the Court complained, none of the studies or reports referred to by the insurers at various points were introduced into evidence. Id.

In Crumlish v. Ins. Comm'r., 70 Md. App. 182 (1987), the Court of Special Appeals, relying on Lumbermen's, also emphasized that conclusory statements bearing on the relationship of an insurer's underwriting standard to its "economic and business purposes" are not enough to comply with the statute. Instead, the Court opined:

Facts must be produced which answer at least the following questions:

1. What is the statistical basis for the supposition that a person who has two or more chargeable losses within a 24 month period is more likely to have a chargeable accident within the next 12 months than a person who has had no accidents, one chargeable accident, or two or more nonchargeable accidents?
2. How valid is any such statistical evidence?
3. If there is statistical validity to the supposition, what direct and substantial adverse effect would it have upon [the insurer's] losses and expenses in light of its current approved rating plan?

70 Md. App. at 190.

Appellant initially challenges the decision of the Commissioner on the general basis, essentially, that the Commissioner's findings were not supported by substantial evidence. This general contention must fail, however, in light of the scope of review outlined, supra. The instant case presents a factual basis to support Allstate's underwriting guideline that is quite distinguishable from those present in Lumbermen's and Crumlish. Rather than presenting mere "bald conclusory statements," Allstate here has presented demonstrably objective statistical evidence, addressing each of the questions which the Court of Special Appeals indicated in Crumlish must be considered. Additionally, the evidence produced by Allstate included the actual data from the studies and reports underlying its underwriting analysis.

First, Allstate produced before the Commissioner facts showing the statistical basis, developed from analyses of both the Study and its own studies, supporting the supposition that a person with chargeable occurrences is more likely to have a greater frequency of accidents than drivers who have no such incidents. Next, the insurer introduced evidence showing the validity of its statistical evidence. Finally, Allstate produced evidence of the direct and substantial adverse effect which would result, based on its current approved rating plan. Since Allstate has no provision in its guideline for surcharging for the added potential exposure, the impact of requiring Allstate to continue such a risk was demonstrated in an objective fashion.

From all of the evidence presented, it is this court's view that a reasoning mind could have reasonably found that Allstate successfully carried its burden of proving that Richard posed an increased risk and that its rating plan does not provide for the imposition of an adequate rate to compensate for the increased risk. See R.2. Compare Lumberman's Mut. Casualty v. Ins. Comm'r, supra, 302 Md. at 266.

The other objections raised by Troy to the Commissioner's decision below are insufficient to meet the burden of showing that the administrative proceedings prejudiced any of his substantial rights. One line of these objections goes to the validity of the underlying statistics and resulting conclusions drawn by Allstate from the Study and its own analysis of its insured drivers in Maryland. As to these arguments, this court may not substitute its judgment for the expertise of the Commissioner. The underlying statistical data and concomitant analysis were set out for the Commissioner's review, and this court is of the view that the Commissioner gave sufficient consideration to the evidence and its validity. See R.1-2.

This court also rejects Troy's assertion that the "Order on Hearing" issued by the Commissioner does not comport with the requirements of Sec. 39. It provides, in pertinent part, that "[t]he Order shall contain a concise statement of the facts as found by the Commissioner and of his conclusions



therefrom, and the matters required by Section 29." Section 29 requires that an Order of the Commissioner state its effective date and concisely state its intent or purpose, the grounds on which it is based and the provision of Art. 48A pursuant to which action is taken.

The Order of Hearing in the instant case meets these requirements. The Hearing Examiner made factual findings as to Allstate's underwriting standards as follows: (1) Richard's driving record exceeds these standards; (2) Allstate's statistical data was valid and supported its assertions concerning an increase in expected accident frequency for Richard; (3) Allstate's rating plan does not provide for the imposition of an adequate rate for the additional exposure presented by Richard; (4) continued insurance coverage for Richard would adversely affect Allstate's losses and expenses. This Order clearly satisfies the requirements of Sec. 39.

Another series of objections presented by Troy questions the uniformity with which Allstate applies its underwriting standards, suggesting that the insurer may be applying its standards in an arbitrary and capricious way. However, at the hearing Kreseski testified that Allstate's decision in this case was purely a function of its uniform policies as determined by its underwriting guideline. In fact, Kreseski specifically emphasized that the proposed action would have been the same for any driver with a driving record such as

that of Richard. Troy produced no evidence to the contrary.

Although Troy suggests that Allstate is somehow basing its coverage decisions merely on future promises it may or may not fulfill, he has not offered any evidence that Allstate actually deviated from its professed uniform underwriting guideline. Troy also suggests that Allstate's nonrenewal or exclusion decision may have been the result, at least in part, of racial discrimination, notwithstanding the provision in Allstate's nonrenewal notice that its action would be the same for any of its policyholders with the same driving record. R.24. This allegation, however, is not supported by any evidence.

Troy also argues that Allstate's proposed action, and the Commissioner's decision to approve it, are flawed because the underlying data and analysis fail to take into account the particular individual situation of Richard in determining his position under the policy. Thus, according to Troy, insufficient weight was given to the fact that Richard was involved in "only" one accident that resulted in a claim of "only" \$705; that he received "only" two points against his driving record for motor vehicle violations in the applicable three year period; that he has "a radically changed driving pattern" since he is now enrolled in college and away from home; and that he has "learned from his experiences" and "matured as a young man." These arguments do not prevail in

this situation, because the statutory scheme does not require an insurer to take them into account. On the contrary, an insurer is required to look to demonstrably objective data, and an underwriting system based solely on subjective judgments concerning the individual lifestyles and personal characteristics of each insured would seem infinitely more susceptible to challenge as arbitrary and capricious. There is no question that, in determining whether to nonrenew the Troy insurance policy, Allstate could consider traffic violations and accidents involving Richard which occurred within three years of the policy renewal date. See Sec. 234A(d)(1).

Finally, Troy suggests that the Commissioner has in some way abdicated his responsibility by allowing Allstate to apply the criteria on which it has chosen to rely in its underwriting guideline. The action taken in this case is clearly a function of Allstate's determination not to provide automobile liability insurance for drivers predicted by the company to cause higher levels of liability exposure. In Lumbermen's, supra, the Court specifically referred to such a determination as one available to an insurer. If an insurer decides it does not wish to insure the risk of a driver with more than one traffic violation or accident in a three year period, the Court explained, it could in fact seek to modify its rating plan by deleting this classification of risks. See Lumbermen's, supra, 302 Md. at 369. In the instant case, Allstate has clearly chosen a method approved by the Court of Appeals. Its approved rating plan does not include coverage for the risks presented

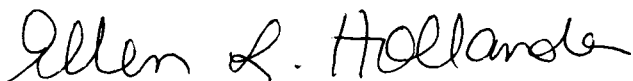
by a driver such as Richard. R. 12. The insurer thus may refuse to renew Troy's policy or, alternatively, to exclude Richard as a result. See Sec. 240C-1(a)(1) (requiring the insurer to make exclusion offer in lieu of nonrenewal). Troy therefore cannot now complain that this action is unfair or discriminatory, or that it constitutes illegal "complusion/blackmail/duress" as applied to his policy.

The Hearing Examiner properly applied the relevant statutory provisions to the facts, which are supported by substantial evidence. Accordingly, Allstate's proposed action was lawfully approved.

Based on the foregoing, it is, this 25<sup>th</sup> day of May, 1990, by the Circuit Court for Baltimore City,

ORDERED that the decision of the Commissioner be, and the same hereby is, AFFIRMED.

Costs to be paid by Appellant.

  
Ellen L. Hollander, Judge

cc: Mr. Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

Steven L. Kreseski, Esquire  
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Washington Place  
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PRESIDING JUDGE .....

COURTROOM CLERK .....

STENOGRAPHER .....

(15)

ASSIGNMENT FOR THURSDAY DECEMBER 07, 1989

CASE NUMBER - 89184050  
CASE TITLE - TROY VS ALLSTATE INS CL99747  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

CL

SCHWARTZ, JOSEPH II  
KRESKESKI, STEVEN L  
SCHWARZT, JOSEPH IV  
ROSTHAL, MEG L  
TROY, TERRY

DEFENSE ATTORNEY 244-7000  
DEFENSE ATTORNEY 244-7000  
DEFENSE ATTORNEY  
DEFENSE ATTORNEY 333-6284  
PLAINTIFF

*Sub curia*

TYPE OF PROCEEDING: (\_\_\_ JURY) (\_\_\_ NON-JURY) (\_\_\_ OTHER)

DISPOSITION (CHECK ONE)

- (\_\_\_ SETTLED) (\_\_\_ CANNOT SETTLE) (\_\_\_ NEXT COURT DATE)
- (\_\_\_ VERDICT) (\_\_\_ REMANDED) (\_\_\_ NON PROS/DISMISSED)
- (\_\_\_ JUDGEMENT NISI) (\_\_\_ ORDER/DECREE SIGNED) (\_\_\_ OTHER) PLEASE EXPLAIN:
- (\_\_\_ JUDGEMENT ABSOLUTE) (\_\_\_ ORDER/DECREE TO BE SIGNED)
- (\_\_\_ POSTPONED) (\_\_\_ MOTION GRANTED)
- (\_\_\_ SUB CURIA) (\_\_\_ MOTION DENIED)

JUDGE SIGNATURE *Ellen Hollander* DATE *12/18/89*

PRESIDING JUDGE *MA Hubbard* .....

COURTROOM CLERK .....

STENOGRAPHER .....

(14)

ASSIGNMENT FOR THURSDAY NOVEMBER 09, 1989

CASE NUMBER - 89184050

CASE TITLE - TROY VS ALLSTATE INS CL99747

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

CASE CONTROL SHEET

SCHWARTZ, JOSEPH II

DEFENSE ATTORNEY

244-7000

KRESKI, STEVEN L

DEFENSE ATTORNEY

244-7000

SCHWARZT, JOSEPH IV

DEFENSE ATTORNEY

ROSTHAL, MEG L

DEFENSE ATTORNEY

333-6284

TROY, TERRY

PLAINTIFF

*Defendants' Motion to Dismiss Appeal is denied as to each and both Defendants*

TYPE OF PROCEEDING: (\_\_\_ JURY) (\_\_\_ NON-JURY) (\_\_\_ OTHER)

DISPOSITION (CHECK ONE)

(\_\_\_ SETTLED) (\_\_\_ CANNOT SETTLE) (\_\_\_ NEXT COURT DATE)

(\_\_\_ VERDICT) (\_\_\_ REMANDED) (\_\_\_ NON PROS/DISMISSED)

(\_\_\_ JUDGEMENT NISI) (*MA* ORDER/DECREE SIGNED) (\_\_\_ OTHER) PLEASE EXPLAIN:

(\_\_\_ JUDGEMENT ABSOLUTE) (\_\_\_ ORDER/DECREE TO BE SIGNED)

(\_\_\_ POSTPONED) (*MA* MOTION GRANTED)

(\_\_\_ SUB CURIA) (*MA* MOTION DENIED)

JUDGE SIGNATURE *MA Hubbard* DATE 12/06/89

NOV 16 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

TERRY TROY	*	
	*	
Appellant	*	
v.	*	IN THE
	*	
INSURANCE COMMISSIONER OF THE	*	CIRCUIT COURT
STATE OF MARYLAND	*	
	*	FOR BALTIMORE CITY
and	*	
	*	CASE NO. 89184050/CL99747
ALLSTATE INSURANCE COMPANY	*	
	*	
Appellees	*	
* * *	*	* * * * *

MEMORANDUM OF THE INSURANCE COMMISSIONER

John A. Donaho, Insurance Commissioner of the State of Maryland, by his attorneys, J. Joseph Curran, Jr., Attorney General of Maryland and Meg L. Rosthal, Assistant Attorney General, submits this Memorandum of Law pursuant to Maryland Rule B12.

STATEMENT OF THE CASE AND OF THE FACTS

By notice dated December 14, 1988, Allstate Insurance Company (Allstate) informed Terry Troy that, effective February 7, 1989, his automobile insurance policy would not be renewed. (R. 21-24). In lieu of nonrenewal, Allstate offered to continue the policy in force, provided Richard Christian Troy was excluded from coverage under the policy. The reasons for nonrenewal were stated in the notice as follows:

The Allstate Insurance Company has as its economic and business purposes the following: (1) the continued solvency of the corporation, (2) the making of a reasonable profit to provide continued service to policyholders and for corporate growth and expansion, and (3) the maintenance of the

lowest possible rate structure for its policyholders.

To achieve this, we maintain a program in which we seek to insure the average or better than average risk. The average Maryland driver that we have insured during the past three years has been involved in an at-fault accident at the rate of one in every fifteen (15) to seventeen (17) years of driving. This rate of accident involvement has remained fairly constant over the past several years.

Prior to renewal, the company reviews the records of policyholders with losses during the past three years. There are a number of situations that will occur which when analyzed by an Allstate Underwriter, may result in a decision not to continue a risk. Such a decision is made when the Underwriter is convinced that the risk of future loss exceeds the exposure anticipated and that the economic and business interests of Allstate would no longer be served by the continuation of such a risk. Some of the more typical examples of such situations follow: . . . (4) a frequency of convictions for motor vehicle violations (Allstate's non-continuation standard is at least two convictions by any one operator) . . . (6) a frequency of combined losses and convictions which is defined as at least two per operator . . . .

A review of your policy records shows the following: Richard has 8-9-88 sideswiped claimant - \$705.00 paid; 3-31-88; speed; 8-8-88 failure to stop at stop/yield at yield sign.

Independent research studies have shown that persons with accident and or motor vehicle violation involvement are more likely to have future accidents than persons without this involvement. One such study shows the chance of an accident rises almost correspondingly with the number of convictions the driver has in a three (3) year period. The average conviction record compared with "0" convictions in a three (3) year period



based on this study would indicate a 1.95<sup>1</sup> greater chance of accident. Allstate does not have a rating plan to accomodate the potential for future accident involvement indicated by this violation record.

The same study shows that the chance of an accident rises almost correspondingly with the number of accidents the driver has in a three-year period. The above record compared with "0" accident involvement would indicate a 3.61 times greater chance of accidents.

We do surcharge for certain at-fault accidents, however, the projected increased exposure indicated by the above driving record is beyond the scope of that anticipated by our classification and rating structure.

Our action to terminate coverage is in compliance with our stated economic and business purposes and supported by the fact that such action would be the same for any of our policyholders with the same circumstances or similar driving record.

(R. 21-24).

Appellant protested Allstate's proposed nonrenewal action and a hearing was held before Hearing Examiner William E. Holliway on May 18, 1989. (R. 1-2). Allstate was represented at the hearing by Steven L. Kreseski, Esquire and Terry Troy was represented by Joyce Troy, his wife.

Kreseski recounted the reasons for Allstate's proposed

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<sup>1</sup> An exhibit submitted at the hearing by Allstate indicates that the accident frequency figures contained in the notice have been transposed. (See R. 41). The figures in the notice pertain to predicted accident frequency based on a driving record of one conviction and three accidents within 2 years, rather than Richard Troy's record of one accident and three convictions within two years. However, Richard Troy's driving record, which is the basis for Allstate's proposed nonrenewal of the Troy policy, is accurately stated in the notice and Allstate's exhibit identifies the expected accident frequency associated with that record.

nonrenewal of the Troy policy, which are that, on August 9, 1988, Richard Troy sideswiped another vehicle requiring Allstate to pay \$705.00 to that claimant, on March 31, 1988 and April 30, 1988, Richard Troy was ticketed for speeding and on August 8, 1988 he was ticketed for failing to stop at a stop sign or to yield at a yield sign. (R. 10, 35). All three traffic tickets resulted in convictions. (R. 35). Kreseski explained that Allstate has an underwriting guideline which precludes continued insurance coverage for any driver who has had two or more occurrences within a three-year period. (R. 10, 11-12). Kreseski explained that Allstate will not continue insurance coverage for any operator who has had at least two convictions in a three-year period or a frequency of combined losses and convictions which is defined as at least two per operator. (R. 11-12). Allstate does not have the ability to surcharge in Maryland for traffic convictions, although it can surcharge for certain at-fault accidents, Kreseski testified. (R. 12).

Allstate seeks to insure preferred drivers in Maryland and calculates that the average Maryland Allstate insured is involved in an at-fault accident only once every 15 to 17 years. (R. 12). Based on this expected accident frequency, coupled with the average amount Allstate spent to process and pay a claim in 1988 (1,511.04), Allstate can determine how much money it needs to reserve in order to pay future claims. (R. 12-13). A driver who has incurred traffic convictions or accidents can be expected to have more accidents in the future than a driver who has been

violation or accident free, Kreseski testified. (R. 13). In support of this contention, Kreseski cited the California Study, a research study conducted by the California Department of Motor Vehicles, which concludes that, with three convictions in two years Richard Troy is 3.61 times more likely to have an at-fault accident in the third year than a driver who has had no convictions in two years. (R. 13-14, 41). This expected accident frequency far exceeds that of the average Allstate insured and will have a direct adverse effect upon the company's ability for profit, Kreseski testified. (R. 14).

Due to Richard Troy's driving record, Allstate seeks to exclude him from coverage under the family automobile policy or, if the exclusion offer is rejected, to cancel the entire policy. (R. 15). However, Allstate would offer coverage to Richard Troy through Allstate Indemnity Insurance, a subsidiary which caters to the less than preferred market. (R. 15, 24).

In further support of its underwriting standards, Kreseski offered into evidence the affidavit of Matthew Stegle, Territorial Underwriting Manager for Allstate Insurance Co. assigned to the Maryland region. (R. 15, 36-43). The affidavit discusses Allstate's use of the California Study results<sup>2</sup> concerning accident frequencies for drivers with prior accidents and convictions and compares these frequencies to the results of

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<sup>2</sup>Stegle's affidavit states that Allstate's underwriting department relies upon the statistics contained in the most recent California study update, which was conducted in 1987, contrary to Appellant's assertions that the figures are 25 years old.

Allstate's in-house studies which determined the frequency of accident involvement by the average Allstate insured. (R. 36-38). Stegle's affidavit explains that Allstate has calculated the average claim payout and administrative costs associated with an at-fault accident sustained by one of its Maryland insureds and, based on this calculation, coupled with the expected accident frequency, has derived its current rating plan. (R. 38-39). Stegle's affidavit further states that "Allstates premium and surcharge rating plan does not adequately compensate the company for the increased loss potential projected by the California study (December, 1987) for drivers with two or more non-surchageable occurrences. The additional loss potential projected for this insured is not adequately covered by Allstate's present premium and surcharge rate filing." (R. 39, emphasis original). Accordingly, Stegle concluded that if Allstate were required to continue to insure this risk it would suffer a loss which would have a direct and sub-stantial adverse effect upon Allstate's business and economic purpose. (R. 39).

The validity of the California study results can be tested by determining their correlation coefficient, a statistic which indicates how strongly two variables are related. (R. 42). A correlation coefficient of 1.000 indicates a perfect relationship between variables. (R. 43). The correlation coefficient associated with the relationship between prior conviction history and subsequent accident frequency is .994, indicating highly significant results. (R. 42-43) .

On June 16, 1989 Hearing Examiner Holliway issued an Order on Hearing in which he found that Allstate utilizes an underwriting standard which provides that it will not continue to insure any driver who has a frequency of combined losses and convictions defined as at least two per operator within the past three years, that Richard Troy has had one loss and three convictions within a 4-1/2 month period, which record exceeds Allstate's underwriting standard, that the driving record of Richard Troy presents additional exposure to Allstate which is not contemplated by its rating plan, that the statistical evidence produced by Allstate is valid and demonstrates that there is a strong relationship between past accidents and violations and the probability for future accident involvement, that Allstate's rating plan does not provide for the imposition of an adequate rate for Richard Troy and, therefore, that the application of Allstate's underwriting standards is reasonably related to its economic and business purposes. (R. 1-2). Accordingly, Allstate was authorized to effect its proposed nonrenewal of the Troy insurance policy on or after July 6, 1989. Troy noted a timely appeal of this Order to the Circuit Court for Baltimore City and obtained a stay of the Commissioner's Order.

#### QUESTIONS PRESENTED

1. Was Allstate's recitation of its underwriting standard at the hearing a statement of the standard in effect at the time Allstate attempted to nonrenew the Troy Policy?
2. Did Allstate lawfully consider Richard Troy's driving record for the three years

preceding the date of its proposed nonrenewal of the Troy policy?

3. Did the Insurance Commissioner correctly determine that the evidence presented by Allstate was sufficient to satisfy the burden imposed upon the insurer by Article 48A, §234A?<sup>3</sup>

4. Does the Insurance Commissioner's Order comport with the requirements set forth in §39?

5. Is Allstate's exclusion of driver offer tantamount to illegal "compulsion/blackmail/duress," as Appellant alleges?

#### ARGUMENT

##### I.

#### STANDARD OF REVIEW

The standard of review applied by a reviewing court to quasi-judicial decisions of the Insurance Commissioner is set forth in §40(5), which states:

The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (i) In violation of constitutional provisions; or
- (ii) In excess of the statutory authority or jurisdiction of the Commissioner; or
- (iii) Made upon unlawful procedure; or
- (iv) Affected by other error of law; or
- (v) Unsupported by competent, material and substantial evidence in view of

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<sup>3</sup> All statutory reference shall be to Article 48A, the Insurance Code.

the entire record as submitted; or

- (vi) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or
- (vii) Unsupported by the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or
- (viii) Arbitrary or capricious.

It is well settled that it is within the power of the Commissioner to make all factual conclusions necessary to the determination of whether Allstate violated §234A in attempting to terminate Appellant's automobile insurance policy. Department of Natural Resources v. Linchester, 274 Md. 211 (1974); Nationwide Mutual Insurance Company v. Insurance Commissioner, 67 Md. App. 727 (1986).

A reviewing court may not set aside an agency decision merely because it might weigh the evidence differently. Secretary v. Crowder, 43 Md. App. 276, 281-82 (1979). It may only determine whether a reasoning mind reasonably could have reached the same conclusions and inferences that the Commissioner reached. Lumbermen's Mutual Casualty Company v. Insurance Commissioner, 302 Md. 248, 266 (1985); Bulluck v. Pelham Woods Apts., 283 Md. 505 (1977); Nationwide Mutual Insurance Company v. Insurance Commissioner, 67 Md. App. 727 (1987). The reviewing court must also review the

agency's decisions in the light most favorable to the agency, since the decisions of adminis-

trative agencies are prima facie correct . . . 'and carry with them the presumption of validity'. [citations omitted].

Bulluck, 283 Md. at 513. Furthermore,

not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence may be drawn, it is for the agency to draw the inferences.

Bulluck, id.

The Court of Appeals has also stated that, where the decision of the administrative agency is one of law rather than fact, the reviewing court must determine only whether the decision is "in accordance with law." Baltimore Building & Construction Trade Councils, AFL-CIO v. J. Gordon Barnes, 290 Md. 9, 14-15 (1981).

It is clear when applying this exacting standard of review that the Insurance Commissioner, in resolving the "inconsistent inferences from the same evidence", and finding the facts in the case before him, acted consistently with the law, and that a reasoning mind reasonably could have reached the same conclusions the agency reached. Accordingly, the Insurance Commissioner's decision should be upheld.

## II.

Allstate's Recitation of its Underwriting Standard at the Hearing Was a Statement of the Standard in Effect at the Time Allstate Attempted to Nonrenew the Troy Policy.

Appellant contends, on page two of his Memorandum, that Allstate's statement of its underwriting standard is a "future



promise," or a statement of a standard that "was not true at time of hearing." Apparently, Appellant construes the phrase "Allstate WILL not continue to insure any driver . . . ." (emphasis original) as a statement of Allstate's plans for the future rather than of its existing underwriting standards.

The Commissioner is at a loss as to precisely where in the record these exact words appear and points out that Allstate's representative, Steven L. Kreseski, stated that "Allstate's non-continuation standard is at least two convictions by any one operator. And number six, a frequency of combined losses and convictions which is defined as at least two per operator." (R. 11-12, emphasis added). Clearly these are statements of Allstate's current underwriting standards, as are identical statements contained in Allstate's notice to Appellant. (R. 23).

Even if the precise phraseology cited in Appellant's Memorandum does appear in the record ("Allstate will not continue to insure . . . ."), Appellant misconstrues this statement as one of future intent rather than current practice. There is nothing in the record to support Appellant's allegations that the underwriting standard utilized in this case was not in use at the time Allstate proposed to nonrenew the Troy policy and is not now in use.

Moreover, insurers are free to change their underwriting standards from time to time without giving prior notice to their insureds and need not file their underwriting standards with the Commissioner.

Underwriting is a company's decision whether to issue or to continue a policy, and that decision is within the province of the insurer. See Insurance Commissioner v. Allstate Ins., 268 Md. 428, 440 (1983); Edelstein v. Nationwide Mut. Ins., 253 Md. 455, 461 (1969). Regulatory control of underwriting extends only to determining whether the decision is "arbitrary, capricious, or unfairly discriminatory," or, to the contrary, based on "standards which are reasonably related to the insurer's economic and business purposes." §234A(a). There is no requirement in the Insurance Code that insurers give insured previous notice of how their underwriting department operates; truly, insureds drive at their peril if they do not drive well. It is only after the underwriting decision has been made that an insurer is obliged to apprise an insured of the basis of its underwriting decisions, which is accomplished through the §240AA(b) notice of cancellation or nonrenewal. At that point, insureds have the right to protest the reasonableness of an insurer's decision. §240AA(d).

While rates must be filed with and approved by the Commissioner pursuant to §242(d), there is no comparable provision in the Insurance Code for underwriting standards. It is reasonable to conclude that, by enacting a rating requirement, but not an underwriting one, and further by establishing a procedure whereby underwriting decisions are subject to review, that the Legislature meant what it did not say: that underwriting is essentially the insurer's business and there need not be prior

disclosure of underwriting guidelines to the insured. When the Legislature intends to require insurers to include specific provisions in insurance policies, the Legislature has made this perfectly clear in specific language mandating those provisions, for example, the numerous health insurance mandated benefit statutes in Maryland, as well as other sections designating particular provisions that must be included in an insurance policy. See e.g., §§388-389 (life insurance), §§402-409 (annuities), §§539-541 (motor vehicle liability insurance). If, as has been stated frequently, courts are not to insert words into a statute to make it express an intention not evident in its original form, Board of Education of Garrett County v. Lends, 295 Md. 55 (1982), then they should certainly not insert entire legislative mandates.

### III.

Allstate Lawfully Considered Richard Troy's  
Driving Record for the Three Years Preceding the  
Date of its Proposed Nonrenewal of the Troy Policy

Appellant takes exception to Allstate's consideration of that part of Richard Troy's driving record which is adverse to him, without giving favorable weight to the fact that Richard subsequently drove for one full year without having an accident and is currently not driving at all.<sup>4</sup>

There is no question that, in determining whether to nonrenew the Troy insurance policy, Allstate could consider

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<sup>4</sup> If indeed Richard is away at school and not driving at this time, it would seem to impose no hardship on Appellant to simply accept the exclusion of driver offer.

traffic violations and accidents involving Richard Troy which occurred within three years of the policy renewal date. See §234A(d)(1). These violations and accidents are significant for their predictive value with regard to future accident frequency. It is immaterial that an accident may have entailed only minor damage. What is important in this case is that Richard Troy had three moving violations and one at-fault accident in the span of only 4-1/2 months and, therefore, can be expected to have a much higher accident frequency in the future than a driver who has had fewer, or no, violations or accidents. Allstate acted lawfully when it attempted to nonrenew the Troy policy effective February 7, 1989, based on Richard Troy's driving record for the previous three years.

#### IV.

The Insurance Commissioner Correctly Determined That The Evidence Presented by Allstate Was Sufficient To Satisfy the Burden Imposed Upon the Insurer by §234A.

Appellant contends that the California study data is not valid, that it is 25 years old and that Allstate has not demonstrated that it would lose money if it were required to insure drivers with records like Richard Troy's. He also insinuates that Allstate's action is based, at least in part, on the color of his son's skin. Before exploring these specific objections, a review of §234A's requirements, as construed by Maryland's appellate courts, should be helpful.

Section 234(a) provides in pertinent part:

No insurer . . . shall cancel or refuse to underwrite or renew a particular insurance risk

for any reason based in whole or in part upon race, color, creed, sex, or blindness of any applicant or policyholder or for any arbitrary, capricious or unfairly discriminatory reason. No insurer . . . . may cancel or refuse to underwrite or renew a particular insurance risk . . . . except by the application of standards which are reasonably related to the insurer's economic and business purposes. At any hearing to determine whether there has been a violation of this section, the burden of persuasion shall be upon the insurer to demonstrate that the cancellation, or refusal to underwrite or renew is justified under the standards so demonstrated.

In Geico v. Insurance Commissioner, 273 Md. 467 (1957), the Court explained what an insurer must show in support of a decision to cancel or not to renew an automobile policy:

[T]he insurer must establish that its assigned reason is an actual one, that is, genuine; and that the facts on which it is based are true. In addition, of course, the insurer must comply with the remaining procedural requirements in §240AA and the substantive standards, including the prohibition of historic prejudices, in §§234A and 240F. Only then will the insurer have met the burden of proving its proposed action to be justified under §240AA(f).

Essentially, 234A of the Insurance Code requires two findings:

1. That the standards used to cancel or nonrenew are 'reasonably related to the insurer's economic and business purposes'; and
2. That under those standards the cancellation is justified -- essentially, that the insured falls within the underwriting proscription.

As stated in Geico v. Insurance Commissioner, 273 Md. at 483-84:

Nothing in §240AA permits the Commissioner to substitute his underwriting judgment for that of the insurer. Similarly, it is not for the Courts to decide whether a driver is a good or

poor risk; nor may the courts formulate criteria for the Commissioner to follow in considering whether the action proposed by an insurer is justified.

Most recently, in Crumlish v. Insurance Commissioner, 70 Md. App. 182 (1987), the Court of Special Appeals set forth, in dicta, the quantum of proof an insurer must adduce in order to satisfy the requirements of §234A. The Court stated that:

Facts must be produced which answer at least the following questions:

1. What is the statistical basis for the supposition that a person who [violates the applicable underwriting standard] is more likely to have a chargeable accident within the next 12 months than a person who [does not violate the standard]?
2. How valid is any such statistical evidence?
3. If there is statistical validity to the supposition, what direct and substantial adverse effect would it have upon [the insurer's] losses and expense in light of its current approved rating plan?

70 Md. App. at 190.

Appellant takes numerous stabs at the California study data and its use by Allstate. He contends that the data is 25 years old, when the affidavit of Matthew Stegle belies that assertion. Stegle's affidavit reveals that the study was originally conducted in 1964, but that it has been updated on several occasions and that Allstate relies on the most recent data, which was compiled in 1987. (R. 36-37).

Appellant also contends that the data are not valid and that Allstate would not lose money if it were required to continue to

insure Richard Troy.

The testimony and evidence presented demonstrate that, with three traffic convictions in two years, Richard Troy is 3.54 times more likely to have an accident in the third year than a driver who has been conviction free and that with 1 accident in two years he is 1.74 times more likely to have an accident in the third year than a driver who has been accident free. (R. 41). The average Allstate insured has only one at-fault accident every 16.2 years and Allstate's rates are based upon this expected accident frequency, coupled with the average claim and administrative cost per accident. (R. 38). Richard Troy's expected accident frequency is nearly four times greater than that of the average Allstate insured. (R. 43). Allstate has no surcharge plan for convictions and can surcharge for only one accident and, therefore, it cannot procure an adequate rate for the increased loss potential presented by a driver with a record such as Richard Troy's. (R. 39-43). It follows that Allstate would suffer a direct and substantial adverse effect upon its losses and expenses if it were required to continue to insure Richard Troy.

Allstate demonstrated the validity of the California study results through the use of a correlation coefficient. As previously stated, the correlation coefficient associated with the relationship between prior convictions and subsequent accident frequency is .994, indicating highly statistically significant results. (R. 42).

Appellant also insinuates that Allstate's actions are, at least in part, racially motivated. Appellant provides no support for this bald allegation and has submitted no evidence which would indicate that his son was treated differently than any other Allstate insured with the same driving record. Allstate's notice to the Troys states that its "action would be the same for any of [its] policyholders with the same circumstances or driving record" (R. 24) and Appellant has offered no evidence to refute this statement.

V.

The Insurance Commissioner's Order Comports  
With the Requirements Set Forth in §39.

On page five of his Memorandum, Appellant makes the assertion that the Order on Hearing does not comport with §39.

Section 39 provides in pertinent part:

The Order shall contain a concise statement of the facts as found by the Commissioner and of his conclusions therefrom, and the matters required by §29.

Section 29 requires that an Order of the Commissioner state its effective date and concisely state its intent or purpose, the grounds on which it is based and the provision of Article 48A pursuant to which action is taken.<sup>5</sup>

The Order on Hearing in the instant case meets these requirements. Hearing Examiner Holliway made findings relative

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<sup>5</sup> The Insurance Commissioner is specifically exempted from those provisions of the Administrative Procedure Act applicable to contested cases and, therefore, his Orders need not comply with the more stringent requirements of that statute. State Government Article, §10-202(a)(3)(iv).



to Allstate's underwriting standards, found that Richard Troy's driving record exceeds these standards, found that the statistical data presented by Allstate is valid and supports the company's assertions concerning an increase in expected accident frequency for Richard Troy, determined that Allstate's rating plan does not provide for the imposition of an adequate rate for the additional exposure presented by Richard Troy and concluded that continued insurance coverage for him would adversely affect Allstate's losses and expenses. This Order clearly satisfies the mandate of §39, which requires only a concise statement of the facts as found by the Commissioner and his conclusions therefrom.

VI.

Allstate's Exclusion of Driver Offer is Not Tantamount to Illegal "Compulsion/Blackmail/Duress" as Appellant Alleges.

Appellant contends, on the seventh page of his Memorandum, that Allstate's offer to exclude Richard Troy from coverage under the policy, in lieu of cancelling the policy as a whole, amounts to illegal "compulsion/blackmail/duress." It is difficult to fathom how an insurer can be guilty of an illegal action when it has merely complied with the dictates of the Insurance Code.

Section 240C-1(a)(1) provides in pertinent part:

In any case where an insurer is authorized under this article to cancel or nonrenew . . . an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of 1 or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation [or] nonrenewal offer to continue or renew the insurance, but to exclude all coverage when a motor vehicle is operated by the specifically named excluded person or

persons whose claim experience or driving record would have justified the cancellation or nonrenewal.


(emphasis added).

Allstate's exclusion offer merely follows the dictates of §240C-1 and, therefore, does not constitute illegal compulsion, blackmail, or duress.

CONCLUSION

For all of these reasons, the Insurance Commissioner respectfully requests this Court to affirm his June 16, 1989 Order on Hearing.


J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
\_\_\_\_\_  
MEG L. ROSTHAL  
Assistant Attorney General  
501 St. Paul Place  
Baltimore, Maryland 21202  
(301) 333-6284

Attorneys for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 1989, a copy of the foregoing Memorandum of the Insurance Commissioner was mailed, postage prepaid, to Terry Troy, 7819 Ivymount Terrace, Potomac, MD 20854 and Steven L. Kreseski, Law Offices of Joseph A. Schwartz, III, P.A., Washington Place, 10 W. Madison St., Baltimore Maryland 21201.

  
\_\_\_\_\_  
MEG L. ROSTHAL

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND, ET AL

Appellee

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IN THE  
CIRCUIT COURT

FOR  
BALTIMORE CITY

CASE NO: 89184050/  
CL99747

12  
*[Signature]*  
**FILED**  
OCT 20 1989

**CIRCUIT COURT FOR  
BALTIMORE CITY .**

**MOTION TO DISMISS APPEAL**

Appellee, Allstate Insurance Company, by and through its undersigned attorneys, hereby concurs with the facts, reasons and statements of points and authorities made by J. Joseph Curran, Jr., Attorney General of the State of Maryland, and Meg L. Rosthal, Assistant Attorney General, his attorneys in his Motion to Dismiss the appeal of Terry Troy for failure to file the required Memorandum in a timely manner.

WHEREFORE, Appellee, Allstate Insurance Company, respectfully requests this Court to dismiss this appeal with prejudice.

Respectfully submitted,

*Joseph A. Schwartz, III*  
Joseph A. Schwartz, III *TLI*  
*SK*

*Steven L. Kreseski*  
Steven L. Kreseski  
Steven L. Kreseski  
Joseph A. Schwartz, III, P.A.  
10 West Madison Street  
Baltimore, MD 21201  
(301) 244-7000

Attorneys for Allstate Ins. Co.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of October, 1989, copies of the foregoing Motion to Dismiss and Proposed Order were mailed, postage prepaid, to Meg Rosthal, Assistant Attorney General, 501 St. Paul Place, Baltimore, Maryland, 21202; and to Terry Troy, 7819 Ivymount Terrace, Potomac, Maryland (20854).

  
\_\_\_\_\_  
Attorney for Allstate Ins. Co.

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND, ET AL

Appellee

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IN THE  
CIRCUIT COURT

FOR  
BALTIMORE CITY

CASE NO: 89184050/  
CL99747


O R D E R

IT IS, this 6<sup>th</sup> day of December, 1989,

HEREBY ORDERED:

~~That this appeal is hereby dismissed with prejudice for  
Appellant's failure to file the Memorandum required by Rule B12.~~

*that Defendants' Motion to Dismiss Appeal  
be, and each is hereby denied.*

  
\_\_\_\_\_  
J U D G E

**FILED**

**OCT 19 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

*Rec'd  
10/16/89  
[Signature]  
11  
462 [Signature]*

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place

APPELLEE

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No. 89184050/CL99747  
\*  
\* Appeal of the Insurance  
\* Commissioner's decision,  
\* Department of Licensing  
\* and Regulation.  
\* Upon the Complaint  
\* of Terry Troy  
\*  
\* Case No. 1467-14/89

\* \* \* \* \*

OPPOSITION TO MOTION TO DISMISS APPEAL

The Appellant, Terry Troy, prays that this court deny the motion of the Appellee to dismiss this appeal. The Appellant has filed the memorandum required by Maryland Rules of Procedure [B12], thus complying with the rule and satisfying the basis for Appellee's Motion, and opposes the motion to dismiss.

In People's counsel v. Public Service Commission, 52 Md. App. 715 [1982] The court stated:

Appellant should have been more diligent in apprising himself of the Rules of Procedure; but the imposition of the ultimate sanction of dismissal appears too harsh...we do not believe that it is a mandatory sanction required to be applied indiscriminately in all cases.

With justifiable embarrassment, I did not file within the 30 days as I erroneously misinterpreted the rule and I am acting *per se*, without counsel. As soon as I was made aware that this was desired by Appellee, I set to the task and have complied with the requirement. I do not believe the Commission has been prejudiced by this lapse, and dismissal of the appeal would be an unnecessarily harsh sanction, especially for one acting on his own without benefit of legal counsel. There is no evidence that either the court or the Commission has been seriously inconvenienced, much less prejudiced, by the lateness in filing the memorandum.

In Gaetano v. Calvert County, 310 Md. 121, 527 A.2nd 46 [1987], The court stated:

Certainly there was no justification for an eleven month delay in [that] case...although the rule is mandatory, dismissal is not required as a sanction for failure to comply...[w]hen a rule...mandates...conduct,... the court may compel compliance with the rule....

I now understand that the rule is mandatory and have complied

JB

with it with all deliberate speed. Actually, the issues and arguments were stated and enumerated in detail in the petition by Appellant. The Court <sup>is keeping copies</sup> of Appeals has stated that an appeal may be allowed to proceed on the ground that there has been substantial, if not literal, compliance...where there are minor irregularities. The petition set forth a concise statement of each issue raised on appeal and the argument on each issue. With the memoranda now on file, I have included citations of legal authority [well known to the Insurance Commissioner and Allstate] and references to pages of the transcripts. I am not anticipating that the Commission or Allstate will find any new or complex legal rules that require research. The issues and arguments in the petition can be viewed as an attempt to comply with Rule B12.

I object very strongly <sup>to</sup> the Commission's statement that the circumstances involve a blatant disregard of the procedural rules. It was a misunderstanding on my part that was cleared up as soon as I was aware of the mandatory nature of the procedure. The Appellant has made every attempt to comply with all rules and will continue to do so. There is no evidence that either the Court or the Commission has been seriously inconvenienced, much less prejudiced, by the lateness in filing the memorandum.

I also believe that the Court should decline to dismiss the appeal because that would allow Allstate to unfairly non-renew my policy. I DO NOT WANT MY POLICY NON-RENEWED! I HAVE A CLEAN RECORD WITH NO OCCURRENCES OF ANY KIND -- NO ACCIDENTS, NO CITATIONS, NO CONVICTIONS! The issue should be the right of Allstate to exclude my son, who was involved in a very minor accident.

I would like to note that I <sup>which occurred within a few months</sup> now have new evidence that the cause ~~was~~ of my son's accident was probably, I believe, the direct result of Allstate's failure to properly inspect the vehicle after a very serious previous accident to that vehicle. Allstate failed to make a routine inspection that would have disclosed a serious defect to the automobile that affected handling, and put my family in jeopardy of life and limb. Allstate has now implored me to give them time to correct their mistake and is now attempting to rectify their error. Additionally, a review of my account over the last few years showed that Allstate charged me double for my daughter [Lesley Camille Troy]. Allstate is now pleading to rectify this error. What will happen if Allstate is allowed to dump my family now? I will probably get no protection from the Insurance Commissioner and Allstate will get away clean.

The above new evidence, I hope, will also be considered as circumstances in the late filing of the memoranda and in determining that dismissal is not an appropriate sanction. The Appellant is seeking, as a worst case scenario, that the case be remanded with instructions that Allstate may exclude the son. But this must not eliminate the right of the Appellant to retain his policy. Should our son be found during the appeal to

*from the repair shop*

be justifiably excludable, I will exclude him from my policy.

Appellant, pro se, not versed in MD procedures or in insurance law, could not have severely prejudiced Appellee's esteemed Attorneys or their ability to prepare an adequate defense to this action. However, I would have no objection, and the Appellees would be without opposition to delays they may request. The Commission's own inaction in not advising one known to be acting as his own attorney [not an obligation but as an officer of the court seeking speedy justice] could have helped the Appellant to determine the meaning of the rule.

I would also like to add that the June 16 Order on Hearing received on June 19, 1989 failed to allow the Appellant any options whatsoever, this in contradiction of and in conflict with testimony presented at Hearing of May 18, 1989, wherein it was agreed by both of the Parties and the Hearing Examiner that the Appellant would have 20 days in which to exclude the son Richard or appeal the Order. Nevertheless, Mrs Troy requested exclusionary forms on several occasions from Allstate, including several agents, but the forms were never sent, illegally preventing the Appellant from exercising the exclusion option as Mrs Troy preferred to do. [The Appellant, Mr Troy, however preferred to appeal because the statistical inferences were outrageous.] The exclusionary option forms were never received. The licensee was permitted to effect its proposed action on or after 6th of July. Their June 21, 1989, letter [received, if memory serves, on June 26, 1989] purporting to terminate Appellant insurance, did not include exclusionary forms as Appellants quite reasonably assumed would be the case, however, the letter we received included two rebate checks. - Perhaps indicating that Allstate acted with arrogance in violation of Commissioner's authority. Appellees looked at only one item: cancel Terry Troy's policy. I believe that Allstate's attempted non-renewal of Appellant's policy is without statutory authority, arbitrary and capricious.

I HEREBY CERTIFY on this 16th day of October, 1989, a copy of the foregoing Opposition to Appellee's Motion to Dismiss has been mailed to the Insurance Commissioner of Maryland and to the attorney for Allstate.

*Terry Troy*

-----  
Terry Troy, Appellant

(301) 975-4039 (wk)  
299-3396



Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

IN THE CIRCUIT COURT  
FOR BALTIMORE CITY

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BS,

FILED  
OCT 16 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

Case No. 89184050/CL99747

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place

Appeal of the Insurance  
Commissioner's decision,  
Department of Licensing  
and Regulation.

Upon the Complaint  
of Terry Troy

APPELLEE

Case No. 1467-14/89

\* \* \* \* \*

OPPOSITION TO MOTION TO DISMISS APPEAL

The Appellant, Terry Troy, prays that this Court deny the motion of the Appellee to dismiss this appeal. The Appellant has filed the memorandum required by Maryland Rules of Procedure [B12], thus complying with the rule and satisfying the basis for Appellee's Motion, and opposes the motion to dismiss.

In People's counsel v. Public Service Commission, 52 Md. App. 715 [1982]The court stated:

Appellant should have been more diligent in apprising himself of the Rules of Procedure; but the imposition of the ultimate sanction of dismissal appears too harsh...we do not believe that it is a mandatory sanction required to be applied indiscriminately in all cases.

With justifiable embarrassment, I did not file within the 30 days as I erroneously misinterpreted the rule and I am acting pro se, without counsel. As soon as I was made aware that this was desired by Appellee, I set to the task and have complied with the requirement. I do not believe the Commission has been prejudiced by this lapse, and dismissal of the appeal would be an unnecessarily harsh sanction, especially for one acting on his own without benefit of legal counsel. There is no evidence that either the Court or the Commission has been seriously inconvenienced, much less prejudiced, by the lateness in filing the memorandum.

In Gaetano v. Calvert County, 310 Md. 121, 527 A.2nd 46 [1987], The court stated:

Certainly there was no justification for an eleven month delay in [that] case....although the rule is mandatory, dismissal is not required as a sanction for failure to comply...[w]hen a rule...mandates...conduct,... the court may compel compliance with the rule....

I now understand that the rule is mandatory and have complied

with it with all deliberate speed. Actually, the issues and arguments were stated and enumerated in detail in the petition by Appellant. The Court in Peoples Counsel stated that an appeal may be allowed to proceed on the ground that there has been substantial, if not literal, compliance...where there are minor irregularities. The petition set forth a concise statement of each issue raised on appeal and the argument on each issue. With the memoranda now on file, I have included citations of legal authority [well known to the Insurance Commissioner and Allstate] and references to pages of the transcripts. I am not anticipating that the Commission or Allstate will find any new or complex legal rules that require research. The issues and arguments in the petition can be viewed as an attempt to comply with Rule B12.

I object very strongly to the Commission's statement that the circumstances involve a blatant disregard of the procedural rules. It was a misunderstanding on my part that was cleared up as soon as I was aware of the mandatory nature of the procedure. The Appellant has made every attempt to comply with all rules and will continue to do so. There is no evidence that either the Court or the Commission has been seriously inconvenienced, much less prejudiced, by the lateness in filing the memorandum.

I also believe that the Court should decline to dismiss the appeal because that would allow Allstate to unfairly non-renew my policy. I DO NOT WANT MY POLICY NON-RENEWED! I HAVE A CLEAN RECORD WITH NO OCCURRENCES OF ANY KIND -- NO ACCIDENTS, NO CITATIONS, NO CONVICTIONS! The issue should be the right of Allstate to exclude my son, who was involved in a very minor accident.

I would like to note that I now have new evidence that the cause of my son's accident was probably, I believe, the direct result of Allstate's failure to properly inspect the vehicle after a very serious previous accident to that vehicle. Allstate failed to make a routine inspection that would have disclosed a serious defect to the automobile that affected handling, and put my family in jeopardy of life and limb. Allstate has now implored me to give them time to correct their mistake and is now attempting to rectify their error. Additionally, a review of my account over the last few years showed that Allstate charged me double for my daughter [Lesley Camille Troy]. Allstate is now pleading to rectify this error. What will happen if Allstate is allowed to dump my family now? I will probably get no protection from the Insurance Commissioner and Allstate will get away clean.

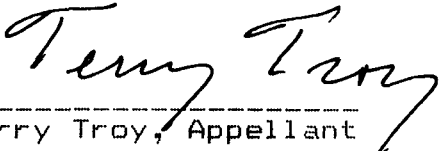
The above new evidence, I hope, will also be considered as circumstances in the late filing of the memoranda and in determining that dismissal is not an appropriate sanction. The Appellant is seeking, as a worst case scenario, that the case be remanded with instructions that Allstate may exclude the son. But this must not eliminate the right of the Appellant to retain his policy. Should our son be found during the appeal to

be justifiably excludable, I will exclude him from my policy.

Appellant, pro se, not versed in MD procedures or in insurance law, could not have severely prejudiced Appellee's esteemed Attorneys or their ability to prepare an adequate defense to this action. However, I would have no objection, and the Appellees would be without opposition to delays they may request. The Commission's own inaction in not advising one known to be acting as his own attorney [not an obligation but as an officer of the court seeking speedy justice] could have helped the Appellant to determine the meaning of the rule.

I would also like to add that the June 16 Order on Hearing received on June 19, 1989 failed to allow the Appellant any options whatsoever, this in contradiction of and in conflict with testimony presented at Hearing of May 18, 1989, wherein it was agreed by both of the Parties and the Hearing Examiner that the Appellant would have 20 days in which to exclude the son Richard or appeal the Order. Nevertheless, Mrs Troy requested exclusionary forms on several occasions from Allstate, including several agents, but the forms were never sent, illegally preventing the Appellant from exercising the exclusion option as Mrs Troy preferred to do. [The Appellant, Mr Troy, however preferred to appeal because the statistical inferences were outrageous.] The exclusionary option forms were never received. The licensee was permitted to effect its proposed action on or after 6th of July. Their June 21, 1989, letter [received, if memory serves, on June 26, 1989] purporting to terminate Appellant insurance, did not include exclusionary forms as Appellants quite reasonably assumed would be the case, however, the letter we received included two rebate checks -- perhaps indicating that Allstate acted with arrogance in violation of Commissioner's authority. Appellees looked at only one item: cancel Terry Troy's policy. I believe that Allstate's attempted non-renewal of Appellant's policy is without statutory authority, arbitrary and capricious.

I HEREBY CERTIFY on this 16th day of October, 1989, a copy of the foregoing Opposition to Appellee's Motion to Dismiss has been mailed to the Insurance Commissioner of Maryland and to the attorney for Allstate.

  
-----  
Terry Troy, Appellant

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

**FILED**  
\*  
OCT 16 1989\*

IN THE CIRCUIT COURT  
FOR BALTIMORE CITY

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*[Handwritten signature]*

APPELLANT

Case No. 89184050/CL99747

VS.

CIRCUIT COURT FOR  
BALTIMORE CITY

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
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Appeal of the Insurance  
Commissioner's decision,  
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APPELLEE

Upon the Complaint  
of Terry Troy

Case No. 1467-14/89

\* \* \* \* \*

MEMORANDUM

Pursuant to Sections 25, 234A and 240AA of Article 48A of the Annotated Code of Maryland (1986) a hearing was conducted on May 18, 1989 wherein the above captioned Appellee supported the Allstate Insurance Company's proposed non-renewal of Appellant's auto insurance or [at Appellant's option] transference of young male race-classification-one driver in his fourth year of driving with one minor accident of \$705 and two points on his driving record to their high risk indemnity insurance subsidiary where Allstate would raise the son's rates from \$1000 to \$3300 per year. The Appellee and Allstate proposed, should Appellant refuse the transference, a second option: to exclude the son from the family insurance policy. The Appellant did not accept either option; consequently, the Appellee ORDERED that Allstate be permitted to effect its proposed action. Allstate notified the Appellant of non-renewal but a Stay was obtained on the Appellee's Order. On July 14, 1989, a petition was filed with the Circuit Court for Baltimore City.

The Appellant believes that substantial rights have been violated; the administrative findings of fact and conclusions of law are: unsupported by competent, material and substantial evidence, unsupported in view of the entire record submitted, affected by errors of law, and for other reasons. Appellant asked the Circuit Court to reverse the decision of the Insurance Commissioner in CASE NO: 1467-4/89, dated 16th day of June, 1989, that allowed the Allstate Insurance Company to non-renew the family's insurance policy, and/or exclude the son Richard C. Troy, and/or increase his rate by \$2300 per year; and to remand the case with instructions to the Appellee to deny non-renewal, deny any exclusion options, and deny any rate increases to the Allstate Insurance Company of or within the Appellant's policy.

The issues and arguments were set forth in detail in the petition by appellant, pro se [acting without Md legal counsel], nevertheless, Appellee move for dismissal. The Appellant hopes that this Court may allow this appeal to proceed on the ground

that there has been substantial, if not literal, compliance in the petition. The Appellant does not believe there are any difficult questions of law of sufficient importance beyond those that are anticipated by the petition. However, the Appellant, pro se, sets forth below [in expectation of his 'day in court'] a statement of all issues, arguments and conclusions, citations and references available:

#### STATEMENT OF ISSUES

These issues are derived from the petition and follow sequentially the paragraphs of the two page Order on Hearing dated June 16, 1989. Citations and references from the transcripts have been added.

1. Made findings of fact that are future promises: Allstate WILL not continue to insure any driver who has a frequency of combined losses and convictions defined as at least two per operator within the past three years. Apparently Allstate's claim was not true at time of hearing, and Allstate could change its mind. [The particular requirement must be established for all policy holders or it can be applied, with connivance by Insurance Commissioner, in an arbitrary and capricious way.] These standards that WILL do something in future were apparently not verified by any evidence; no proof of what they do now, nor was Appellant able to call Allstate's agents to see what they are really telling prospects, i.e., that they will be excluded if they have two occurrences. Automobile insurer seeking to cancel policy must determine objective probability of direct and substantial adverse effect upon losses or expenses of the insurer in light of the rating plan...then in effect.... Code 1957, Art. 48A, Sec. 234 A(a). A reasoning mind reasonably could not have reached the factual conclusion the agency reached [not judicial fact-finding or substitution of judgment] Supervisor of Assmts. v. Ely, 272 Md. 77, 321 A.2nd 166 [1974]

See pg 1 Order; One accident with payout of \$705...was held for the complainant. [Allstate is apparently the only company that seeks exclusion with one accident [two occurrences as underwriting standards] although they claim they will exclude if they find out]. Commissioner's judgment on the facts is separate, hearing is for Allstate to apply a surcharge, a merit rating; Court should not substitute its judgement for that of the agency which was for appellant on the facts.

2. Found on only that PART of the son's driving record most favorable to Allstate. The Appellee ignored most important facts: only one accident of \$705 and two points in over three years of driving. Appellee apparently did not give any weight to the son's subsequent year of driving without any accident or occurrence, or that the son has a radically changed driving pattern [away at school eight months of year and does not drive to work during summer, exclusion offer is tantamount to a rate increase to \$3,300 per year [\$1000/month and he rides the metro

to work]. This hasty conclusion, that the son exceeds standards that Allstate will have, may indicate an intent to show bias in favor of Allstate.

See pg 11 143; Allstate's rate filing [did not consider minor accident and only two points].

148-150; noncontinuation standard is at least two convictions by any one operator is unrealistic and enforceable only by arbitrary and capricious application of the standard and the connivance of the Insurance Commissioner

3. Found that the son presents additional exposure not contemplated by Allstate's rating plan. But Appellee failed to take into account Allstate's own computer generated statements, on file with the Insurance Commission, showing the amount of increase Allstate would need, [an additional \$70 per period or \$140 per year], to cover their contemplated additional exposure because of the accident. The Appellee also failed to take into account the extreme low cost of the actual accident, that existing premiums more than cover the possibility of a similar accident, the actual earnings from the son's share of the premiums, and that future damages if any may be minor and within the policy's deductibility.

Facts must be produced which answer at least the following questions:

1. What is the statistical basis for the supposition that a person who has one chargeable loss within a three year period is more likely to have a chargeable accident within the next 12 months than a person who has had no accidents.
2. How valid is any such statistical evidence?
3. If there is statistical validity to the supposition, what direct and substantial adverse effect would it have upon Allstate's losses and expenses in light of its current rating plan?

The fundamental right of the Appellant and the Circuit Court to be apprised of the facts relied on by the commission has been abridged.

4. Allowed the introduction of 25 year old out-of-State out-of-date statistical data, with outrageous concomitant assumptions, and accepted that that data had sufficiently demonstrated that the son belongs to group with 1.74 times greater chance of future accident than a 0-accident driver. But what does it mean that the son possibly may have 1.74 times as many accidents as the mythical 0-accident California driver had 25 years ago, over an unknown period of time. It proves nothing about what the son's driving record may be in the future. Actually this is a factor of secondary predictability, and if one uses it in conjunction with Allstate's own data it would suggest the possibility that the son would have one or less accidents in the next four years, for a total of two or less in eight years, well below the Allstate standards for exclusion. The record before us is sorely deficient in providing facts upon which conclusions could be based for the purpose of applying the standard set out above. See pg 8 61-70; [disallowing Allstate's protest because they did

not meet the requirements of a Maryland court of Special Appeals case known as Crumlish v. Insurance Commissioner, 70 Md. Appeals 182 [1987]. There is also the case of Medical Mutual Liability Insurance Society of MD, et. al. v. O. Magan, 529 Atlantic 2nd. 841 [1987]

See pg 15 257-258; "take a few minutes to go through that" average claims pay-out, statistical abstract of the CA study, [can't compare to state where the density of automobiles is so great, it has required special emissions equipment many years before MD] goes to the validity of the study, the equations used, correlation coefficient [what is one?], application of the frequency factors.

253; strong correlation between the statistics and predicting the FACTS they predict? Is Allstate trying to convince the Insurance Commissioner that the statistics are valid because the statistics are predicting the facts they predict? What does this mean?

260; with regard to the exclusion of Richard.

271; Allstate has not only been arbitrary; they have been less than totally honest and somewhat obfuscatory.

5. Also found that the data demonstrated that the son belongs to group with 3.54 times greater chance of future accident than a 0-convictions driver. Does it mean he will have 3.54 times as many accidents as the mythical 0-occurrence California driver had 25 years ago, over an unknown period of time. This is a factor of tertiary predictability and is highly speculative, but the son would still be within the standard if one uses Allstate's own data. This is merely blind acceptance of Allstate's industry data. At this point in the Order On Hearing, there is no indication that the Appellee or Allstate has calculated the chance of a one-accident Maryland driver or a three-conviction Maryland driver having an accident during Allstate's next billing period when presumably they will be at risk. Hence, the Appellee cannot jump to any conclusions, and does not have a valid basis for interpolating and using Allstate's statistical inferences. A reviewing court may... examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference follows from other facts which are shown by direct proof. There is not sufficient evidence to support the commission's findings and conclusions.

6. Found that the statistical data is valid. This should be reversed as not supported by any evidence. Appellee did not factor-in length-of-time in using zero accidents/convictions as a determinant; frequency data without a time axis is categorically INVALID. Appellee's conclusions are also INVALID because his intended comparisons cannot be made using "numbers" with no magnitude [the zero accidents/convictions "numbers" have no factor of predictability], zero times any number is always zero. Additionally, Appellee failed to apply weights to secondary and tertiary factors. Occurrences are not accidents and accidents are not claims pay-out money. Appellee has failed to give proper weights to primary factors [large number] that have probable

predictability such as actual dollar claims against Allstate, secondary factors [small number] that have only possible predictability such as number of accidents, and highly speculative tertiary factors [very small number] such as convictions. Court of Special Appeals for Maryland [in Crumlish case GEICO paid out \$1,461.54, plus \$658.00, plus \$403.47 for Mr. Crumlish who had two accidents in two years] stated that [Sec. 39 of the Insurance Code directs the Commissioner, after the hearing, to issue an order...contain[ing] a concise statement of facts as found by the Commissioner, and of his conclusions therefrom.... This portion of the order falls far short of the requirements of the statute that it contain a "concise statement of the facts as found by the Commissioner and his conclusions therefrom."

7. Recognized "other statistical data" not part of the signed affidavit nor notarized. This inadmissible [Appellant's view] data is useless to show any cause and effect at critical stages of the reasoning that should have been but was not set forth, but it was apparently used as a basis that mystically led to conclusions of a "strong relationship" without supporting, or Appellee showing, any intermediate steps. This must be reversed as not supported by an assignment of reasons for the result reached. Appellant believes that the Appellee should have examined the actual primary facts not just secondary or tertiary hypothetical speculations.

See pg 13 193-194; expected to have one accident in 15 years and charge him five times as much, my son is well below his expected rate for what you charge. My son pays five times as much, you can't say he's expected to have one accident in 15 years and charge him five times as much--he is in the discriminated against class where he pays for the 'privilege' of the expectation of having five times as much payout.

8. Failed to take into account the relevant elements of the son's actual driving record, admitted into evidence, and showing that he had only two points for minor violations. [Allstate and the Commission may have recognized that the son was in racial category one.] The law must always be vigilant when racial classification data is admitted into the administrative record.

9. Concluded that Allstate's rating plan does not provide for an adequate rate. What is an adequate rate if \$300 dollars profit in the year of the accident and \$1000 profit for each year that there is no accident is not adequate? Appellee also failed to take into account Allstate's own statements that their rating plan and rates are adequate for up to two accidents. Appellee apparently ignored the amount of profit gained by Allstate which is part of an industry with premiums running four times the inflation rate, and failed to take into account possible greed of, and conspiracy within, the insurance industry. Standards applied by automobile insurer in determining which risks to accept and a general description of market it attempted to insure does not bear on relationship of standard to the insurer's



"economic and business purpose as required by statute dealing with cancellation of policies. Automobile insurer seeking to cancel policy must determine objective probability of direct and substantial adverse effect upon losses or expenses. Code 1957, Art. 48A, Sec. 234 A(a).

See pg 11 149; noncontinuation standard for two convictions by any one operator is this exclusion? Yes, does not deal with cancellation.

See pg 14 206; more likely Allstate will pay out a lot more in terms of premium and in terms of the claims dollars than it will take in from premium. [WRONG because intake is five times and risk is only 3.5 times]

209-216; Entire sentence on which case turns is ridiculous, premise is incorrect, criteria for analysis is wrong [tertiary factor of predictability], logic is nonsense and conclusion is [in my humble opinion] less than honest!

See pg 14 "It just increases, You just continue to go up." Example: actual dollar value of stock, number of shares sold, correlation with sunspots. [no! you look at the record, the management, products, markets, etc as hearing examiner should look at pay-out, premium, points, etc., go back to the facts]

10. Delegated its authority [particularly as to switching from exclusion issue to non-renewal issue] to decide this case to Allstate, and their rating plan, out-of-state out-of-date statistical data, and to highly speculative tertiary factors of predictability. [Has Appellee forgotten why the people need an insurance commissioner? Hearing Examiners must carry out their responsibility to the public without fear, e.g., that the insurance industry might cost them their jobs.] No insurer, agent, or broker may cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards which are reasonably related to the insurer's economic and business purposes. Crumlish v. Insurance Commissioner, 70 Md. Appeals 182 [1987].

See pg 9 89; exclusion offer as to your son

See pg 10 103; switch from exclusion to non-renewal.

See pg 10 111-113; any driver who has two or more occurrences within a three year period shall be non-renewed [I do not have two occurrences and therefore cannot be non-renewed!] [If the court holds against me, after I have had my day in court, I will exclude my son who has had only one occurrence=an at-fault accident.]

See pg 12 156; [this is a surcharge on top of a surcharge and is an example of insurance industry greed and insurance connivance]

158-160; additional premium dollars to compensate it adequately for anticipated greater frequency of accident and possible pay-out in the future. [Surcharge was applied and paid for, then on 12/14/88 a non-renewal notice was sent.]

167; one accident in 15 yrs and pay-out of \$1511. [Is this believable for 1989?] Money is better predictor than accidents and much better than convictions. Note that my son is less than half the average.

See pg 14 205-236; protest exclusion = cancellation

See pg 15 234-235; did not agree to go along with the exclusion, then the entire policy would be cancelled [I believe that compulsion/blackmail/duress is illegal in MD.

See pg 16 269-271; "fairly applied" right to protest subsequent cancellation is "fair"?

See pg 17 285; until you get that order...nothing is changed

See pg 17 295-307; protest=cancel other arrangements/restraint/collusion/rate fixing

295; You use those 20 days to contact your agent -- Mrs Troy contacted agent's office to request exclusionary forms which were never received -- and inform them you've decided to accept the exclusion offer which removes Richard C. Troy off the policy.... Allstate refused to send exclusionary forms, therefore, Appellant had no recourse but to appeal the June 16 Order on Hearing. Additionally, Appellant received a letter on non-renewal and rebate checks from Allstate exactly one week later than the Commissioner's Order on Hearing which was received on June 19, 1989. [The agents were called four times for the forms. This seems to indicate that the agents were told to not send them.]

299; If you do not exercise that option within 20 days, then Allstate is free to go ahead and cancel the entire policy

306; you are all in effect without insurance

See pg 19 329-340; if the insurance company hears nothing they can cancel

11. Failed to show that Allstate or the Insurance Commissioner does NOT allow young male drivers of race-classification-two with more than zero accident, more that \$705 in claims, and more than two points to continue on family policies. Allstate must prove that they have excluded ALL male drivers under age 29 and classified by the State of Maryland as racial category two who have three or more violations; or perhaps they should be investigated for possible charges of racial discrimination. [The particular requirement must be established for all policy holders or it can be applied, with connivance by Insurance Commissioner, in an arbitrary and capricious way. At a minimum the case should be remanded with instructions that Allstate may exclude the son but this must not eliminate the right of the appellant to retain their policy. At any hearing to determine there has been a violation...the burden of persuasion shall be upon the insurer to demonstrate that the...refusal to...renew is justified under the standards so demonstrated. Ch. 752 of the Acts of 1974 [to amend Sec. 234A].

I would like to note that I now have new evidence that the cause of my son's accident, which occurred within a few minutes after picking up the car from the repair shop, was probably, I believe, the direct result of Allstate's failure to properly inspect the vehicle after a very serious previous accident to that vehicle. Allstate failed to make a routine inspection that would have disclosed a serious defect to the automobile that affected handling, and put my family in jeopardy of life and limb. Allstate has now implored me to give them time to correct their

mistake and is now attempting to rectify their error. Additionally, a review of my account over the last few years showed that Allstate charged me double for my daughter [Lesley Camille Troy]. Allstate is now pleading to rectify this error. What will happen if Allstate is allowed to dump my family now? I will probably get no protection from the Insurance Commissioner and Allstate will get away clean.

I HEREBY CERTIFY on this 16th day of October 1989, pursuant to Maryland Rule B12, that I have mailed a copy of this Memoranda to the Insurance Commissioner of Maryland and to the attorney for Allstate.

*Terry Troy*  
-----  
Terry Troy, Appellant

*J. B.*

**FILED**

**OCT 16 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND, et al.

Appellees

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE NO. 89184050/CL99747

\* \* \* \* \*

MOTION TO DISMISS APPEAL

Appellee, John A. Donaho, Insurance Commissioner of the State of Maryland, by J. Joseph Curran, Jr., Attorney General of Maryland, and Meg L. Rosthal, Assistant Attorney General, his attorneys, moves this Court to dismiss the above action, and for reasons states:

1. On July 3, 1989, Appellant, Terry Troy, filed an appeal from a June 16, 1989, Order of the Insurance Commissioner. This Order permitted Allstate Insurance Company to nonrenew Appellant's automobile liability insurance policy.

2. Notice of the appeal was given by the Insurance Division on July 6, 1989, and the record of the administrative proceedings was filed with the Court on August 8, 1989.

3. Despite the requirement of Maryland Rules of Procedure, Rule B12, Appellant has failed to file the required memorandum. Rule B12 states:

Within thirty days after being notified by the clerk of the filing of the record, the appellant shall file a memorandum setting forth a concise statement of all issues raised on appeal and argument on each issue, including citations of legal authorities and references to pages of the transcript and

exhibits relied on. Within thirty days thereafter any other party desiring to be heard, including the appropriate agency . . . , shall file an answering memorandum in the same form. The Appellant may file a reply memorandum within fifteen days after the filing of any answering memorandum.

4. Appellant's memorandum was due to be filed no later than September 7, 1989. Appellant has provided no reason or good cause for his failure to comply with the procedural rules.

5. Appellee will be severely prejudiced in his ability to prepare an adequate defense to this action. The trial in this matter is currently scheduled to take place on December 7, 1989, and Appellee has been given no opportunity to review the legal basis for Appellant's contentions that his denial of hearing was in error, and to prepare a defense to these allegations.

6. In circumstances such as these, involving a blatant disregard of the procedural rules, dismissal, although not mandatory, is certainly warranted. As stated in People's Counsel v. Public Service Commission, 52 Md. App. 715, 719-20 (1982):

It has often been said that the Rules of Procedure adopted by the Court of Appeals 'are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and (that they) are to be read and followed.' Countess v. State, 286 Md. 444, 463 (1979), . . . It has also been made clear that when such a rule says that something 'shall' be done, the Court jolly-well means for it to be done . . . Maryland Rule B12 is such a Rule. It is a 'precise rubric' adopted by the Court 'to promote the orderly and efficient administration of justice', and it is meant to be obeyed.


7. There is no good reason, either in law or policy, to

prevent this Court from dismissing an administrative appeal where the Appellant has made no attempt whatsoever to comply with the clearly stated rules of procedure, and has severely prejudiced the rights of the Appellee.

WHEREFORE, Appellee, the Insurance Commissioner of the State of Maryland respectfully requests this Court to dismiss the above appeal, with prejudice.


Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
\_\_\_\_\_  
Meg L. Rosthal  
Assistant Attorney General  
501 St. Paul Place, 14th Floor  
Baltimore, Maryland 21202  
(301) 333-6284

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ~~12<sup>th</sup>~~ <sup>13<sup>th</sup></sup> day of ~~October~~ <sup>October</sup>, 1989, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid to Terry Troy, 7819 Ivymont Terrace, Potomac, MD 20854, and Steven L. Kreseski, Esquire, Law Offices of Joseph A. Schwartz, III, Washington Plce, 10 W. Madison Street, Baltimore, MD 21202.

  
\_\_\_\_\_  
Meg L. Rosthal  
Assistant Attorney General

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND, et al.

Appellee

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE NO. 89184050/CL99747

\* \* \* \* \*

ORDER

Upon consideration of the Motion to Dismiss Appeal filed by the Insurance Commissioner of the State of Maryland, and as it appears that the Appellant has failed to file a memorandum as required by Maryland Rules of Procedure, Rule B12, and as it appears that such failure to file a memorandum has caused prejudice to the rights of the Appellee, it is this day of , 1989 by the Circuit Court for Baltimore City hereby ORDERED, that the above appeal be and hereby is DISMISSED.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
J U D G E

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Terry Troy

.....  
Allstate Insurance Co., et al  
.....

Docket: .....  
Folio: .....  
File: 89184959/CL99747  
Date of Notice: 8/9/89

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 8th day of August, Nineteen Hundred and eighty-nine, I received from the Administrative Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Terry Troy

.....  
Allstate Insurance Co., et al  
.....

Docket: .....  
Folio: 89184959/CL99747  
File: .....  
Date of Notice: 8/9/89

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SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39



Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

Steven L. Kreseski  
Joseph A. Schwartz, III, P.A.  
10 West Madison Street  
Baltimore, Maryland 21201

TRANSCRIPT TO RECORD

BEFORE THE INSURANCE DIVISION

OF THE

DEPARTMENT OF LICENSING AND REGULATION

(CASE NO. 1467-4/89)

TERRY TROY

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND

APPELLEE

TO THE

CIRCUIT COURT FOR BALTIMORE CITY

CASE NO. 89184050/CL99747

FILED

AUG 8 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

TERRY TROY  
7819 Ivymount Terrace  
Potomac, Maryland 21854

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place  
Baltimore, Maryland 21202

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* CASE NO. 89184050/CL99747  
\* APPEAL OF THE INSURANCE  
\* COMMISSIONER'S DECISION,  
\* DEPARTMENT OF LICENSING  
\* AND REGULATION - UPON THE  
\* COMPLAINT OF:  
\* Terry Troy  
\* Case No. 1467-4/89

\* \* \* \* \*

INDEX TO RECORD

Order on Hearing	1 - 2
Transcript of Hearing	3 - 20

EXHIBITS

INSURANCE DIVISION

#1 Non-renewal Notice dated 12/14/88 with attachment	21 - 25
#2 Protest and Hearing Request dated 1-25/89	26
#3 Insurance Division Questionnaire	27
#4 Letter from Richard H. Reese, Insurance Division to Allstate Insurance Co. dated 3/7/89	28 - 30
#5 Request for Hearing dated 3/24/89	31
#6 Notice of Hearing dated 4/23/89	32 - 34

LICENSEE

#1 Motor Vehicle Record of Richard Christian Troy dated 3/30/89	35
#2 Affidavit of Matthew Stegle dated 3/89	36 - 43

Maryland Rules of Procedure, Rule B2.c and d	44
--	----

Certified Mail Receipts

45 - 46

Certificate of Compliance

47

Certificate of Transcript to Record

48

**STATE OF MARYLAND**

WILLIAM DONALD SCHAEFER  
Governor

WILLIAM A. FOGLE, JR.  
Secretary

JOHN A. DONAHO  
Insurance Commissioner



Department of Licensing and Regulation  
**INSURANCE DIVISION**

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

**DIRECT DIAL 301/333-**

**EX REL:**

Terry Troy  
7819 Ivymount Terrace  
Potomac, MD 20854

Complainant

\*  
\*  
\*  
\*  
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\*  
\*

**LICENSEE:**

Allstate Insurance Company  
1850 Centennial Park Drive, Suite 400  
Reston, VA 22091

**CASE NO:** 1467-4/89

**ORDER ON HEARING**

This Hearing was conducted on May 18, 1989, pursuant to Sections 55, 234A and 240AA of Article 48A of the Annotated Code of Maryland (1986 Replacement Volume) upon the request of the Licensee on the proposed action of Licensee in nonrenewing Complainant's insurance coverages.

**FINDINGS OF FACT**

Licensee proposed to nonrenew Policy Nos. 918 264 792 and 052 463 940 for the reasons set forth in its notice dated December 14, 1988; or in lieu of said nonrenewal, Licensee proposed to exclude RICHARD C. TROY from coverage under said policies for the reasons set forth in its notice.

Complainant protested Licensee's proposed action and upon due consideration of the testimony and exhibits, I find, as a fact, that the Licensee utilizes underwriting standards which provide that it will not continue to insure any driver who has a frequency of combined losses and convictions defined as at least two (2) per operator, within the past three (3) years.

The Hearing Examiner finds that RICHARD C. TROY has the following driving record:

08/09/88	Sideswiped Claimant
03/31/88	Speed
04/30/88	Speed
08/08/88	Failure to stop/yield at yield sign

**ORIGINAL**

The Hearing Examiner finds that the driving record of RICHARD C. TROY exceeds the Licensee's underwriting standards; and that the driving record of RICHARD C. TROY presents additional exposure to the Licensee which is not contemplated by its rating plan.

The Licensee produced statistical data from an independent research study which demonstrated that RICHARD C. TROY belongs to a group or class of drivers who by virtue of 1 accident has a 1.74 times greater chance of future accident involvement as compared to a driver with zero accidents.

Page 2

Case No. 1467-4/89

The Licensee produced statistical data from an independent research study which demonstrated that RICHARD C. TROY belongs to a group or class of drivers who by virtue of 3 convictions has a 3.54 times greater chance of future accident involvement as compared to a driver with zero convictions.

The Hearing Examiner finds that the statistical data presented is valid. The Licensee produced other statistical data which demonstrated there is a strong relationship between past accidents and violations and the probability for future accident involvement.

The Hearing Examiner finds that the Licensee's rating plan does not provide for the imposition of an adequate rate for RICHARD C. TROY.

The Hearing Examiner finds the Licensee's application of its underwriting standards to be reasonably related to its economic and business purpose. The Licensee's rating plan does not contemplate coverage for the additional exposure presented by the driving record of RICHARD C. TROY. Continuation of coverage for RICHARD C. TROY under circumstances where the Licensee will not receive an adequate rate for such additional exposure will adversely affect the Licensee's losses and expenses.

#### CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact, I conclude that the Licensee is not in violation of Sections 234A and 240AA of Article 48A in this case.

Licensee has met the burden of proof and production as set forth and required by Section 234A of Article 48A and Crumlish vs. Insurance Commissioner, et al, 70 Md. App. 182 (1987).

#### ORDER

THEREFORE, it is this 16th day of June, 1989, by the Insurance Commissioner of Maryland, ORDERED

That the Licensee be permitted to effect its proposed action on or after 6th of July

AS WITNESS MY HAND THIS 16th day of June, 1989.

JOHN A. DONAHO  
INSURANCE COMMISSIONER

*William E. Holliday*  
William E. Holliday  
Hearing Examiner

WEH/slb

cc: Steve Kreseski  
c/o Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison Street  
Baltimore, MD 21201

BEFORE THE INSURANCE DIVISION  
MARYLAND DEPARTMENT OF LICENSING AND REGULATION

- - -

EX REL:

TERRY TROY  
7819 IVYMOUNT TERRACE  
POTOMAC, MD 20854

Complainant

\*

LICENSEE:

\*

ALLSTATE INSURANCE COMPANY  
1850 CENTENNIAL PARK DRIVE  
SUITE 400  
RESTON, VA 22091

\*

\*

\*

CASE NO. 1467-4/89

TRANSCRIPT OF PROCEEDINGS

ORIGINAL

This transcript of proceedings was produced by agreement of parties by StenoTech, Inc., from official tape recordings provided by the Insurance Division of the Department of Licensing and Regulation of the State of Maryland and constitutes an accurate and complete verbatim representation of the tape recordings supplied. The hearing was conducted on May 18, 1989 before William E. Holliway, Hearing Examiner.

\* \* \* APPEARANCES \* \* \*

- - -

REPRESENTING THE COMPLAINANT:

Joyce Troy  
7819 Ivymount Terrace  
Potomac, MD 20854

REPRESENTING THE LICENSEE:

Steve Kreseski  
c/o Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison Street  
Baltimore, MD 21201



\* \* \* CERTIFICATE \* \* \*

- - -

I, Michael E. Hyer, a court reporter and notary public in and for the County of Montgomery, State of Maryland, do hereby certify:

THAT, the foregoing transcript is a complete and accurate representation of the contents of the tape recordings supplied by the Insurance Division of the Department of Licensing and Regulation of the State of Maryland;

THAT, all known defects with said tape recordings have been described by means of transcriber's note within the transcription;

THAT, prior to giving testimony, all persons were sworn to tell the truth, the whole truth, and nothing but the truth;

THAT, I have no interest in the outcome of this matter and am not related in any way to any of the parties or to any counsel or to any hearing examiner;

THAT, Stenotech, Inc., disclaims any responsibility for errors, omissions, or misrepresentation of comments of any speaker due to quality of the tape recordings provided by the State;

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of July, 1989.

STENOTECH, INC.



MICHAEL E. HYER  
Court Reporter and Notary  
Public in and for the  
County of Montgomery  
State of Maryland

My commission expires: July 1, 1990

ORIGINAL

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P R O C E E D I N G S

- - -

HEARING EXAMINER HOLLIWAY: My name is William  
Holliday and I am part of the Administrative Hearing  
Division of the Department of Licensing and Regulations and  
I've been appointed by the Insurance Commissioner to conduct  
this morning's hearing which is the matter of the Allstate  
Insurance Company, which I'll refer to hereafter as the  
Licensee, and their attempt to non-renew the policy of Mr.  
Terry Troy, spelled T-r-o-y, and in the alternative they  
wish to exclude Richard Christian Troy.

Would both parties for the record identify  
yourself with your name and address please. Ms. Troy, we'll  
start with you.

MRS. TROY: Joyce Troy, 7819 Ivymount Terrace,  
Potomac, Maryland 20854.

MR. KRESESKI: Steve Kreseski from the Law Offices  
of Joseph A. Schwartz, III, P.A., located at 10 West  
Madison Street, Baltimore, Maryland 21201 for the Licensee.

HEARING EXAMINER HOLLIWAY: Okay, would you both  
please raise your right hand please?

26 (WHEREUPON,

27

28

JOYCE TROY

29

STEVE KRESESKI

30

31 were called as witnesses, and after being duly sworn to tell  
32 the truth, the whole truth, and nothing but the truth,  
33 testified as follows:)

34

35 HEARING EXAMINER HOLLIWAY: Thank you both. This  
36 is an informal type hearing in which we do not follow the  
37 strict rules of evidence or of civil pleading. The only  
38 record that is being kept is a taped one. It is not  
39 transcribed, unless it should be necessary for a future  
40 appeal.

41 Before we begin, I have a number of Insurance  
42 Division Exhibits which have been previously reviewed by the  
43 parties. The first of these is the Licensee's Non-Renewal  
44 Notice, dated December 14, 1988 and, as I said, it seeks to  
45 non-renew Mr. Troy's insurance coverage or the alternative  
46 to exclude his son, Richard Christian Troy. This is a four-  
47 page document. The Right to Protest section was executed  
48 and signed January 8, 1988. Do you recognize this as your  
49 husband's signature?

50 MRS. TROY: Yes, it is.

51 HEARING EXAMINER HOLLIWAY: Division Exhibit 2 is  
52 the notice of Protested Hearing Request. This was sent to  
53 the Licensee and informs them that their Insured has filed a  
54 Notice of Protest and therefore any action they were  
55 contemplating would be stayed.

56 Division Exhibit 3 has a date of February 7th and  
57 it is the standard Insurance Division form that they send to  
58 anyone who lodges a protest and it asks for the names and  
59 ages of the drivers, description of the vehicles and so  
60 forth. So that's Exhibit 3.

61 Exhibit 4 is a notice to the Licensee indicating  
62 that they are disallowing-- when I say "they" I mean the  
63 Insurance Division-- their protest and the reason they are  
64 disallowing it is they maintain that the Insurance Division  
65 did not meet the requirements of a Maryland Court of Special  
66 Appeals case which is known as Crumlish v. Insurance  
67 Commissioner, 70 Md. Appeals 182 (1987). There is also the  
68 case of Medical Mutual Liability Insurance Society of  
69 Maryland, et. al. v. Michael O. Magan, 529 Atlantic 2d. 841  
70 (1987).

71 Division Exhibit 5 is dated March 24, 1989. It is  
72 from Matthew Stegle, the territorial underwriting manager  
73 for the Licensee and he requests a hearing on the Insurance  
74 Division's disallowance of the non-renewal.

75 Finally, is a Notice of Hearing dated April 23,

76 1989. It is Division Exhibit 6. It sets a date of hearing  
77 for today, May 18, 1989.

78 (Whereupon, the documents were marked for  
79 identification and received into evidence  
80 as Division Exhibits Nos. 1 through 6.)

81

82 HEARING EXAMINER HOLLIWAY: The burden of proof,  
83 as always, is upon the Licensee. So, Mr. Kreseski, do you  
84 want to begin on behalf of the Licensee?

85 MR. KRESESKI: Mrs. Troy, Allstate's decision to  
86 non-renew your family policy, as indicated in the Notice of  
87 Non-Renewal which is has been marked Insurance Division  
88 Exhibit No.1. The date of the notice is 12/14/88. There is  
89 an exclusion offer as to your son, Richard Christian Troy,  
90 and a premium amount in the event that he is excluded.

91 This decision was made in Reston, Virginia which  
92 is the seat for the territorial underwriting manager's  
93 headquarters for Allstate for the Maryland region. The  
94 underwriter had available, either he or she, information  
95 pertinent to determine the risk of the six automobiles that  
96 are insured and the number of people that are on the  
97 policies. I have an eight-page computer and a five-page  
98 computer printout. I'm not going to move to introduce either  
99 into the record. However, there is a substantial activity  
100 on the policy and this information is recorded under your

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101 policy number in the computer and this is the hard copy of  
102 that computer printout.

103           The actual reasons for Allstate's decision to non-  
104 renew the policy are outlined on page two of the Notice of  
105 Non-Renewal. Paragraph three, "A review of your policy  
106 records shows the following: Richard has 8-9-88 sideswiped  
107 claimant - \$705.00 paid; 3-31-88 speed; 4-30-8 speed; 8-8-  
108 88 failure to stop at stop/yield at yield sign."

109           All three of these were convictions. Allstate has,  
110 as its underwriting guideline on file with the Maryland  
111 Insurance Commissioner, a statement that any driver who has  
112 two or more occurrences within a three-year period shall be  
113 non-renewed. A three-year period is established by the  
114 legislature. Allstate cannot review a driver's record  
115 beyond a three-year period previous to the anniversary date  
116 which is the proposed effective termination date of February  
117 7, 1989.

118           Allstate solicited a copy of the driving record  
119 from the Equifax Corporation. Equifax is a private for-  
120 profit corporation that has a direct computer link-up with  
121 the MVA. The information contained on the Equifax report is  
122 in the same format as the information has been placed on the  
123 MVA computer and I'd move to introduce this document into  
124 the record as Exhibit No. 1.

125           HEARING EXAMINER HOLLIWAY: Mrs. Troy, usually my

126 questions at this time is to the affected driver, if they  
127 are here. Do you recognize this insofar as you know is a  
128 fair recital of the traffic record? Are you familiar with  
129 your son's traffic record, insofar as you know? Is this an  
130 accurate depiction?

131 MRS. TROY: Yes.

132 HEARING EXAMINER HOLLIWAY: In which case, this  
133 will be Licensee Exhibit No. 1.

134 (Whereupon, a document was marked for  
135 identification and received into evidence  
136 as Licensee Exhibit No. 1.)

137

138 MR. KRESESKI: Mrs. Troy, in paragraph two of the  
139 Notice of Non-Renewal, and you might want to look at Mr.  
140 Holliway's-- do you have a copy of the Notice of Non-  
141 Renewal, the initial letter? That's it there. The second  
142 page of that, in the second paragraph of the Notice there  
143 are particular examples of Allstate's rate filing which I've  
144 already indicated is on file with the Insurance  
145 Commissioner.

146 The particular examples that would apply to your  
147 son's record would be number four, a frequency of  
148 convictions for motor vehicle violations. Allstate's non-  
149 continuation standard is at least two convictions by any one  
150 operator. And number six, a frequency of combined losses

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151 and convictions which is defined as at least two per  
152 operator. Let me point out that Allstate does not have the  
153 ability to surcharge in Maryland for traffic convictions.  
154 Allstate can surcharge for certain at-fault accidents and  
155 could surcharge for the August 9, 1988 at-fault accident and  
156 I believe a surcharge may have been applied to the policy. A  
157 surcharge is a means by which the company can take in  
158 additional premium dollars in this particular year to  
159 compensate it adequately for anticipated greater frequency  
160 of accident and possible pay-out in the future, not  
161 necessarily the next year, but in the future. There will be  
162 a certain percentage of drivers that will have the increased  
163 frequency.

164 Allstate seeks to insure preferred drivers in  
165 Maryland as determined through its own statistics that the  
166 average Maryland Allstate insured is involved in at-fault  
167 accident only once every 15 to 17 years. Approximately six  
168 percent of Allstate's 350,000 drivers in Maryland are  
169 involved in an at-fault accident in any given year. Based  
170 on that rate of frequency and a determination of what the  
171 average claims pay-out is, and I think through the end of  
172 calendar year 1988 it was \$1511.04 and that includes the  
173 administrative cost of processing a claim, the company can  
174 determine how much money needs to be taken out to process  
175 claims in the future. There is a certain allocation from



176 the policy premium dollars for reserve. That's not to say  
177 that anyone in your family is going to have an accident for  
178 instance in the next year or two years, but if each driver  
179 is expected to have a frequency of at-fault accident only  
180 once every 15 years, there is a proportional allocation each  
181 year to satisfy their reserves to pay-out claims that  
182 eventually occur and will occur in random fashion obviously.

183           If a driver has had traffic convictions or at-  
184 fault accidents, however, there is a study which is known as  
185 the California Study-- it is an independent research study  
186 done by the California Department of Motor Vehicles--  
187 wherein there was a determination made that, based on a  
188 driver's past traffic conviction or accident history, there  
189 is an increased likelihood that a driver will be involved in  
190 an accident in the future with a greater frequency as  
191 compared to a driver that has a clean record.

192           What that boils down to is, rather than having an  
193 expected rate of accident once every 15 years, Richard would  
194 have a corresponding increase based on either his traffic  
195 convictions or his accident. You'll note in the last two  
196 paragraphs you can see what the percentage is. Taking, for  
197 instance, based on his traffic conviction records, there was  
198 a 3.61 times greater chance of accident. What that says in  
199 effect is that there is three and a half times greater  
200 chance that he's going to be involved in an at-fault

201 accident in a future year compared to a driver with a clean  
202 record. Taking the average of once every 15 years, dividing  
203 it by three and a half, you come up with roughly once every  
204 four years.

205           So what that means is if Allstate insures Richard  
206 over a period of time it is more likely Allstate will pay  
207 out a lot more in terms of premium and in terms of the  
208 claims dollars than it will take in from premium. On that  
209 basis, since predictably Richard or other drivers similarly  
210 situated who have three traffic convictions-- since we're  
211 using just the traffic convictions to make that analysis  
212 right now-- any other driver who has at least three traffic  
213 convictions exceeds the underwriting guidelines and has the  
214 corresponding increase or predicted increase of frequency of  
215 at-fault accidents, will have a direct and adverse impact  
216 upon the company's ability for profit.

217           There are several thousand drivers that have at  
218 least two traffic convictions which exceeds Allstate's  
219 underwriting guidelines and then have three, four, five or  
220 more and all those drivers have a different frequency  
221 factor. We haven't gotten into the affidavit by Matthew  
222 Stegle yet, but you'll see that based on traffic convictions  
223 that someone who has traffic convictions has a 2.7 times  
224 greater chance. It just increases. You just continue to go  
225 up.

226                   Based on that reason, Allstate seeks to exclude  
227 Richard from your family policy, since everyone else  
228 conforms with the underwriting guidelines and has fewer  
229 traffic convictions or at-fault accidents than would  
230 necessarily cause them to be excluded. But, if any other  
231 driver eventually exceeded the underwriting guidelines and  
232 the company found out about it, the company would seek to  
233 exclude them and in the event you or your husband as  
234 policyholders did not agree to go along with the exclusion,  
235 then the entire policy would be cancelled which is what's  
236 occurring here.

237                   On the last page, Allstate makes mention of the  
238 offer, the unconditional offer of Allstate indemnity  
239 coverage and explains that in some detail. I would suggest  
240 that you explore that with your insurance agent.

241                   I move into evidence the last exhibit, the  
242 affidavit of Matthew Stegle which I provided you with a copy  
243 at the beginning of this hearing. In the affidavit, Matt  
244 Stegle, who is territorial underwriting manager for Allstate  
245 Insurance Company, discusses Allstate's use of the  
246 California study, the Maryland statistics and records the  
247 average claims pay-out for calendar years 1986, 1987, and  
248 1988. That's on page three.

249                   Beginning on page six, there is a statistical  
250 abstract from the California study. This goes to the

251 validity of the study. It includes the equations used.  
252 You'll see that there is a correlation coefficient of .994  
253 which is extremely high, indicating that there is a strong  
254 correlation between the statistics and predicting the facts  
255 they predict.

256 On page eight is the application of the frequency  
257 factors to Richard's driving record. If you'd like to take  
258 a few minutes to go through that, it essentially goes into a  
259 little more detail of my comments, but I've given you a  
260 broad brush approach to what Allstate's position is with  
261 regards to the exclusion of Richard. I move to introduce  
262 the affidavit of Matthew Stegle as Licensee's Exhibit No. 2

263 HEARING EXAMINER HOLLIWAY: Okay. The affidavit of  
264 Matthew Stegle becomes Licensee Exhibit No. 2.

265 (Whereupon, a document was marked for  
266 identification and received into evidence  
267 as Licensee Exhibit No. 2.)

268

269 MR. KRESESKI: Allstate has fairly applied its  
270 underwriting guidelines to this situation and has not been  
271 arbitrary or capricious.

272 HEARING EXAMINER HOLLIWAY: Does that conclude--

273 MR. KRESESKI: My direct? Yes, sir.

274 HEARING EXAMINER HOLLIWAY: Okay. Mrs. Troy, do you  
275 have any comments or questions or anything?

276 MRS. TROY: No, I don't.

277 HEARING EXAMINER HOLLIWAY: Alright. Do you have  
278 anything further?

279 MR. KRESESKI: No, sir.

280 HEARING EXAMINER HOLLIWAY: Okay. Then let me once  
281 again-- I'll give this to you in writing as well-- let me go  
282 through the explanation I talked about. You need do nothing  
283 at this point because my decision is not made today. It  
284 comes in the form of a written paper which you will  
285 eventually get in the mail. Until you get that order, the  
286 insurance continues just as it was and nothing is changed.

287 Once you get that order, if it should be in favor  
288 of yourself or your son really, then you need do nothing  
289 further. However, you also need to be sure what to do if the  
290 order is adverse to you. The first thing: You have twenty  
291 days, if you decide not to appeal my order further, which  
292 I'll explain how you do that in a second. But, first, if  
293 you should decide not to appeal my order and it happens to  
294 be adverse, then you have 20 days from the date on that  
295 order. There will be a date on there. You use those 20 days  
296 to contact your agent and inform them you've decided to  
297 accept the exclusion offer which removes Richard C. Troy off  
298 the policy, but the remainder of the family continues as  
299 before. You have 20 days to do that. If you do not exercise  
300 that option within 20 days, then Allstate is free to go

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301 ahead and cancel the entire policy. Actually, I believe  
302 there are two policies it looks like. And Allstate can  
303 cancel those within that period if you do not inform them of  
304 your election to accept the exclusion, in which case no one,  
305 yourself, your husband, the other members of the family as  
306 well as Richard, no one is-- you are all in effect without  
307 insurance until you make other arrangements.

308           So that's 20 days and you needn't start thinking  
309 20 days until the order actually comes in the mail. You're  
310 fine until that order does show in the mail.

311           The other part of this is my decision, if it is an  
312 adverse one, is appealable. It can be appealed either by  
313 yourself on the one hand or, if it is adverse to the  
314 insurance carrier, they also can have the same appeal  
315 rights. But my decision can be appealed in the Circuit Court  
316 for Baltimore City and it must be done within 30 days from  
317 the day of my order. However, if my order is being appealed  
318 and you wish, as I would presume everyone would, to keep the  
319 insurance in effect unchanged, then a petition for a stay of  
320 my order must be filed in the Circuit Court for Baltimore  
321 City within 20 days of the date on my order. As I say, I  
322 will give you this in writing. It reiterates what I've said,  
323 plus it provides the appropriate court address and telephone  
324 numbers.

325           MRS. TROY: I do have one question. If you rule

326 against us, then is the insurance automatically at that time  
327 cancelled or is it cancelled as of the regular termination  
328 period?

329 HEARING EXAMINER HOLLIWAY: No. There will be a  
330 date on my order, and, as I say, I can't tell you precisely  
331 what it is because I haven't written it yet and that's the  
332 last thing that goes on the order before it goes out. Within  
333 20 days of the date on that order, if they hear nothing from  
334 you saying we're going to accept the exclusion offer, then  
335 they can go ahead and cancel. They are not permitted to  
336 cancel automatically the very day the order goes out. Does  
337 that answer your question? It gives you a 20-day grace  
338 period, for want of a better term, to either accept their  
339 exclusion offer or remain silent, in which case then they  
340 will go ahead and non-renew everybody.

341 MRS. TROY: Okay. That's not what I meant. Our  
342 regular termination date is August 7. So, what I'm asking  
343 is--

344 HEARING EXAMINER HOLLIWAY: You'll have your order  
345 well before that.

346 MRS. TROY: So I would get a refund from Allstate?

347 MR. KRESESKI: You'd get a rebate.

348 HEARING EXAMINER HOLLIWAY: If you were to pay your  
349 ordinary normal premium renewal and you pay that and then,  
350 say, a month hence along comes an order saying the insurance

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351 company can take the action, they non-renew your son, then  
352 you get a rebate. In this case, as I say, unless I somehow  
353 get very behind or get hit by a car or something, my order  
354 will probably be out certainly sometime in June. So, there  
355 will be a disposition of this either way well in advance of  
356 August 8th.

357 MRS. TROY: Okay. I understand.

358 HEARING EXAMINER HOLLIWAY: Okay. Do we have  
359 anything further. If not, I thank you both.

360 (Whereupon, the hearing was concluded.)



MARYLAND  NOTICE OF NON-RENEWAL  
 NOTICE OF CANCELLATION

ALLSTATE INSURANCE COMPANY  
 ALLSTATE INDEMNITY COMPANY  
1819 ELECTRIC ROAD  
ROANOKE, VIRGINIA 24018

*RHK*  
*AP 240*  
MD Insurance Division Exhibit No. 1  
NAMED INSURED AND ADDRESS

TERRY TROY  
7819 IVYMOUNT TERR  
POTOMAC, MD 20854  
*73489*

DATE OF NOTICE 12-14-88
TERMINATION EFFECTIVE DATE 2-7-89 12:01 A.M. Standard Time
POLICY NUMBER (1) 018 264 792 (2) 052 463 940
VEHICLE AS LISTED ON POLICY
AGENCY WHITE BC 285 mm

MD Insurance Division Exhibit No. 4

You are hereby notified in accordance with the terms and conditions of the policy identified above that this policy is terminated effective the DATE OF CANCELLATION OR NON-RENEWAL shown hereon and after that date no further protection will be provided thereunder. Therefore, you should immediately contact an agent or broker for other insurance or request insurance through the Maryland Automobile Insurance Fund. The Fund affords eligible persons the right to obtain insurance. In addition to contacting an insurance broker or agent you may directly contact the office of the Fund for an explanation.

The phone number and address of the Fund are: 301-269-1680  
Maryland Automobile Insurance Fund 1750 Forest Drive Annapolis, Maryland 21401

Applicable paragraphs marked

REASON OR REASONS FOR CANCELLATION OR REFUSAL TO RENEW:

The Allstate Insurance Company has as its economic and business purposes the following: (1) the continued solvency of the corporation, (2) the making of a reasonable profit to provide continued service to policyholders and for corporate growth and expansion, and (3) the maintenance of the lowest possible rate structure for its policyholders.

RICHARD CHRISTIAN TROY DATE OF BIRTH 6-11-70

EXCLUSION OFFER: See reverse side for further details regarding an offer to provide a policy excluding from coverage. Under such a policy we would not be liable for damages, losses or claims arising out of the operation or use of the insured motor vehicle by the named excluded person or persons, whether or not such operation or use was with the expressed or implied permission of a person insured under the Policy. Policy Premium \$ (1) \$1,527.11 (2) \$577.72

This quotation covers all presently listed automobiles on your policy.

See reverse side for details regarding your right to PROTEST ACTION AND REQUEST HEARING BEFORE THE COMMISSIONER OF INSURANCE. SEE PAGE TWO FOR IMPORTANT INFORMATION

### IMPORTANT

#### "Right of Protest"

For your protest to be duly filed you must sign two copies of the notice and send them to the:

Maryland Insurance Commissioner  
501 St. Paul Place  
Baltimore, Maryland 21202

within thirty (30) days after receipt of the notice. Unless your protest is filed within thirty days, the protest cannot be considered by the Insurance Division as provided under Article 48A, Section 240AA of the Insurance Code.

*W. Math*  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

(other s.de =  
p. 22)

THE FOLLOWING ADDITIONAL INFORMATION IS APPLICABLE ONLY WHEN THE POLICY IS A POLICY OF MOTOR VEHICLE LIABILITY INSURANCE AND WHEN THE BOX TO THE LEFT OF THE APPROPRIATE PARAGRAPH ON THE FRONT SIDE OF THIS NOTICE IS MARKED WITH AN "X".

**RIGHT TO PROTEST AND REQUEST HEARING**

This notice has been sent to you in triplicate. You have the right to protest this action and request a hearing thereon before the Commissioner by signing two copies of the notice in the space provided and sending them to the Maryland Insurance Commissioner, 501 St. Paul Place, Baltimore, Maryland 21202, within 30 days after receipt of this notice.

If protest is filed this policy will remain in effect until a determination is made by the Commissioner upon payment of any lawful premium due or becoming due prior to termination.

The Commissioner has authority to award reasonable counsel fees to the insured for services rendered to the insured in connection with any such hearing if he finds the proposed action to be unjustified.

I hereby request a hearing.

DATE

Jan 8, 1988

SIGNED

Terry Troy

**EXCLUSION OFFER**

If you are desirous of having a policy which will exclude from coverage the person or persons identified on the front side of this notice, indicate acceptance by signing below and return this notice together with a remittance in the amount of the policy premium specified prior to the effective date of cancellation or non-renewal. It should be understood that a similar limitation will be included within any subsequent transfer, reinstatement or renewal of such policy or policies.

DATE

SIGNED

PAGE 2 mm  
018 264 792 & 052 463 940

To achieve this, we maintain a program in which we seek to insure the average or better than average risk. The average Maryland driver that we have insured during the past three years has been involved in an at-fault accident at the rate of one in every fifteen (15) to seventeen (17) years of driving. This rate of accident involvement has remained fairly constant over the past several years.

Prior to renewal, the company reviews the records of policyholders with losses during the past three years. There are a number of situations that will occur which when analyzed by an Allstate Underwriter, may result in a decision not to continue a risk. Such a decision is made when the Underwriter is convinced that the risk of future loss exceeds the exposure anticipated and that the economic and business interests of Allstate would no longer be served by the continuation of such a risk. Some of the more typical examples of such situations follow: (1) facts which would support a conviction of a serious violation, such as driving under the influence, reckless driving, failure to stop and identify oneself when involved in an accident, etc., (2) suspension or revocation of a drivers license, (3) fraudulent claim activity, (4) a frequency of convictions for motor vehicle violations (Allstate's non-continuation standard is at least two convictions by any one operator). (5) a frequency of loss which is defined as two occurrences by any one operator, (6) a frequency of combined losses and convictions which is defined as at least two per operator, (7) a loss situation where the insured operator shows an above-average degree of negligence in the operation of the automobile, (8) policy claims experience which exceeds twice the average Allstate policy claims experience which means that any policy with 3 or more claims of any nature within the past 3 years will be non-renewed.

A review of your policy records shows the following: Richard has 8-9-88 sideswiped claimant - \$705.00 paid; 3-31-88 speed; 4-30-88 speed; 8-8-88 failure to stop at stop/yield at yield sign.

Independent research studies have shown that persons with accident and or motor vehicle violation involvement are more likely to have future accidents than persons without this involvement. One such study shows the chance of an accident rises almost correspondingly with the number of convictions the driver has in a three (3) year period. The average conviction record compared with "0" convictions in a three (3) year period based on this study would indicate a 1.95 greater chance of accident. Allstate does not have a rating plan to accommodate the potential for future accident involvement indicated by this violation record.

The same study shows that the chance of an accident rises almost correspondingly with the number of accidents the driver has in a three-year period. The above record compared with "0" accident involvement would indicate a 3.61 times greater chance of accidents.

✓

PAGE 3 mm  
052 463 940 & 018 264 792

We do surcharge for certain at-fault accidents, however, the projected increased exposure indicated by the above driving record is beyond the scope of that anticipated by our classification and rating structure.

Our action to terminate coverage is in compliance with our stated economic and business purposes and supported by the fact that such action would be the same for any of our policyholders with the same circumstances or similar driving record.

Take Advantage Of This Timely Offer.....

At this time you may qualify for Allstate Indemnity Insurance. This insurance may be arranged immediately thru the Agent who recently took your Allstate Insurance application.

Allstate Indemnity is one of the Allstate companies. With Allstate Indemnity you can enjoy advantages like--budget payment plan--coast to coast offices--and fast, fair, claim service--all these available to you thru Allstate's network of service offices.

When you talk to the Allstate Agent, show him this notice. He may be able to provide you with protection, right now.

If you have any questions, please contact your agent.

**RECEIVED**

JAN 11 1988

**INSURANCE DIVISION**

January 8, 1988

Memo for Maryland Insurance Commissioner

From: Terry Troy, Allstate Insured *Terry Troy*  
Policy Number [1] 018 264 792 [2] 052 463 940

Subject: Protest of Intention of Non-Renewal by Insurance Co

This memorandum and two signed copies of the Allstate notice constitute our protest to the threatened non-renewal action to discontinue, and to the alternative exclusion offer to continue without my son Richard, our automobile insurance policy. We request that our insurance remain in force for ourselves and our daughters and son Richard.

Richard is a full time college student living in a dorm at the University of Maryland and doesn't have access to a car for most of the eight months of the year that he is in school. He realizes the seriousness of what he has done. We believe that he has learned his lesson, is not likely to have future accidents, and will be a safe driver.

Because of inexperience in driving his sisters' car and bad weather conditions on an strange road, Richard had an unhappy incident late last Spring. With two lanes merging into one in fogging weather, Richard attempted to enter the remaining lane [quickly, to improve safety] but another vehicle coming from the blind side did not yield. He was not charged with any violation by the police who were on the scene and saw the accident as the two vehicles attempted to take the same lane. He never had an accident before and he has learned from this experience.

We, Richard's parents, were shocked to learn that he had received two speeding ticket just before high school graduation when young men are learning to grow up. In addition to the accident and the speeding tickets last spring, he failed to come to a complete stop at a yield sign this fall. [Had we known, we would have supported him in protesting this last charge in court as the law doesn't require a full stop.] Nevertheless, we have severely reprimanded Richard and believe that he has learned his lesson about safe and lawful driving responsibilities.

We ask for a favorable decision on the renewal of our insurance of 23 years with Allstate and to include our youngest of five children, Richard. If you have any questions, please call me at work 301 975-4039. Thank you for your consideration of this matter.

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER  
Governor

WILLIAM A. FOGLE, JR.  
Secretary

E. SUSAN KELLOGG  
Insurance Commissioner



Department of Licensing and Regulation  
INSURANCE DIVISION

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333-

ALLSTATE  
1850 CENTENNIAL PARK  
BOX 4200, SUITE 400  
FARMINGTON, VA 22091-0000

MD Insurance Division Exhibit No. 2

SUBJECT: PROTEST  
TERRY TROY  
7819 IV  
POTOMAC  
POLICY NO. 240

MEMORANDUM

PURSUANT TO  
ANNOTATED CODE  
CLOSED PERIOD  
APPLIED TO

AND 240

HEARING HAS BEEN  
GIVEN YOUR NOTICE.

THREE DAYS YOUR ACTION AS IS STATED IN YOUR

PERIOD  
EFFECTIVE, THE  
WHEN BILLED

HIS PERIOD  
SUM OF POLICY WILL

YOU WILL BE NOTIFIED OF WHAT DECISION HAS BEEN MADE

DATE  
INSURANCE

FOR FILING AND FORWARDING

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER  
Governor

WILLIAM A. FOGLE, JR.  
Secretary

E. SUSAN KELLOGG  
Insurance Commissioner



Department of Licensing and Regulation  
INSURANCE DIVISION

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333- 2920

RECEIVED  
FEB 7 1989  
INSURANCE DIVISION

INSURED'S NAME: TERRY TROY  
FILE NUMBER: 73489 11889 03  
INSURER'S NAME: ALLSTATE INS CO

NOTICE TO INSURED

RATHER THAN CALLING MY OFFICE, PLEASE ANSWER THE FOLLOWING QUESTIONS AND RETURN TO MY ATTENTION:

A. LIST NAMES AND AGES OF ALL LICENSED DRIVERS UNDER THE POLICY IN QUESTION:

- (1) TERRY TROY 53
- (2) LESLEY TROY 22
- (3) DARLYN TROY 48
- (4) NOËL SANDY TROY 21
- (5) RICHARD TROY 18
- (6) ED TROY 30

B. LIST VEHICLES INSURED UNDER YOUR POLICY AND ESTIMATED MILEAGE BY EACH OF THE ABOVE LISTED DRIVERS:

- CORVETTE TERRY 2K
- FORD RICHARD 1K
- DODGE TERRY 5K
- ALPHA ROMEO NOËL SANDY 5K
- CADILLAC DARLYN 12K
- ALPHA MILANO LESLEY 2K

C. HOW LONG HAVE YOU BEEN INSURED WITH THIS INSURANCE COMPANY?  
25 YEARS

D. PLEASE COMMENT ON THE SPECIFIC REASONS GIVEN BY THE COMPANY FOR TERMINATING YOUR INSURANCE, INCLUDING HOW EACH ACCIDENT AND/OR VIOLATION, IF ANY, OCCURRED AND BY WHICH DRIVER. USE REVERSE SIDE IF ADDITIONAL SPACE IS NEEDED.

*They are saying that Richard is likely to have another accident. I believe he learned from his first & only accident and is not likely to have a second accident. (see letter of JAN 8)*

YOUR OFFICE TELEPHONE # 301 975 4039 SIGNED [Signature]

YOUR HOME TELEPHONE # 301 299 3396 ADDRESS 7819 IVYDUNT TER, POTOMAC, MD

THANK YOU FOR THIS OPPORTUNITY TO BE OF SERVICE.  
PLEASE RETURN YOUR RESPONSE TO MY ATTENTION WITHIN 15 WORKING DAYS.

BY: [Signature]  
RICHARD H. REESE  
INSURANCE INVESTIGATOR

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER  
Governor

WILLIAM A. FOGLE, JR.  
Secretary

E. SUSAN KELLOGG  
Insurance Commissioner



Department of Licensing and Regulation  
INSURANCE DIVISION

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333- 2920

Date March 7, 1989

Insured Terry Troy

Policy No. 018264792,052463940

Our File No. 73489 03 19

Allstate Ins. Co.  
1850 Centennial Park Drive  
Box 4200, Suite 400  
Reston, Va. 22091-000

MD Insurance Division Exhibit No. 4

NOTICE

By an earlier communication you were advised of a protest filed with this Division by your policyholder. That protest related to the action initiated by your recent notice which affects the above reference policy. In accordance with the provisions of Section 234A and 240AA of Article 48A of the Annotated Code of Maryland, it has been determined from the information contained in your notice that the protest has merit. Upon such finding your proposed action is disallowed for the following:

- (1)        Failed to give required forty-five (45) days notice.
- (2)        Failed to offer proper named driver exclusion/or quote premium if exclusion is offered.
- (3)        Failed to state in the Notice the right of the Complainant to protest.
- (4)        Failed to state in the Notice the right to replace with MAIF and give address.
- (5)        Reasons given in Notice have been determined to be factually incorrect.
- (6)        Notice relies in part on traffic violations or accidents more than three (3) years from the effective renewal date, or five (5) years old on the date of the application on new business.
- (7)        The insurer has failed to meet its burden of proof by stating the standard used to terminate the coverage.
- (8)        The Maryland Insurance Division, at present, requires that an incident covered by a filed and approved surcharge plan be rated in accordance with that plan. This requirement merely reflects the insurance company's filing which states that the insurance company has an adequate rate for this insured. The remedy, if desired, is not cancellation but the filing of a proper rate or the withdrawal of the rate that is alleged to be improper.
- (9) XXX Other - See attached. Policy must continue.



Therefore, your company is hereby directed to continue in effect the insurance coverage of the Complainant's policy referred to herein.

SECTION 240AA (f) PROVIDES THAT ANY AGGRIEVED PARTY MAY REQUEST A HEARING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS NOTICE. A HEARING MAY BE REQUESTED BY DIRECTING A LETTER TO THE UNDERSIGNED STATING THE REASONS THEREFORE.

IN THE EVENT THAT A HEARING IS REQUESTED ALL INSURANCE COVERAGES WILL REMAIN IN EFFECT PENDING A FINAL DETERMINATION OF THE PROTEST BY THE COMMISSIONER, PROVIDED ANY LAWFUL PREMIUM DUE OR BECOMING DUE PRIOR TO SUCH DETERMINATION IS PAID.

IN THE EVENT OF A HEARING THE INSURER HAS THE BURDEN OR PERSUASION THAT THE STANDARDS APPLIED IN ITS PROPOSED ACTION ARE REASONABLY RELATED TO ITS ECONOMIC AND BUSINESS PURPOSES AND/OR THE BURDEN OF PROOF THAT ITS ACTION IS JUSTIFIED, AND IN DOING SO, IT MAY RELY ONLY UPON THE REASONS SET FORTH IN ITS NOTICE TO THE INSURED. NO EVIDENCE EXTRANEIOUS TO THE NOTICE REASONS WILL BE HEARD.

Very truly yours,

By: Richard H. Reese  
Insurance Investigator

RHR:mm

cc: Insured

NOTICE

Pursuant to Section 234A(a) of Article 48A, Annotated Code of Maryland (1986 Replacement Volume), any standard which forms the basis of an insurer's cancellation, refusal to underwrite, or refusal to renew a particular insurance risk or class of risk must be reasonably related to the insurer's economic and business purposes.

The Maryland Court of Special Appeals has ruled that evidence intended to satisfy this requirement must contain facts which answer at least the following questions:

- 1.) What is the statistical basis for the supposition that a given set of facts, i.e. a particular insured's accident or violation record, renders that insured more likely to incur future losses than an insured who has had fewer accidents or violations in the past?
- 2.) How valid is any such statistical evidence?
- 3.) If there is statistical validity to the supposition, what direct and substantial adverse effect would it have upon the insurer's losses and expenses in light of its current approved rating plan?

The attached protest has been resolved in favor of the insured because the requirements set forth above have not been met.

You have the right to dispute this finding. However, please be advised that in order to prevail on this protest you must produce testimony and evidence which satisfies the requirements set forth above.

---

<sup>1</sup> For a more detailed statement from the Court, see Crumlish v. Insurance Commissioner, 70 Md. App. 182 (1987) and Medical Mutual Liability Insurance Society of Maryland, et. al. v. Michael O. Magan, \_\_\_ Md. \_\_\_, 529 A.2d. 841 (1987).

Capital Region  
1850 Centennial Park Drive  
Suite 400  
P.O. Box 4200  
Reston, VA 22091  
703-648-1600

~~MC Insurance~~ 5

March 24, 1989

Richard H. Reese  
Department of Licensing and Regulation  
Insurance Division  
Complaints and Investigations  
501 Saint Paul Place  
Baltimore, Maryland 21202-2272

File Number: 73489 03 19  
Policy Numbers: 018 264 792 and 052 463 940  
Insured: TROY, Terry

Dear Mr. Reese:

In accordance with the provisions of Section 234C of Article 48A of the Annotated Code of Maryland, I request a hearing on the above insurance policy.

We feel our notice was proper and in compliance with the provisions of the Code. We applied standards that are reasonably related to our economic and business purposes.

Sincerely,



Matthew R. Stegle  
Territorial Underwriting Manager

cgh

cc: Agent White  
Location 285

Steven L. Kreseski

**STATE OF MARYLAND**

**WILLIAM DONALD SCHAEFER**  
Governor

WILLIAM A. FOGLE, JR.  
Secretary



Department of Licensing and Regulation  
**OFFICE OF THE SECRETARY**  
Administrative Hearings

13th FLOOR  
501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272  
301/333-6216

Allstate Insurance Company  
1850 Centennial Park Drive  
P.O. Box 4200 Suite 400  
Reston, Virginia 22091

Steve Kreseski, Esquire  
c/o Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison Street  
Baltimore, Maryland 21201

April 23, 1989  
Re: Terry Troy  
Policy No.: 018264792  
Case No.: 1467-4/89

NOTICE OF HEARING

MD Insurance Division Exhibit No. 6

A hearing has been requested by ~~Allstate Insurance Company~~ pursuant to the provisions of Sections 239A, 240A and 95 of Article 48A, Annotated Code of Maryland (The Insurance Code). The above-captioned protest has been scheduled for a hearing to be held on \_\_\_\_\_ in Room \_\_\_\_\_, \_\_\_\_\_ Floor, 501 St. Paul Place Baltimore, Maryland 21202.

Please inform this office of any changes in address and/or phone number while this matter is pending.

Hearing Information Attached

pp

Terry Troy  
Ivymount Terrace  
Baltimore, Maryland

**STATE OF MARYLAND**

**WILLIAM DONALD SCHAEFER**  
Governor

**WILLIAM A. FOGLE, JR.**  
Secretary



Department of Licensing and Regulation  
**OFFICE OF THE SECRETARY**  
Administrative Hearings

13th FLOOR  
501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272  
301/333-6216

NOTICE OF HEARING

A hearing has been requested by  
pursuant to the provisions of Sections 234A, 240AA and 55 of Article 48A,  
Annotated Code of Maryland (The Insurance Code). The above captioned protest  
has been scheduled for a hearing to be held on \_\_\_\_\_  
in Room \_\_\_\_\_, \_\_\_\_\_ Floor, 501 St. Paul Place, Baltimore, Maryland 21202.

Please inform the undersigned of any changes in address and/or phone number  
while this matter is pending.

Very truly yours,

\_\_\_\_\_  
Richard Globus  
Chief Hearing Examiner

FRG:

Hearing Information on Reverse Side

cc:

HEARING INFORMATION

PLEASE READ CAREFULLY

All cases duly scheduled by the Maryland Insurance Division for hearing before the Insurance Commissioner or his appointed Hearing Officer will proceed as scheduled without delay whether or not the parties appear. Where there is absence of a party or witness, a determination and Order on Hearing will be made from testimony of attending witnesses, file documents and information otherwise deemed necessary by the Hearing Officer.

Policy coverages will remain in effect until: (1) parties are notified of the Commissioner's determination by written Order issued within thirty (30) days after the hearing record is closed; or (2) parties are notified that the hearing is cancelled: provided ANY LAWFUL PREMIUM DUE OR BECOMING DUE PRIOR TO SUCH DETERMINATION IS PAID.

At the hearing the Insurer will have the burden of persuasion that its standards are reasonably related to its economic and business purposes and the burden of proof that its action is justified, and in doing so may rely only upon the reasons set forth in its notice to the insured. No testimony extraneous to the Notice reasons will be heard. THE HEARING OFFICER MAY NOT REVERSE OR AMEND INCIDENTS CONTAINED IN MOTOR VEHICLE ADMINISTRATION DRIVING RECORDS NOR DETERMINE ISSUES OF NEGLIGENCE, LIABILITY OR FAULT IN ACCIDENTS.

If the Commissioner finds in the hearing that the proposed action of the Insurer is unjustified, he shall disallow the action and may, in addition, order the Insurer to pay such reasonable counsel fees incurred by the Insured for representation at the time of the hearing, unless otherwise determined by the Hearing Officer.

Please be advised that in the event you choose to engage the services of an attorney to represent you, Maryland law requires that the attorney be licensed to practice law in Maryland, or is specially admitted in the case by the Circuit Court for Baltimore City. (Article 10, Section 7(b) of the Annotated Code of Maryland).

Any party aggrieved with the decision of the Commissioner may appeal that decision to the Circuit Court for Baltimore City. If there is an appeal from the Commissioner's Order, all costs in connection with the making and/or photocopying of the transcript and exhibits must be paid by the party making the Appeal. When a court reporter is not requested, a record of the hearing shall be made by the Commissioner. Any party requesting a court reporter must do so in a reasonable time prior to the hearing, in writing, and must pay that expense.

Postponements will be granted only under exceptional circumstances. Requests must be made in writing, received in this office not later than seven (7) working days prior to the hearing date and should contain the reason for the request, names of the parties, date of hearing, case number and telephone number for contact between 8:30 a.m. and 4:30 p.m. Please mail a copy of the request to the other parties involved in the hearing. The Chief Hearing Officer will make the final decision on postponements and notify all parties.

PRINT REQUESTED AT 15:16:11 MAR 30, 1989

TERMINAL 1558

M A R Y L A N D  
MOTOR VEHICLE ADMINISTRATION

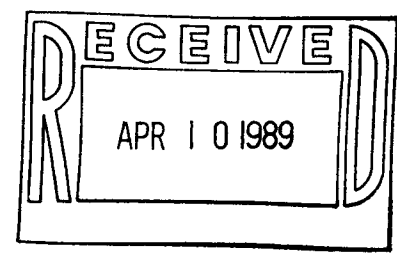
SOUNDEX	HEIGHT	WEIGHT	RACE	SEX	DATE-OF-BIRTH	RESTR	PAGE
T 600-738-115-437	6-00	175	1	M	06-11-70		1
RICHARD CHRISTIAN TROY						LICENSE	EXPIRES
7819 IVYMONT TER						CLASS D	06-11-90
POTOMAC		M	MD	20854			

CURRENT LICENSE STATUS  
VALID

THE RECORD REFLECTS ENTRIES FOR THE PAST 36 MONTHS

V-DATE	C-DATE	SUMMARY	DESCRIPTION	POINTS
08-09-86		D381723	FAIL TO CARRY REG CARD IN VEH/ DISPLAY IT UPON DEMAND	
03-31-88	07-19-88	F309789	EXCEEDING MAXIMUM SPEED LIMIT BY 1-9 MPH	01
01-30-88	08-22-88	US DIST COURT	EXCEEDING MAXIMUM SPEED LIMIT BY 1-9 MPH	
08-08-88	10-20-88	G255287	FAILURE TO STOP AT STOP SIGN/ YIELD AT YIELD SIGN	01

RECORD END TOTAL CURRENT POINTS 02



March, 1989

## AFFIDAVIT OF MATTHEW STEGLE

1. I am the Territorial Underwriting Manager for Allstate Insurance Company assigned to the Maryland Region. Allstate has provided me with special training for this position to which I was first assigned over three years ago. At present, my responsibilities include supervising Allstate's underwriting program with respect to all automobile insurance for the entire State of Maryland.

2. In Allstate's Maryland automobile cancellation/non-renewal notices, Allstate cites statistics from the independent research study conducted by the California Department of Motor Vehicles (California Study). These statistics indicate an increased frequency of future accident involvement for drivers with past accident/violation involvement when compared to drivers without past accident/violation involvements.

3. The California Study was first published in 1964 and subsequently updated on several occasions, most recently in December, 1987. The California Study is a comprehensive examination of driving behavior and risk factors associated with accidents. The only data Allstate draws from the California Study is statistical data with regard to accident frequencies for drivers with prior accidents/convictions within a three (3) year period. This data compares the expected frequency of accident



involvement for drivers with a certain number of accidents/convictions compared to those drivers with no accidents/convictions during the same three (3) year period. Allstate does not utilize any other portion of the California study with the exception of alcohol related data which is not relevant to this proceeding.

4. The California Study is utilized by most, if not all, insurance carriers licensed to do business in the State of Maryland. The Insurance Commissioner for the State of Maryland has taken administrative notice of the validity of the California Study and a copy of this study is on file with the administrative offices of the Insurance Commissioner. Allstate's underwriting department relies upon the statistics contained in the most recent update (December, 1987). The California Study is based on accident involvement without regard to fault. Allstate relies upon at-fault accidents in determining to non-renew/cancel a policy of automobile liability insurance and therefore the statistical data selected from the California Study would be the most conservative estimate of future accident involvement for that driver.

5. Allstate has also performed "in house" studies to determine the frequency of accident involvement by its average insured. Allstate states on page 2 of its notice of non-renewal/cancellation that "the average Maryland driver that we have insured during the past three years has been involved in an at-fault accident at the rate of one in every fifteen (15) to

seventeen (17) years of driving. This rate of accident involvement has remained fairly constant over the past several years." Allstate's actuarial department has determined that for each 100 Allstate Maryland insureds, that Allstate paid out property damage and bodily injury claims on 6.17 of these 100 insureds each year. The reciprocal of 6.17 is approximately 16.2; therefore, in an effort to personalize this yearly liability claim frequency, Allstate states that each insured is expected to have an at-fault accident once every 16.2 years. This expected frequency factor has varied slightly year to year between a range of 16.0 to 16.2 years.

6. Allstate's Regional Controller's Office has determined that the average claim payout for an at-fault loss sustained by a Maryland insured has been as follows:

1986	\$ 1,341.00
1987	1,485.56
1988	1,511.04

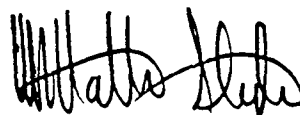
The above referenced claim payout includes allocated expenses which are the expenses incurred by Allstate in processing and paying at-fault property damage and/or bodily injury claims.

7. The automobile liability policy premium charged an Allstate insured is based on the aforestated frequency of at-fault accident involvement by the average Maryland driver insured by Allstate. Allstate has calculated its current approved surcharge rating plan based upon the administrative and actual

dollar cost of at-fault accident involvement by its Maryland insureds (including both property damage and bodily injury payouts).

8. A statistical analysis of Allstate's recent loss experience indicates that for those Maryland insured's who are covered by Allstate's current approved rate filing (two or less surchargeable at-fault accidents), that the surcharge rates are adequate.

9. Allstate's premium and surcharge rating plan does not adequately compensate the Company for the increased loss potential projected by the California study (December, 1987) for drivers with two or more non-surchargeable occurrences. The additional loss potential projected for this insured is not adequately covered by Allstate's present premium and surcharge rate filing. If Allstate were required to continue to insure this risk, the resulting loss would have a direct and substantial adverse effect upon Allstate's business and economic purpose which is to provide low cost automobile insurance to as many drivers as possible, while making a reasonable profit. In this particular instance, Allstate would be inadequately compensated by premium and surcharge dollars to continue insuring this driver who exceeds the standards of Allstate's current approved rate filing.



Matthew Stegle



Allstate includes in the cancellation/non-renewal notices used in the State of Maryland statistics from an independent research study that addresses the increased chances of future accident involvement for drivers with prior accident/violation involvement compared with drivers without prior accident/violation involvement. This study was conducted by the California Department of Motor Vehicles (The California Driver Fact Book, April, 1981). This study developed the following data:

CONVICTIONS

<u>NUMBER OF CONVICTIONS FIRST TWO YEARS</u>	<u>ACCIDENTS TIMES-AS-MANY FACTOR* (THIRD YEAR)</u>
0	1.00
1	1.95
2	2.70
3	3.54
4	3.98
5	4.55

ACCIDENTS

<u>NUMBER OF ACCIDENTS FIRST TWO YEARS</u>	<u>ACCIDENTS TIMES-AS-MANY FACTOR* (THIRD YEAR)</u>
0	1.00
1	1.74
2	2.93
3	3.61
4	5.73

\* This number represents the relative increase in accident rate in the third year over the zero conviction group of the first two years. For example, if an individual has two convictions during the first two years of the study, that group of drivers' accident rate was 2.70 times the accident frequency of the group that had zero convictions in their first two years of the study.

The above data demonstrates that, as a group, drivers having convictions and accidents during one two year period are substantially more likely to have accidents in the following year. As the number of prior convictions increase the future accidents frequency also increases.

The above data can also be tested for its validity by determining its correlation coefficient. The correlation coefficient is a statistic that indicates how strongly two variables are related. In this case, prior conviction records and subsequent accident involvement. The actual third year accident frequency is used instead of the "times-as-many" factor to compute the correlation coefficient. These data and formulae are displayed below:

CORRELATION OF PRIOR CONVICTION HISTORY AND  
SUBSEQUENT ACCIDENT FREQUENCY  
BASED ON CALIFORNIA STUDY DATA

---

CONVICTIONS IN FIRST TWO YEARS 'X'	THIRD YEAR ACCIDENT FREQUENCY 'Y'	$(X-E(X))^2$	$(Y-E(Y))^2$	$(X-E(X)) * (Y-E(Y))$
0	0.117	4.000	0.039	0.382
1	0.228	1.000	0.006	0.080
2	0.316	0.000	0.000	0.000
3	0.414	1.000	0.011	0.106
4	0.466	4.000	0.025	0.316

$$\begin{aligned}
 E(X) &= 2.000 \\
 E(Y) &= 0.308 \\
 S_x &= 1.414 \\
 S_y &= 0.126
 \end{aligned}$$

Correlation Coefficient = 0.994

Number of Points = N

Mean X = E(X) = X/N

Mean Y = E(Y) = Y/N

$$\text{Standard Deviation (X)} = S_x = \sqrt{\frac{E(X-E(X))}{N}}$$

$$\text{Standard Deviation (Y)} = S_y = \sqrt{\frac{E(Y-E(Y))}{N}}$$

$$\text{Correlation Coefficient (X,Y)} = \frac{E(X-E(X))(Y-E(Y))}{N \cdot S_x \cdot S_y}$$

A correlation coefficient of 1.000 indicates a perfect relationship. Taking a conservative approach, a value of .7 or greater indicates a very strong relationship and one that can be relied upon. Thus, the correlation coefficient of .978 for the California data indicates that the relationship of prior accident history and subsequent accident frequency is significant. A similar correlation can be shown for conviction history.

As stated in Allstate's Notice of Non-Renewal, Allstate has analyzed the at-fault accident involvement of their Maryland insureds. It was determined that, on average, 6% of the Maryland insureds are involved in an at-fault accident resulting in bodily injury or property damage liability claims each year. This means that the average policy has one at-fault accident approximately every 15 to 17 years. This at-fault accident frequency has remained consistent for a number of years.

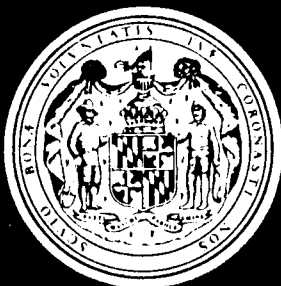
Allstate's current rate filing requires a Maryland driver to be excluded or policy non-renewed if a driver has two or more incidents within the previous 3 year period. An incident is defined as at-fault accident involvement or traffic convictions. Allstate does surcharge for certain at-fault accidents however, Allstate does not surcharge for traffic convictions. Allstate does not have a surcharge plan applicable to this insured to adequately compensate Allstate for the increase risk of future at-fault involvements. Allstate's charge is based upon an expected average at-fault accident frequency of .06 (6% of Maryland insureds involved in at-fault accidents per year). Based upon the statistics developed from the California Study, this insured is expected to have an at-fault accident frequency of .117 ( $1.95 \times .06$ ) or .217 ( $3.61 \times .06$ ). These frequencies are almost 4 times the at-fault accident involvement for the average Allstate insured. The losses associated with this increased accident frequency would have a direct and adverse affect upon Allstate's profitability in Maryland.

**STATE OF MARYLAND**

WILLIAM DONALD SCHAEFER  
Governor

WILLIAM A. FOGLE, JR.  
Secretary

JOHN A. DONAHO  
Insurance Commissioner



Department of Licensing and Regulation  
INSURANCE DIVISION

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333- 4002/3

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

July 6, 1989

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

Dear Mr. Troy:

In accordance with the Maryland Rules of Procedure, Chapter 1100, Rule B2.c and d and B7.1, entitled Administrative Agencies, and Section 40 of Article 48A, entitled Maryland Insurance Code, this will acknowledge the receipt of your order for Appeal in the matter of:

**Terry Troy vs.  
Insurance Commissioner of the State of Maryland  
(Case No. 1467-4/89)**

This written notice of the Order of Appeal is being given to every party in this proceeding.

Please arrange to have a Reporting Service write to me or furnish me with a copy of your authorizing letter to them, so that I can forward the original hearing tape recording and exhibits to the Reporting Service for transcribing, photocopying, and binding. The original exhibits, transcription, tape, and one transcribed copy should be returned to this office and one copy will be forwarded to the Appellant by the Reporting Service. You will receive an invoice for transcribing from the Reporting Service.

You may also wish to request an extension of time for filing the record from the Circuit Court, due to the limited time allowed for transcription.

Very truly yours,

Wenda K. Gordon  
Administrative Officer

/sm

cc: Meg Rosthal, Assistant Attorney General  
Allstate Insurance Company  
Steve Kreseski, Esquire



P 923 772 612

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Allstate Ins. Co. 1850 Centennial Park Dr.	
Street and No. Suite 400.	
P.O., State and ZIP Code Reston, Va. 22091	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

P 923 772 613

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Terry Troy</b>	
Street and No. <b>7819 Ivy Mount Terrace</b>	
P.O., State and ZIP Code <b>Potomac, MD 20854</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse, **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE  
USE, \$300

RETURN  
TO



Print Sender's name, address, and ZIP Code in the space below.

Wendie K. Gordon, Adm. Officer  
Dept. of Licensing & Regulation  
Insurance Division  
501 St. Paul Place, 6th Floor  
Baltimore, Maryland 21202-2272

Case No.

1467-4/87

STONY  
Appeal

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address.      2.  Restricted Delivery  
(Extra charge)      (Extra charge)

3. Article Addressed to:

Terry Troy  
7819 Ivy Mount Terrace  
Potomac, MD 20854

4. Article Number

P 923 772 613

Type of Service:

- Registered       Insured  
 Certified       COD  
 Express Mail       Return Receipt  
for Merchandise

Always obtain signature of addressee  
or agent and DATE DELIVERED.

5. Signature - Address

X

6. Signature - Agent

X

7. Date of Delivery

7-7-88

8. Addressee's Address (*ONLY if  
requested and fee paid*)



● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. (Extra charge)      2.  Restricted Delivery (Extra charge)

3. Article Addressed to:

Allstate Insurance Co.  
1850 Centennial Park Dr.  
Suite 400  
Reston, Virginia 22091

4. Article Number

P 923 772 612

Type of Service:

- Registered       Insured  
 Certified       COD  
 Express Mail       Return Receipt  
for Merchandise

Always obtain signature of addressee  
or agent and DATE DELIVERED.

5. Signature - Address

X

6. Signature - Agent

X Elaine Chambliss

7. Date of Delivery

7-7-89

8. Addressee's Address (*ONLY if  
requested and fee paid*)



P 923 772 11

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Steve Kneseski, Esq.</b>	
Street and No. <b>c/o Joseph A. Schwartz, III, P.A.</b>	
P.O., State and ZIP Code <b>Betha, MO 64601</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

P 923 772 111

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Steve Kneseski, Esq.</b>	
Street and No. <b>c/o Joseph A. Schwartz, III, P.R.</b>	
P.O., State and ZIP Code <b>Betha, MO 64601</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



**SENDER INSTRUCTIONS**

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE  
USE, \$300

RETURN  
TO



Print Sender's name, address, and ZIP Code in the space below.

Wenda K. Gordon, Adm. Officer

Dept. of Licensing & Regulation  
Insurance Division

501 St. Paul Place, 6th Floor

Baltimore, Maryland 21202-2272

Case No.

1467-4/89

Troy Appeal

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. (Extra charge)      2.  Restricted Delivery (Extra charge)

3. Article Addressed to:

Steve Kreseski, Esquire  
40 Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison St.  
Balto., MD 21201

5. Signature - Address

X

6. Signature - Agent

X Carl Claassen

7. Date of Delivery

7/7/81

4. Article Number

P 923 772 611

Type of Service:

- Registered       Insured  
 Certified       COD  
 Express Mail       Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

8. Addressee's Address (ONLY if requested and fee paid)

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 21854

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place  
Baltimore, Maryland 21202

APPELLEE

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No. 89184050/CL99747  
\*  
\* Appeal of the Insurance  
\* Commissioner's decision,  
\* Department of Licensing  
\* and Regulation.  
\* Upon the Complaint of  
\* Terry Troy  
\*  
\* Case No. 1467-4/89

\* \* \* \* \*

CERTIFICATE OF COMPLIANCE  
WITH MARYLAND RULE B2.c and d

I HEREBY CERTIFY that on this 6th day of July 1989, pursuant to Maryland Rule B2.c and d, I have given written notice to the following party to the proceeding styled:

**TERRY TROY VS.  
INSURANCE COMMISSIONER OF THE STATE OF MARYLAND  
(CASE NO. 1467-4/89)**

scheduled before the Insurance Division of the Maryland Department of Licensing and Regulation, that an Order for Appeal has been filed in the Circuit Court of Baltimore City by:

**TERRY TROY**


from the decision of the Insurance Commissioner of the State of Maryland, on June 16, 1989.

Meg Rosthal, Esquire  
Assistant Attorney General

Allstate Insurance Company  
1850 Centennial Park Dr., Suite 400  
Reston, Virginia 22091

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

Steve Kreseski, Esquire  
c/o Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison Street  
Baltimore, Maryland 21201

  
Wenda K. Gordon  
Administrative Officer

TERRY TROY  
7819 Ivymount Terrace  
Potomac, Maryland 21854

APPELLANT

VS.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place  
Baltimore, Maryland 21202

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* CASE NO. 89184050/CL99747  
\* APPEAL OF THE INSURANCE  
\* COMMISSIONER'S DECISION,  
\* DEPARTMENT OF LICENSING  
\* AND REGULATION - UPON THE  
\* COMPLAINT OF:  
\* Terry Troy  
\* Case No. 1467-4/89

\* \* \* \* \*

CERTIFICATE OF TRANSCRIPT TO RECORD

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I, WENDA K. GORDON, hereby certify that the following is a true record taken from the proceedings of the Insurance Division, Department of Licensing and Regulation, in the administrative proceedings styled TERRY TROY VS. INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, CASE NO. 1467-4/89.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Insurance Division, Department of Licensing and Regulation, this 8th day of August, 1989.

Meg Rosthal, Esquire  
Assistant Attorney General

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 21854

Allstate Insurance Company  
1850 Centennial Park Drive  
Suite 400  
Reston, Virginia 22091

Steve Kreseski, Esquire  
c/o Joseph A. Schwartz, III, P.A.  
Washington Place  
10 West Madison Street  
Baltimore, Maryland 21201



*Wenda K. Gordon*  
\_\_\_\_\_  
Wenda K. Gordon  
Administrative Officer

**FILED**

**JUL 31 1989**

CIRCUIT COURT FOR  
BALTIMORE CITY

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND, ET AL

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 89184050/  
CL99747



**ANSWER TO PETITION**

ALLSTATE INSURANCE COMPANY, by and through its under-  
signed attorneys, answers the Petition of the Appellant, TERRY  
TROY, as follows:

1. Allstate denies all allegations contained in Paragraph  
1 of the Petition with the exception that Allstate admits it  
maintains rate filings stating that "any driver who has a fre-  
quency of combined losses and convictions defined as at least two  
per operator within the past three (3) years" will be excluded or  
non-renewed from the policy of automobile liability insurance.

2. Allstate denies the allegations contained in Paragraph  
2 of the Petition.

3. Allstate admits the allegation contained in Paragraph  
3 of the Petition to the extent that Allstate and the Insurance  
Commissioner found that the policyholder's son [Richard A. Troy]  
driver record presents additional exposure not contemplated by  
Allstate's current rating plan; however, Allstate denies  
Appellant's assumptions with regard to Allstate's use of its' own  
computer generated statements.

4. Allstate denies the allegations contained in Paragraph 4 of the Petition.

5. Allstate admits the allegations contained in Paragraph 5 of the Petition to the extent that the data from the California Study "demonstrated that the son [Richard A. Troy] belongs to a group with 3.54 times greater chance of future accident than a 0-conviction driver" (spelling errors corrected); however, Allstate denies Appellant's mischaracterization of information contained in the California Study.

6. Allstate denies the allegations contained in Paragraph 6 of the Petition.

7. Allstate denies the allegations contained in Paragraph 7 of the Petition.

8. Allstate denies the allegations contained in Paragraph 8 of the Petition.

9. Allstate admits the allegation contained in Paragraph 9 of the Petition to the extent that Allstate's rating plan does not provide for an adequate rate to insure Richard A. Troy nor do Insurance laws permit Allstate to consider past profits from the Troy policy of insurance; however, Allstate denies the remaining allegations made in Paragraph 9 of the Petition.

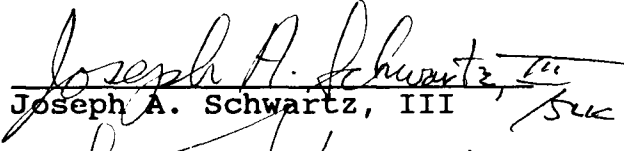
10. Allstate denies the allegations contained in Paragraph 10 of the Petition.


11. Allstate denies the allegations contained in Paragraph 11 of the Petition.

WHEREFORE, Allstate Insurance Company respectfully



requests that this Court affirm the decision of the Insurance Commissioner of the State of Maryland as stated in his Order on Hearing issued on June 16th, 1989.

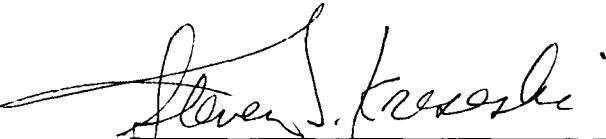
  
Joseph A. Schwartz, III

  
Steven L. Kreseski  
Joseph A. Schwartz, III, P.A.  
10 West Madison Street  
Baltimore, MD 21201  
(301) 244-7000

Attorneys for Allstate  
Insurance Co.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of July, 1989, copies of the foregoing Answer were mailed, postage prepaid, to Meg Rosthal, Assistant Attorney General, 501 St. Paul Place, Baltimore, Maryland, 21202; and to Terry Troy, 7819 Ivymount Terrace, Potomac, Maryland (20854).

  
Attorney for Allstate Ins. Co.

**FILED**

**JUL 26 1989**

**CIRCUIT COURT FOR FACSIMILE  
BALTIMORE CITY (301) 332-4505**

LAW OFFICES

JOSEPH A. SCHWARTZ, III, P. A.

WASHINGTON PLACE

10 WEST MADISON STREET

BALTIMORE, MARYLAND 21201

(301) 244-7000

JOSEPH A. SCHWARTZ, III

STEVEN L. KRESKI

July 25, 1989

Mr. Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

RE: Troy v. Allstate Insurance Company

Dear Mr. Troy:

Please be advised that I have prepared a Motion to Dismiss for Failure to File the Petition in this case. Assistant Attorney General Meg Rosthal has just advised me that you did file a Petition; therefore, I must assume that you failed to provide me with a copy or that my copy was lost by the U.S. Postal Service.

Please be kind enough to provide me with a copy of this Petition immediately and all future pleadings and correspondence you send to the Court. I will hold the Motion to Dismiss for five days pending receipt of the Petition.

Very truly yours,



Steven L. Kreski

SLK/csc

cc: Clerk, Circuit Court for Baltimore City (89184050/CL99747)  
Assistant Attorney General Meg Rosthal

FILED

JUL 24 1989

CIRCUIT COURT FOR BALTIMORE CITY

TERRY TROY

Appellant

v.

INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, et al.

Appellees

\* IN THE \*  
\* CIRCUIT COURT \*  
\* FOR \*  
\* BALTIMORE CITY \*

\* CASE NO. 89184050/CL99747 \*

\* \* \* \* \*

ANSWER TO PETITION

John A. Donaho, Insurance Commissioner of the State of Maryland, by his attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Meg L. Rosthal, Assistant Attorney General, answers the Petition of Appellant, Terry Troy, as follows:

- 1) The Insurance Commissioner denies the allegations contained in paragraph 1 of the Petition.
- 2) The Insurance Commissioner denies the allegations contained in paragraph 2 of the Petition.
- 3) The Insurance Commissioner denies the allegations contained in paragraph 3 of the Petition.
- 4) The Insurance Commissioner denies the allegations contained in paragraph 4 of the Petition.
- 5) The Insurance Commissioner denies the allegations contained in paragraph 5 of the Petition.
- 6) The Insurance Commissioner denies the allegations contained in paragraph 6 of the Petition.
- 7) The Insurance Commissioner denies the allegations contained in paragraph 7 of the Petition.

8) The Insurance Commissioner denies the allegations contained in paragraph 8 of the Petition.

9) The Insurance Commissioner denies the allegations contained in paragraph 9 of the Petition.

10) The Insurance Commissioner denies the allegations contained in paragraph 10 of the Petition.

11) The Insurance Commissioner denies the allegations contained in paragraph 11 of the Petition.

WHEREFORE, the Insurance Commissioner respectfully requests this Court to affirm his June 16, 1989 Order on Hearing.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL OF MARYLAND



Meg L. Rosthal  
Assistant Attorney General  
501 St. Paul Place - 14th Floor  
Baltimore, Maryland 21202  
(301) 333-6284

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of July, 1989, a copy of the foregoing Answer to Petition was mailed first class to Terry Troy, 7819 Ivymount Terrace, Potomac, Maryland 20854 and to Steven L. Kreseski, Law Offices of Joseph A. Schwartz, III, Washington Place, 10 West Madison Street, Baltimore, Maryland 21201.



Meg L. Rosthal  
Assistant Attorney General

{4}

FILED

JUL 17 1989

CIRCUIT COURT FOR BALTIMORE CITY

Terry Troy  
7819 Ivymount Terrace  
Potomac, Maryland 20854

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY

APPELLANT

\* Case No. 89184050/CL99747

VS.

\*  
\* Appeal of the Insurance  
\* Commissioner's decision,  
\* Department of Licensing  
\* and Regulation.  
\* Upon the Complaint  
\* of Terry Troy

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND  
501 St. Paul Place

APPELLEE

\* Case No. 1467-14/89

\* \* \* \* \*

PETITION

Pursuant to Sections 25, 234A and 240AA of Article 48A of the Annotated Code of Maryland (1986) a hearing was conducted on May 18, 1989 wherein the above captioned Appellee supported the Allstate Insurance Company's proposed nonrenewal of Appellant's auto insurance or [at Appellant's option] transference of young male race-classification-one driver in his fourth year of driving with one minor accident of \$705 and two points on his driving record to their high risk indemnity insurance subsidiary where Allstate would raise the son's rates from \$1000 to \$3300 per year. The Appellee and Allstate proposed, should Appellant refuse the transference, a second option: to exclude the son from the family insurance policy. The Appellant did not accept either option; consequently, the Appellee ORDERED that Allstate be permitted to effect its proposed action. Allstate notified the Appellant of nonrenewal but a Stay was obtained on the Appellee's Order. ✓

ERROR COMMITTED BY THE INSURANCE COMMISSIONER

The Appellant believes that substantial rights have been violated; the administrative findings of fact and conclusions of law are: unsupported by competent, material and substantial evidence, unsupported in view of the entire record submitted, affected by errors of law, and for other reasons to be made explicit in an amended petition after a transcript of the record is received.

10/1

The Appellant believes and intends to show that the Appellee erroneously and/or in reversible error:

1. Made findings of fact that are future promises: Allstate WILL not continue to insure any driver who has a frequency of combined losses and convictions defined as at least two per operator within the past three years. Apparently Allstate's claim was not true at time of hearing, and Allstate could change its mind. These standards that WILL do something in future were apparently not verified by any evidence; no proof of what they do now, nor was Appellant able to call Allstate's agents to see what they are really telling prospects, i.e., that they will be excluded if they have two occurrences.

2. Found on only that PART of the son's driving record most favorable to Allstate. The Appellee ignored most important facts: only one accident of \$705 and two points in over three years of driving. Appellee apparently did not give any weight to the son's subsequent year of driving without any accident or occurrence, or that the son has a radically changed driving pattern [away at school eight months of year and does not drive to work during summer]. This hasty conclusion, that the son exceeds standards that Allstate will have may indicate an intent to show bias in favor of Allstate.

3. Found that the son presents additional exposure not contemplated by Allstate's rating plan. But Appellee failed to take into account Allstate own computer generated statements, on file with the Insurance Commissioners, showing the amount of increase Allstate would need, [an additional \$70 per period or \$140 per year], to cover their contemplated additional exposure because of the accident. The Appellee also failed to take into account the extreme low cost of the actual accident, that existing premiums more than cover the possibility of a similar accident, the actual earnings from the son's share of the premiums, and that future damages if any may be minor and within the policy's deductibility.

4. Allowed the introduction of 25 year old out-of-State out-of-date statistical data, with outrageous concomitant assumptions, and accepted that that data had sufficiently demonstrated that the son belongs to group with 1.74 times greater chance of future accident than a 0-accident driver. But what does it mean that the son possibly may have 1.74 times as many accidents as the mythical 0-accident California driver had 25 years ago, over an unknown period of time. It proves nothing about what the son's driving record may be in the future. Actually this is a factor of secondary predictability, and if one uses it in conjunction with Allstate's own data it would suggest the possibility that the son would have one or less accidents in the next four years, for a total of two or less in eight years, well below the Allstate standards for exclusion.

5. Also found that the data demonstrated that the son belongs to group with 3.54 times greater chance of future accident than a 0-convictions driver. What does it mean will he have 3.54 times as many accidents as the mythical 0-occurrence California driver had 25 years ago, over an unknown period of time. This is a factor of tertiary predictability and is highly speculative, but the son would still be within the standard if one uses Allstate's own data. At this point in the Order On Hearing, there is no indication that the Appellee or Allstate has calculated the chance of a one-accident Maryland driver or a three-conviction Maryland driver having an accident during Allstate's next billing period when presumably they will be at risk. Hence, the Appellee cannot jump to any conclusions, and does not have a valid basis for any statistical inferences.

6. Found that the statistical data is valid. Appellee did not factor-in length-of-time in using zero accidents/convictions as a determinant; frequency data without a time axis is categorically INVALID. Appellee's conclusions are also INVALID because his intended comparisons cannot be made using "numbers" with no magnitude [the zero accidents/convictions "numbers" have no factor of predictability], zero times any number is always zero. Additionally, Appellee failed to apply weights to secondary and tertiary factors. Occurrences are not accidents and accidents are not claims pay-out money. Appellee has failed to give proper weights to primary factors [large number] that have probable predictability such as actual dollar claims against Allstate, secondary factors [small number] that have only possible predictability such as number of accidents, and highly speculative tertiary factors [very small number] such as convictions.

7. Recognized "other statistical data" not part of the signed affidavit nor notarized. This inadmissible [Appellant's view] data is useless to show any cause and effect at critical stages of the reasoning that should have been but was not set forth, but it was apparently used as a basis that mystically led to conclusions of a "strong relationship" without supporting, or Appellee showing, any intermediate steps. Appellant believes that the Appellee should have examine the actual primary facts not just secondary or tertiary hypothetical speculations.

8. Failed to take into account the relevant elements of the son's actual driving record, admitted into evidence, and showing that he had only two points for minor violations. [Allstate and the Commission may have recognized that the son was in racial category one.] The law must always be vigilant when racial classification data is admitted into the administrative record.

9. Concluded that Allstate's rating plan does not provide for an adequate rate. What is an adequate rate if \$300 dollars profit in the year of the accident and \$1000 profit for each year that there is no accident is not adequate? Appellee also failed to take into account Allstate's own statements that their rating

plan and rates are adequate for up to two accidents. Appellee apparently ignored the amount of profit gained by Allstate which is part of an industry with premiums running four times the inflation rate, and failed to take into account possible greed of, and conspiracy within, the insurance industry.

10. Delegated its authority to decide this case to Allstate's rating plan, to out-of-state out-of-date statistical data, and to highly speculative tertiary factors of predictability. [Has Appellee forgotten why the people need an insurance commissioner? Hearing Examiners must carry out their responsibility to the public without fear, e.g., that the insurance industry might cost them their jobs.]

11. Failed to show that Allstate or the Insurance Commissioner does NOT allow young male drivers of race-classification-two with more than zero accident, more than \$705 in claims, and more than two points to continue on family policies. Allstate must prove that they have excluded ALL male drivers under age 29 and classified by the State of Maryland as racial category two who have three or more violations; or perhaps they should be investigated for possible charges of racial discrimination.

RELIEF SOUGHT: I request the Circuit Court to reverse the decision of the Insurance Commissioner in CASE NO: 1467-4/89, dated 16th day of June, 1989, that allowed the Allstate Insurance Company to nonrenew my family's insurance policy, and/or exclude my son Richard C. Troy, and/or increase his rate by \$2300 per year; and to remand the case with instructions to the Appellee to deny nonrenewal, deny any exclusion options, and deny any rate increases to the Allstate Insurance Company of or within the Appellant's policy.

I HEREBY CERTIFY on this 14th day of July 1989, pursuant to Maryland Rule B2.e, that I have served [via certified mail] a copy of this Petition on the Insurance Commissioner of Maryland.

*Terry Troy*  
-----  
Terry Troy, Appellant



FILED

2/A

B

TERRY TROY

Complainant

v.

ALLSTATE INSURANCE COMPANY,  
ET AL

Licensee

JUL 7 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY

CASE NO: 89184050/  
CL 99747

ENTRY OF APPEARANCE

Mr. Clerk:

Please enter the appearance of Joseph A. Schwartz, III, Steven L. Kreseski and Joseph A. Schwartz, III, P.A. as attorneys for Licensee, Allstate Insurance Company, in the above captioned administrative appeal from a decision rendered by the Insurance Commissioner of the State of Maryland.

Joseph A. Schwartz III  
Joseph A. Schwartz, III

Steven L. Kreseski  
Steven L. Kreseski  
Joseph A. Schwartz, III, P.A.  
10 West Madison Street  
Baltimore, Maryland 21201  
(301) 244-7000

Attorneys for Allstate Ins. Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 6<sup>th</sup> day of July, 1989, a copy of the foregoing was hand delivered to Meg Rosthal, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland (21202), attorney for the Insurance Commissioner of the State of Maryland and to Terry Troy, 7819 Ivymount Terrace, Potomac, Maryland (20854).

Steven L. Kreseski  
Attorney for Allstate Ins. Co.

3

Terry Troy  
v  
Insurance Commissioner

FILED

JUL 10 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

Terry Troy  
7819 Ivymount Terrace  
Potomac, MD 20854

\*  
\* Allstate Insurance Company  
\* 1850 Centennial Park Drive, Suite  
400  
\* Reston, VA 22091

89184050/cl-

ORDER OF COURT

Order this 16 of July 1989

That the decision of the Insurance Commissioner of Maryland  
In CASE NO: 1467 - 4/89 rendered on the 16th day of June  
is hereby stayed.

*[Handwritten Signature]*

Judge

cm  
7/11/89

2

July 3, 1989

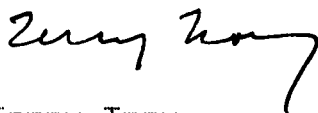
EX REL:	*	LICENSEE:
	*	
Terry Troy	*	Allstate Insurance Company
7819 Ivymount Terrace	*	1850 Centennial Park Drive, Suite 400
<del>400</del>	*	
Potomac, MD 20854	*	Reston, VA 22091
	*	
Complainant	*	CASE NO: 1467-4/89

To The: Circuit Court for Baltimore City  
City Division

Subject: Request for a MOIION TO STAY

I, Terry Troy, complainant/petitioner, hereby request a motion to stay the Order of the Insurance Commissioner in CASE NO: 1467-4/89, dated 16th day of June, 1989, because substantial rights have been prejudiced as the result of administrative findings of fact and conclusions of law [that are UNSupported by competent, material and substantial evidence, UNSupported by in view of the entire record submitted, and for other reasons to be contained in my petition].

July 3, 1989



Terry Troy

*I hereby certify that on 3rd day July 1989  
I delivered a copy of the foregoing request for  
Motion to Stay to The Insurance Commissioner  
At 501 Paul Pl.*

FILED

JUL 8 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

July 3, 1989

8918405Q

CL 99747

8918405Q

ORDER FOR APPEAL

EX REL:	*	LICENSEE:
	*	
Terry Troy	*	Allstate Insurance Company
7819 Ivymount Terrace	*	1850 Centennial Park Drive, Suite
400	*	Reston, VA 22091
Potomac, MD 20854	*	
	*	
Complainant	*	CASE NO: 1467-4/89

I, Terry Troy, complainant/petitioner, wish to appeal an adverse ruling issued pursuant to an administrative hearing conducted on May 18, 1989, by the Insurance Commissioner and contained in the Hearing Examiner's Order in CASE NO: 1467-4/89, dated 16th day of June, 1989, [and received on June 20] because of administrative findings of fact and conclusions of law that are UNSupported by competent, material and substantial evidence, UNSupported by in view of the entire record submitted, and for other reasons.

July 3, 1989

*Terry Troy*  
Terry Troy

2:02PM07/03/89 002#2820 B \*\*\*  
 #0891840  
 #0000050  
 CIVIL \$80.00  
 \*\*TTL \$80.00  
 CASH \$80.00  
 CHNG \$0.00

*I hereby certify that on 3rd day July 1989  
 I delivered a copy of the foregoing order of appeal  
 to the Insurance Commissioner at 501 Paul St.*

*[Handwritten mark]*

TERRY TROY  
7819 IVYMOUNT  
POTOMAC, MD

\* ALLSTATE INSURANCE CO  
\* 1850 CENTENNIAL PARK DR  
\* SUITE 400  
RESTON, VA 22091

ORDER OF COURT

ORDER THIS \_\_\_\_\_ OF \_\_\_\_\_ 1989

THAT THE DECISION OF THE INSURANCE  
COMMISSIONERS OF MARYLAND IN CASE NO:

1467-4/89 RENDERED ON THE 16TH

DAY OF JUNE IS HEREBY STAYED.

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JUDGE

**MSAREF.NET, MSA SC 5458**  
**An Archives of Maryland Publication**

D. Lee  
2-1-10  
Image 141

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**Home** | ▶ **End Session**

**MSA SC 5458-82-150**

**Dates:** 1989-1994

**Description:** Circuit Court for Baltimore City, Cases # 94004032; 94018024

scan whole case with following sequential file numbers

msa\_sc5458\_82\_150\_[full case number]-####

upload pdfs per usual

Cases 94004032 and 94018024 scanned and uploaded by Ray C. on 1/25/10.

Please follow the same procedure for the following:

WOODLIFF VS SEC. OF PUBLIC SAFETY Box 84 Case No. 89047041 [MSA T2691-2720, OR/10/21/82]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

TIMMONS V JOHNS HOPKINS HOSPITAL Box 130 Case No. 89075003 [MSA T2691-2766, OR/10/22/44]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

SIMMS VS SEC OF PUB SAFETY Box 276 Case No. 89142059 [MSA T2691-2912, OR/11/2/22]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

BERMAN VS BOARD OF APPEALS, ET AL Box 319 Case No. 89164046 [MSA T2691-2955, OR/11/2/65]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

TROY VS ALLSTATE INS Box 355 Case No. 89184050 [MSA T2691-2991, OR/11/3/17] *DL 2-1-10 Image 141*

File should be named msa\_sc5458\_82\_150\_[full case number]-####

HIRSCHFIELD VS BD OF MUNICI APL Box 367 Case No. 89194041 [MSA T2691-3003, OR/11/3/29]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

FAISON VS JEFFERSON Box 385 Case No. 89207040 [MSA T2691-3021, OR/11/3/47]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

MITCHELL VS PROVIDENT BANK Box 389 Case No. 89209043 [MSA T2691-3025, OR/11/3/51]

File should be named msa\_sc5458\_82\_150\_[full case number]-####