

October 9, 2024

RULING LETTER CN-2024-361-D

TO ALL INSURERS AUTHORIZED TO TRANSACT MOTOR VEHICLE INSURANCE IN PUERTO RICO, INCLUDING THE JOINT UNDERWRITING ASSOCIATION.

IN RE: REIMBURSEMENT PROCESS OF THE COMPULSORY LIABILITY INSURANCE (SRO) PREMIUM PAYMENT WHEN THE CERTIFICATE OF COMPLIANCE (VOUCHER) IS NOT RECOGNIZED.

To Whom It May Concern:

The Office of the Commissioner of Insurance (OCI), pursuant to Act No. 253, enacted on December 27, 1995, as amended, the Compulsory Liability Insurance for Motor Vehicles Act (hereinafter, “Act 253-1995”), issues this Ruling Letter for the following purposes:

1. To clarify the reimbursement procedure of the premium of the Compulsory Liability Insurance (SRO, for its Spanish acronym) in cases where the insured has been unable to use their Certificate of Compliance to be exempted from paying the SRO in a timely manner due to situations attributable to the insurer or the Joint Underwriting Association (ASC, for its Spanish acronym).
2. To provide a clear and uniform basis for the liability of insurers and the ASC when the Certificate of Compliance may not be properly processed and establish the steps that must be taken to fully reimburse the SRO premium to the insured.

Legal Basis and Regulatory Context

Compulsory Liability Insurance (SRO) was created under Act No. 253-1995 with the purpose of ensuring that every motor vehicle that travels on the public thoroughfares of Puerto Rico is covered by an insurance policy that answers for damages caused to third parties in the event of an accident. Act No. 253-1995, as amended, requires all motor vehicle owners to select an SRO policy when renewing the vehicle registration sticker.

When a vehicle owner has traditional liability insurance with coverage equal to or greater than the coverage required by the SRO, the owner is entitled to be exempted from payment of the SRO premium upon submission of a Certificate of Compliance or Voucher issued by the owner’s insurer. The purpose of this Certificate is to ensure that the vehicle owner does not pay twice for the same coverage. With regard to the procedure for the issuance of the Certificate of Compliance or Voucher, Section 13 of Act No. 253-1995, as amended, provides as follows:

Section 13. — Relationship between Traditional Liability Insurance and Compulsory Liability Insurance (26 L.P.R.A. § 8061)

(a) ...

[E]very insurer, by itself or through its authorized insurance representatives, shall have an obligation to issue and send to its insureds the Certificate of Compliance, as established in this Act, as evidence of compliance with the compulsory liability insurance in those cases where the owner of the motor vehicle has traditional liability insurance or coverage equal to or greater than that of the compulsory liability insurance. This Certificate of Compliance has the effect of exempting said vehicle from the payment of the item corresponding to the compulsory liability insurance at the time of payment of the motor vehicle registration fees. **This Certificate shall be sent to the insured at least two (2) weeks prior to the renewal date of the motor vehicle registration, or electronic access to the Certificate shall be provided according to the mechanism provided by the Commissioner for this purpose.** If any private insurer or the Joint Underwriting Association fails to comply with this obligation, it may be subject to the imposition of an administrative fine by the Commissioner. [...] (Our emphasis).

The aforementioned provision of law establishes the obligation of the insurer to issue and send to its insureds the Certificate of Compliance or Voucher at least two (2) weeks prior to the renewal date of the motor vehicle registration or to provide electronic access to the Certificate. In order to enable the issuance of the Certificate of Compliance or Voucher in the systems of Authorized Entities, insurers are responsible for entering the information using the software provided by the ASC, in accordance with the procedure established by this Office in Ruling Letter N-C-2-1-2001.

SRO Renewal Process – Refund Procedure

It has been brought to our attention that insureds have faced obstacles when using the Certificate of Compliance Voucher due to errors or delays in the transmission of data by the insurer or due to situations related to the software programming conducted by the ASC. These situations have caused failures in the recognition of the Certificate of Compliance Voucher in the platform used by Authorized Entities or in CESCO Digital, and the insureds have had to pay the SRO premium again.

Once the insured requests reimbursement from their insurer, a 10% withholding of the premium paid for SRO is made at the time of vehicle registration renewal. This 10% withholding is allocated to two components:

- 5% for the service fee of the Authorized Entity that processed the vehicle registration sticker renewal.
- 5% is to be distributed between the Treasury Department and the Department of Transportation and Public Works (DTOP, for its Spanish acronym) (4% to the General Fund and 1% to DTOP).

However, the practice of withholding 10% of the paid SRO premium when reimbursing the insured due to the insurer's lack of diligence in processing the Certificate of Compliance or Voucher is in contravention of the provisions of Section 13 of Act No. 253-1995, as amended.

We hold that in cases where the situation that prevents the use of the Certificate of Compliance or Voucher is attributable to the insurer's lack of diligence, the insurer may not apply the 10% withholding to the insured's reimbursement and must reimburse the total amount of the SRO premium paid by the insured. The insurer's failure to fulfill its obligation to issue the Certificate of Compliance or Voucher in a timely manner may not result in harm to its insureds. In addition, an action attributable to the lack of diligence of an insurer or the ASC that obstructs the use of the Certificate of Compliance Voucher by an insured does not initiate a recovery action against any Authorized Entity.

Insurer Liability

Insurers are responsible for the proper transmission and processing of the information of the insured and the insured's vehicle to the ASC for the issuance of the Certificate of Compliance Voucher. Factual examples of lack of diligence attributable to the insurer include, but are not limited to:

1. Transmission errors of insured or vehicle data:

- a. Incorrect transmission of information related to the insured (name, address, policy number, effect, etc.) or vehicle (registration number, VIN, license plate, etc.), which prevents the ASC system from correctly recognizing the policy data.
- b. Lack of updating or errors in the insurer's database, which results in discrepancies in the information transmitted to the ASC.
- c. Software errors or compatibility issues with the ASC's system due to changes or updates made to the insurer's system used to transmit data to the ASC.

2. Delays in information transmission:

- a. The insurer fails to transmit the required data to the ASC within the period stipulated by Ruling Letter CN-2015-190.
- b. Lack of diligence in updating the insured's records or issuing the Certificate of Compliance.

3. Issuance of policies with incorrect information:

Issuance of a policy with errors in the coverage or effective date, which could result in the policy failing to comply with the minimum requirements established by Act No. 253-1995 and, therefore, failing to be recognized by the ASC as valid in order to exempt the insured from the SRO payment.

4. Lack of internal communication or coordination:

- a. Internal problems with the insurer’s management systems, which could lead to a lack of synchronization between different departments, affecting the proper and timely transmission of information on the insured to the ASC.
- b. Communication problems or poor coordination with the insured in order to deliver the Certificate of Compliance Voucher in a timely manner.

ASC Liability

The ASC, as the entity charged with administering the SRO, is responsible for correctly processing the information received from the insurers and ensuring that the Certificates of Compliance Vouchers are issued in a timely manner and with the correct information so that they may be recognized by the processing platform for the renewal of vehicle registration stickers used by Authorized Entities and in digital platforms such as CESCO Digital. Factual examples of lack of diligence attributable to the ASC include, but are not limited to:

1. Programming errors:

- a. Technical or programming errors in the ASC platform that prevent the proper processing of the information received from the insurers. These may include, but are not limited to, incorrect programming in the software that manages Certificates of Compliance, which prevents the Certificate from being generated or recognized by Authorized Entities or CESCO Digital.
- b. Software errors or compatibility issues between the ASC’s system and the insurers’ systems due to changes made to the ASC systems.

2. Data update delays:

- a. The ASC fails to update its records promptly with the information received from insurers, which prevents Certificates of Compliance from being generated or recognized in a timely manner. This can happen, for example, when insurers send the information within the stipulated timeframe, but the ASC fails to process this data in time for the Certificate to be available when the insured needs it.

3. Validation errors of the Certificate of Compliance:

The ASC fails to correctly validate the Certificates of Compliance already issued, even when the information received from the insurer is correct. These validation failures can be due to database management deficiencies, errors in verifying traditional policies, or problems with automatic verification systems.

4. Data integrity issues:

- a. Inconsistencies or errors in the ASC database. Policy and insured vehicle information stored in the ASC database may be incorrectly updated or contain errors, affecting the generation or validation of Certificates of Compliance. These data integrity issues may include errors in the vehicle records, VINs, license plates, policy numbers, policy effective dates, and more.

5. Errors in the issuance of the Certificate of Compliance:

- a. The ASC sends insurers Certificates of Compliance with incorrect or incomplete information. For example, certificates may be issued with inaccurate data, such as incorrect dates, misregistered policy information, or incorrectly entered vehicle data, preventing the insured from using the Certificate at the time of renewal.
- b. Certificates not generated: Although the ASC has received the correct information from the insurer, the ASC failed to generate the Certificates of Compliance due to a system failure or a delay in the process.

6. Delays in correcting reported errors:

- a. ASC delays in resolving problems reported by insurers or insureds related to the issuance or validation of Certificates of Compliance. Although the ASC has been promptly notified of a problem, it fails to correct the error in a timely manner, resulting in insureds being forced to pay the SRO premium while waiting for the issue to be resolved.

Handling Liability due to Errors Attributable to the Insurer or the ASC

Below are the provisions established by this ruling letter when an error prevents the insured from using the Certificate of Compliance Voucher and the reimbursement of the SRO payment is required. The insurer and the ASC shall be jointly liable for determining which of the parties is responsible for the error and acting accordingly. To this end, the following is provided:

- 1. Error Identification:** The insurer and the ASC shall establish internal mechanisms to review and analyze each case where an error that affects the issuance, validation, or acknowledgment of the Certificate of Compliance Voucher has been generated. These mechanisms should make it possible to quickly and accurately identify whether the error is attributable to the insurer or the ASC.
- 2. Internal Liability Resolution:**
 - a. Once the error has been identified, the insurer and the ASC must work together to determine liability. If the error is attributable exclusively to one of the parties, said party shall be responsible for the total 10% reimbursement cost.
 - b. In cases where the error is attributable to the ASC, the insurer shall refund the full SRO premium to the insured without delay and subsequently issue an invoice to the ASC for the corresponding 10% reimbursement. The ASC shall pay the insurer within thirty (30) days.
- 3. Expedited Solution:** The insurer and the ASC shall establish internal agreements that allow them to manage situations promptly, effectively, and autonomously, making sure that the insured is not further affected and does not have to wait for the resolution of their disputes.

4. **Resolution Time:** The ASC and the insurer must determine liability and issue the corresponding reimbursement to the insured within 30 days of the date of the request for reimbursement. This guarantees that the insured receives the total amount without further delay and any withholding if the error is attributable to the insurer or the ASC.
5. **Documenting and Recording:** Both the insurer and the ASC must maintain a detailed record of all cases in which an error has occurred and their corresponding resolutions. The OCI shall review these records in the event of a subsequent audit or review.

Exception to the 10% Withholding

In cases in which there are no situations attributable to the insurer or the ASC and the insured has not made the necessary arrangements with their insurer to promptly process the Certificate of Compliance Voucher or does not submit it to the Authorized Entity due to noncompliance, forgetfulness, carelessness, or any other reason not attributable to the insurer or the ASC, the 10% withholding shall be applicable in accordance with the provisions of Section 7(b) of Act No. 253-1995 and Act No. 245-2014, and the 10% withholding of the paid SRO premium shall be applicable at the time of reimbursement.

Monitoring and Reporting by the ASC

In order to ensure the proper operation of the process for issuing and using Certificates of Compliance Vouchers and guarantee that insureds can fully benefit from their rights under the framework of Act No. 253-1995, the OCI establishes that the ASC must implement a robust system for continuous monitoring and reporting to proactively identify, analyze, and correct any failure or error in the processing of the Certificates of Compliance or Vouchers that affects the insureds.

The specific provisions for monitoring and reporting that the ASC must submit to the OCI are described below.

1. Detailed Quarterly Reports

The ASC shall submit quarterly reports to the OCI, including a complete and detailed analysis of the issues with recognizing, issuing, and using Certificates of Compliance or Vouchers. These reports shall be intended to provide visibility on the errors that occurred in the previous four (4) months and the corrective actions taken to address them. The reports must contain at least the following elements:

- a. Total number of Certificates of Compliance issued: Provide the number of Certificates of Compliance Vouchers issued per month and per insurer, as well as the certificates that were redeemed through electronic platforms, such as CESCO Digital.
- b. Reported errors: Include a detailed breakdown of the errors reported by insurers and insureds specifying the nature of the error, for example, data transmission failures, validation problems, issuance delays, incompatibilities between systems, among others.

Each error must be linked to a probable cause, specifying whether the error is attributable to the insurer or the ASC.

- c. Incidents due to programming or validation errors: Provide a breakdown of the programming or validation issues that prevented the Certificates of Compliance from being properly recognized by Authorized Entities or electronic platforms, such as CESCO Digital. This must include errors in the ASC's systems and errors related to any other system, including Government Entities.
- d. Cases where the Certificate of Compliance was not generated: Indicate the number of cases in which the ASC did not generate the Certificate of Compliance in a timely manner despite having received the insurer's correct information. In addition, include the reasons for such failure, whether due to technical error, delay in updating records, data incompatibility, or other reasons.

2. Error Resolution Time Report

To ensure a prompt and effective response to reported problems, the ASC must include an analysis of the resolution time for the detected errors in its reports. This will allow the OCI to assess the ASC's response capability to problems affecting insureds and the actions taken to correct errors within a reasonable period of time. This section must include:

- a. Average and maximum resolution times: Provide the average and maximum time it took to correct the errors reported during the quarter. These times must be classified according to the severity of the error and its impact on the insured.
- b. Corrective actions taken: The ASC shall provide a summary of the corrective actions implemented in each error case, specifying whether it was a computer systems adjustment, a database update, or any other attributed reason.
- c. Root causes of the most common errors: Provide an analysis of the most frequent causes and errors.
- d. Action plan to prevent future errors: Include an action plan to mitigate recurring errors, specifying the technological or process improvements to be implemented in the ASC system.

3. Recommendations and Continuous Improvements

Finally, the ASC shall include recommendations to improve the issuance and validation process of the Certificates of Compliance in its quarterly reports. These recommendations must be based on the errors that have been detected and on the industry's best practices, and solutions must be proposed to optimize the system for the benefit of the insureds and the Authorized Entities. These may include:

- a. Proposals to eliminate the use of the printed version of the Certificate of Compliance.

- b. Suggestions for improving the interaction between ASC systems and the systems of insurers and Authorized Entities in order to minimize errors and ensure that Certificates of Compliance are issued and validated without any issues.
- c. Proposal for developing and implementing a single Certificate of Compliance number per vehicle and per period, through which real-time validation with the ASC database could be performed to ensure that the Certificate of Compliance is being used in a transaction for the vehicle for which it was created.

Effect

This Ruling Letter shall take effect immediately upon its publication, and strict compliance by all authorized insurers and the Joint Underwriting Association is hereby required.

Failure to comply with the above provisions will entail the imposition of sanctions.

Cordially,

SIGNED

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Commissioner of Insurance of Puerto Rico