

IN THE MATTER OF TIME INSURANCE	)	
COMPANY'S REPORTED LOSSES FOR THE	)	
1997/1998 AND 1999/2000 CALCULATION	)	
PERIODS AND ADVANCE PAYMENTS	)	IHC ADMINISTRATIVE ORDER
MADE BY THE INDIVIDUAL HEALTH	)	No.08-IHC-04
COVERAGE PROGRAM FOR SUCH	)	(AMENDING AO 08-IHC-01)
REPORTED LOSSES	)	

This matter has been opened by the New Jersey Individual Health Coverage ("IHC") Program Board of Directors ("Board") pursuant to its authority set forth at N.J.S.A. 17B:27A-2 et seq., and all the powers expressed or implied therein. This matter involves net paid losses reported by Time Insurance Company ("Time"),<sup>1</sup> a member of the IHC Program, for the 1997/1998 and 1999/2000 two-year calculation periods, for which Time seeks reimbursement. Pursuant to a determination by the IHC Board that Time had failed to meet the conditions for reimbursement of losses for the 1997/1998 and 1999/2000 calculation periods, by Administrative Order 08-IHC-01 (AO 08-IHC-01), dated February 11, 2008, the IHC Board ordered Time to repay, with interest, monies anticipatorily remitted and credited to Time by the Board. Time requested a stay of the payment provisions of the order, which the IHC Board denied by letter, dated April 9, 2008. Time subsequently suggested it retain control over half of the monies in question. The IHC Board now amends its prior order to affirm deferral of the payment of interest in this matter, and address the additional request made by Time.

**Background**

On February 11, 2008, the IHC Board issued AO 08-IHC-01, incorporated herein by reference. AO 08-IHC-01 denied Time's request for reimbursement of losses for the 1997/1998

---

<sup>1</sup> Effective April 1, 1998, Time Insurance Company changed its name to Fortis Insurance Company; effective September 6, 2005 Fortis Insurance Company changed its name to Time Insurance Company. Throughout, Time and other IHC Program members affiliated with Time, including John Alden Life Insurance Company and Fortis Benefits, have been potentially eligible for reimbursement of losses and liable for assessments for losses. Reference to Time includes any other name by which the company may have been known during the years in question, as well as its affiliates that are also IHC Program members, unless specifically identified otherwise.

and 1999/2000 calculation periods, and also demanded return of monies the Board paid and credited to Time in consideration of Time's reported losses as well as funds the Board had paid with respect to expenses that had been incurred to date in auditing of Time's reported losses. In total, AO 08-IHC-01 requires Time to repay to the Board \$2,604,920.51 in principal, plus interest payable at 1.5% per month, accruing from the date the IHC Board issued and credited the funds to Time or paid the audit expenses.

In a letter dated March 7, 2008, Time appealed AO 08-IHC-01, stating its position that: (1) it is entitled to full reimbursement of the net paid losses reflected on its original Exhibit K filings for 1997/1998 and 1999/2000 or, in the alternative, on its revised Exhibit K filings dated July 19, 2001; (2) it is entitled to the withheld loss assessment refunds due Time and its affiliates for the same time periods; (3) the obligation to repay the partial loss reimbursements does not arise unless and until an audit has concluded that Time has been overpaid reimbursements and until its appeal of AO 08-IHC-01 is ultimately resolved in favor of the IHC Board; (4) interest at 1.5% per month is an "interest penalty" and is not authorized by the statutes or regulations for repayment of loss reimbursement, and (5) the audits were improperly terminated. Time requested a hearing regarding the IHC Board's findings and determinations in AO 08-IHC-01, setting forth a statement of the disputed adjudicative facts. Time also requested a meeting with the Board and the contracted auditor, Deloitte & Touche (D&T), and access to various documents.

In a letter dated March 17, 2008, following discussions to establish a meeting date, Time requested a stay of the payment provisions of AO 08-IHC-01, pending the proposed meeting. Time's letter also stated that, having filed a formal appeal challenging the Board's right to request payment prior to resolution of the audit and to assess an interest penalty, Time did not

intend to pay the amount specified in AO 08-IHC-01, and that should the Board seek to enforce that Order, Time would take necessary steps to protect its legal rights.

The IHC Board considered Time's request for a stay at its April 8, 2008 meeting. On that date, the IHC Board voted to defer the requirement that Time pay interest pending resolution of Time's challenge to AO 08-IHC-01, but denied the request for a stay with respect to the payment of the principal amount. The Board's decision was memorialized in a letter, dated April 9, 2008, in which the Board stated Time had not met the standards for grant of the stay, having provided no arguments that would demonstrate: a probability of eventual success in the appeal; irreparable harm to Time if the stay is denied; and, that the inconvenience to Time resulting from a denial of the requested stay would outweigh the inconvenience to the Board and its constituency if the requested stay were granted. The letter instructed Time to contact the Board's accountant to arrange for payment of the \$2,604,920.51 into a segregated interest-bearing account (SIBA).<sup>2</sup>

By a letter dated May 6, 2008, Time replied with a counter proposal concerning the payment of the principal amount. Time also disputed the Board's reasoning for denying the stay. Further, Time noted that the regulations (N.J.A.C. 11:20-2.12(h) and 11:20-2.17(f)) governing placement of contested funds into a SIBA apply to administrative and loss assessments respectively, not reimbursements. Time offered – in what it referred to as a “spirit of cooperation” – to return half the principal amount to the IHC Board for placement in a SIBA, and to retain the other half in a restricted account controlled by Time. Time further proposed an agreement that N.J.A.C. 11:20-2.17(f) would apply, and that funds would only be distributed as per a settlement of the parties or in accordance with an Order issued by a court resolving all

---

<sup>2</sup> Disputed funds are held in segregated interest-bearing accounts maintained by the New Jersey Department of Treasury on behalf of the IHC Board.

outstanding issues between the parties with regard to the loss audits, including the current challenge and any future challenge to the completed audit findings.

At its June 10, 2008 Board meeting, the IHC Board voted to reject Time's May 6th proposal, and to formally modify AO 08-IHC-01.

### **Discussion**

As stated in the IHC Board's April 9, 2008 letter, there are standards for determining whether a request for preliminary relief should be granted, and it is the party requesting the relief that has the burden of proving the standards have been met. To obtain a stay, Time needed to demonstrate: irreparable harm to Time if the stay was denied; that there is a probability Time will prevail on the appeal because the law and the facts support Time's position; and, the hardship to Time if the stay were denied would outweigh the hardship to the IHC Program and its members if the stay were granted. Rather than present legal arguments in support of its request for a stay, Time's March 17th request was premised upon Time's intent to be cooperative with efforts to bring the audit to a conclusion. Because Time did not meet the standards for obtaining a stay, the IHC Board denied the request as to the principal but deferred the interest payment.

In its May 6, 2008 letter responding to the Board's notice of denial of Time's request for a stay, Time promotes a compromise position for payment of the principal amount. Time argues that it has no legal obligation to return the partial loss reimbursement payments prior to the completion of the audit. Time refers to the Acknowledgments it signed when receiving the advances and/or credits against its reimbursements for audited losses, and notes that the Acknowledgments condition request for repayment(s) upon completion of the requisite audit(s).

Time further noted that it believes that after the audits are completed, it will have no obligation to repay the advanced funds.

Time's argument suggests Time has a legal right to the money in the first instance, which is not true. The more appropriate analysis is whether Time has the legal right to retain the funds that were advanced to it in anticipation of successful completion of audits. Losses submitted to the IHC Program are reimbursable (N.J.S.A. 17B:27A-12(b)), but the statutes do not convey an unconditional right to receive reimbursements. N.J.S.A. 17B:27A-11 authorizes the IHC Board to promulgate rules, conditions and procedures pertaining to the sharing of program losses amongst members of the program, including the establishment of performance standards for carriers that are reimbursed for losses submitted to the program and the performance of audits. The IHC Board has established multiple conditions that must be met for reimbursements to be payable, including an audit verifying the amount of the losses reported by a carrier. The IHC Board's vote to advance funds to Time did not waive any of the preconditions to reimbursement, and the Acknowledgments should not be read as if they are separate from or in lieu of the rules. The underlying legal tenet remains in effect: Time's legal right to reimbursement is conditioned upon completion of an audit of Time's reported losses.

As regards Time's compromise offer, it does not serve the best interests of the IHC Program. The IHC Program derives no benefit in allowing Time to retain control of any of the funds the IHC Board has previously ordered Time to return, even if the funds are held in a restricted account by Time. However, the IHC Board affirms the deferral of the interest payment. Accordingly, the IHC Board's position, as set forth in the April 9th letter, is unchanged.

**Order**

NOW THEREFORE, pursuant to the authority granted to the IHC Board by N.J.S.A. 17B:27A-2 et seq., N.J.A.C. 11:20-1 et seq., and all powers expressed or implied therein,

IT IS on this 10th day of June, 2008, ORDERED that:

1. The provisions of AO 08-IHC-01 remain unchanged except that the requirement for Time to pay interest accruing from the date the IHC Board issued and credited funds to Time or paid audit expenses with respect to both the 1997/1998 and 1999/2000 calculation periods is hereby deferred until further notice; and

2. Time shall remit payment to the IHC Board in accordance with paragraphs 3 and 4 of AO 08-IHC-01, except as paragraph 1 above applies, within 10 business days following receipt of this Order, notwithstanding any action taken or intent expressed by Time to appeal the IHC Board's determination and request a hearing.

/s/ Mary Taylor, Chair  
Individual Health Coverage Program Board