

June 22, 2020

The Honorable Ray Farmer
Director and NAIC President
South Carolina Insurance Department

Via E-Mail

Dear President Farmer,

Thank you, and the NAIC officers and executive staff, for your decision to proactively move the 2020 Summer National Meeting to a virtual gathering due to the impacts of COVID-19. While I regret that I will not be able to welcome you to Minneapolis in person this August, I write to encourage NAIC to make the recent events in Minnesota that have reverberated across the country – and the world – our primary focus during the virtual Summer National Meeting.

The killing of George Floyd in Minneapolis highlighted structural inequities in our society that must be addressed. During the coming months, the NAIC must focus its collective attention on the role we can play as insurance regulators in addressing racial inequities in insurance markets.

NAIC consumer representatives and consumer advocates have long worked to draw attention to the effects of both intentional discrimination and the disparate impacts of facially neutral practices in insurance markets. Along similar lines, I offer two recommendations brought to me by University of Minnesota Law Professor Daniel Schwarcz for consideration for NAIC model policies:

- States, as well as the NAIC, should collect detailed data from insurers to allow for the creation of models that evaluate the insurance experiences of home, auto, business, commercial and health policyholders. There are many models for reporting, including the Home Mortgage Disclosure Act, which could serve as the beginning of this discussion. Without good data, insurance regulators will not be able to properly evaluate policy choices aimed at eliminating insurance discrimination that is driven by structural racism.
- Using the broader data resources described above, NAIC members should prohibit discriminatory outcomes. Insurers have long argued that, because the rating process does not explicitly consider race, intentional discrimination cannot occur. Numerous analysts have identified the flaw in that argument. Some states already prohibit reliance on certain rating variables because they are clear proxies for race. The increasing use of sophisticated algorithms in rate designs simply increases the risk of discrimination against protected classes. These algorithms can produce discriminatory results because they reflect

structural racism inherent in statistical facts such as African-Americans having much higher rates of encounters with police than white Americans or when zip codes that happen to have a majority of Black residents experience wholesale premium increases. We must concentrate on how pricing, renewals and claims handling practices result in different outcomes affecting protected classes of customers.

I understand that implementing model legislation to accomplish these goals will not be completed quickly. We can, however, start immediately. As committee, working group and task force chairs are planning their meetings for August, I urge you to ask chairs to examine their respective jurisdictions and focus on reforms that can address racial inequities.

I also ask you to schedule a special session prior to, or during, the National Meeting specifically dedicated to issues of structural discrimination in insurance practices. While many committees have already begun discussions in this area, most recently during the Consumer Liaison Committee meeting held last Friday by Commissioner Mike Conway, a dedicated special session will allow all Commissioners to focus our combined attention and effort on this essential issue. Comments made by Commissioner Conway and by Commissioner Andrew Mais during that meeting indicated that there may be significant support for this project among our colleagues. It would be a fitting recognition of the tragedy of George Floyd's death if the 2020 Summer National Meeting that was scheduled for Minneapolis marked the turning point for the insurance industry's elimination of racially discriminatory outcomes.

I look forward to working with you and the other NAIC officers to move this important work to the center of our combined efforts.

Sincerely,

A handwritten signature in black ink that reads "Steve Kelley". The signature is written in a cursive, flowing style.

Steve Kelley
Commissioner

cc: President-Elect Commissioner David Altmaier
Vice President Director Dean Cameron
Secretary-Treasurer Director Chlora Lindley-Myers