

IN THE MATTER OF THE INDIVIDUAL	)	
HEALTH COVERAGE PROGRAM BOARD'S	)	IHC ADMINISTRATIVE ORDER
AGREED UPON PROCEDURES REVIEW	)	No. 09-IHC-02
OF PROTECTIVE LIFE INSURANCE	)	Final Decision
COMPANY'S NET PAID LOSSES FOR	)	and Order
CALENDAR YEARS 1997/1998 AND	)	
PROTECTIVE'S FAILURE TO REMIT ITS 1996	)	
LOSS ASSESSMENT	)	

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 arises from Protective Life Insurance Company’s (“Protective”) request for an independent adjudicatory hearing in response to Administrative Order 09-IHC-01 (AO 09-01), with the intent of seeking dismissal of AO 09-01 and its predecessor, Administrative Order 04-IHC-01 (AO 04-01), with prejudice. For the reasons discussed below, the IHC Board is denying Protective’s request for an independent adjudicatory hearing, finding no material facts to be in dispute and denying Protective’s request for reimbursement of losses reported on its Assessment Report for the 1997/1998 calculation period.

**BACKGROUND**

Administrative Order 04-01, which covers the period from February 1999 through August 2004, and AO 09-01, which covers the period from September 2004 through June 2009, are repeated herein and incorporated as a part of this Administrative Order. In brief, Protective – a member of the IHC Program<sup>1</sup> in 1997 and 1998 – reported net paid losses for the 1997/1998 calculation period, totaling \$577,505. As a result, the IHC Board’s contracted auditor, Deloitte & Touche (D&T), performed an agreed-upon procedure (AUP) with respect to Protective’s

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<sup>1</sup> From 1993 through 2008, one of the functions of the IHC Program, established pursuant to N.J.S.A. 17B:27A-2 et seq., was to provide a mechanism for reimbursement of losses incurred by carriers offering coverage in the individual health insurance market in New Jersey.

request for reimbursement of that amount.<sup>2</sup> Based on Protective's certification that it had \$577,505 in reimbursable losses, the IHC Board advanced funds to Protective prior to the commencement of the AUP. The advances and subsequent credits against certain liabilities accruing to Protective, were subject to completion of the AUP and Protective's agreement that it would return, within 30 days upon request, any overpayment, with interest, if the AUP did not support Protective's reported net paid losses, or supported adjustment by the IHC Board of Protective's net paid losses to an amount less than the monies advanced to Protective.<sup>3</sup> Protective eventually stated that it was unable to provide premium records as required by N.J.A.C. 11:20-2.8(c) for 11 consecutive months of the 24-month period under review. Based in part on that factor, D&T's draft AUP report indicated Protective's supporting documentation was inadequate for D&T to verify the amount of the losses Protective had reported. Therefore, on August 5, 2004, the IHC Board issued AO 04-01, demanding that Protective return monies it had received from or been credited by the IHC Board in consideration of Protective's reported net paid losses for the 1997/1998 calculation period, with interest.

Protective did not return the monies. Instead, Protective requested and the IHC Board granted an extension of the deadline for filing an appeal of AO 04-01, so that Protective could again try to get information from its former partner, American Chambers Life Insurance

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<sup>2</sup> The IHC Board promulgated regulations at N.J.A.C. 11:20 to implement the IHC Act pursuant to its authority at N.J.S.A. 17B:27A-11, which, among other things, authorizes the IHC Board to establish standards for determining whether reported unaudited net paid losses are appropriate for reimbursement. The IHC Board set forth standards for reporting losses at N.J.A.C. 11:20-8, and further specified that carriers reporting losses for reimbursement must submit to an audit of the information supporting the reported losses by independent auditors under contract with the Board, or an AUP if the dollar amount in question is low enough (see, N.J.A.C. 11:20-8.8 and N.J.A.C. 11:20-2.8). Based on the findings set forth in the independent loss audit or AUP report, the IHC Board determines whether all or a portion of the net paid losses reported by the carrier will be reimbursed. Reimbursements for the losses are funded by assessments on members of the IHC Program.

<sup>3</sup> This was the IHC Board's practice at that time, and Protective was not unique in this respect. The IHC Board has since ended this practice.

Company (American Chambers).<sup>4</sup> Over time, Protective provided more materials to D&T, but did not provide the 11-months of missing records. Protective offered instead a May 11, 1999 report by an auditor hired by American Chambers, Topel Forman LLC (“Topel”), which had reviewed some of the underlying accounting records of Protective and American Chambers with respect to the IHC block of business for the time period in question. However, in a letter dated June 29, 2005, the IHC Board advised Protective that the IHC Board did not consider the Topel Report to be a substitute for the 11 months of missing information, and requested that Protective provide documents to address the open items in D&T’s draft AUP Report.

By a letter dated July 15, 2005, Protective submitted more documentation, and presented an argument on the doctrine of substantial compliance. At the urging of the IHC Board to comply with N.J.A.C. 11:20-20.2(a)1iv, Protective submitted another letter on August 29, 2005, articulating a list of facts in apparent furtherance of its substantial compliance argument. Shortly thereafter, D&T suggested that it would proceed to issue the AUP Report in normal course if Protective would sign the management representation letter, and the IHC Board agreed. The IHC Board did not act further on Protective’s July 15 and August 29, 2005 letters at that time, and Protective continued to withhold return of the monies demanded in AO 04-01.

In January 2007, Protective signed a management representation letter negotiated with D&T, but appended a significant quantity of documentation to it. D&T could not accept the management representation letter (and thus, could not complete the AUP report in normal course) until D&T evaluated Protective’s appended documentation to determine whether Protective was establishing modifications or qualifiers to the management representation letter as a result of the appendices, and whether the documentation provided different information from

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<sup>4</sup> Protective has indicated American Chambers had possession of relevant records when American Chambers was put into rehabilitation and then liquidation by the Ohio Commissioner of Insurance in May of 2000.

materials D&T had previously seen. After its review, D&T agreed to accept inclusion of the appended documentation if further revisions to the management representation letter could be made, and sought to engage in discussions with Protective to revise the management representation letter as well as D&T's AUP Report. Protective was not responsive to D&T's attempts.

Protective asserted in a June 8, 2009 letter that D&T's requested modifications were inappropriate under the circumstances, and unnecessary to the Board's evaluation of Protective's reported losses. Protective went on to request that the IHC Board reconsider AO 04-01 based on Protective's additional submissions following issuance of AO 04-01, and the unique circumstances involved, stating that Protective is entitled to retain the loss reimbursements in question based on substantial compliance with the governing regulatory standards. In AO 09-01, the IHC Board considered and denied Protective's request for reconsideration and again denied reimbursement of Protective's reported losses for the 1997/1998 calculation period.

In addition to demanding return of the monies advanced or credited, AO 09-01 also demanded payment of an amount deriving from the IHC Board's 2006 reconciliation of the 1996 assessment for losses following the conclusion of litigation (*In re N.J. Individual Health Coverage Program's Readoption of N.J. 11:20-1 et seq.*, 179 N.J. 570 (2004)), concerning the IHC Board's assessment rules.<sup>5</sup> As a result of the 2006 reconciliation of the 1996 loss assessment, the IHC Board determined that Protective should have been assessed \$664,091.98, rather than the \$516,303.00 assessment Protective had already paid toward the reimbursable losses for the 1996 calculation period; thus, Protective owed a payment of \$147,788.98. Prior to

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<sup>5</sup> The matter involved litigation between the IHC Program and CIGNA, in which the Supreme Court found in favor of CIGNA. The IHC Board's resulting reconciliation determined that CIGNA owed substantially less money for reimbursable losses for the 1996 calculation period than previously assessed, and consequently, other carriers should have been assessed larger amounts.

issuance of AO 09-01, Protective had not yet submitted payment or otherwise responded to the IHC Board's invoice for \$147,788.98, or follow-up email from IHC Board staff.

The amount the IHC Board demanded from Protective for the 1997/1998 calculation period in AO 04-01 and the amount the IHC Board demanded in AO 09-01 varies because of reconciliations performed between the issuance of AO 04-01 and AO 09-01 with respect to losses reported for the 1997/1998 and 1999/2000 calculation periods<sup>6</sup> and administrative expenses for fiscal years 1993 through 1999,<sup>7</sup> all of which would have resulted in refunds to Protective, but for a decision by the IHC Board at its meeting on April 17, 2007 not to distribute refunds to any carriers that had reported net paid losses if the carrier's audit or AUP report remained incomplete. Accordingly, in AO 09-01, the IHC Board reduced the amount it had ordered Protective to pay in AO 04-01 (\$462,003.97, not including interest and audit costs) by \$91,315.91.<sup>8</sup> Nevertheless, adding interest,<sup>9</sup> the additional amount owed for the 1996 loss assessment, as well as 50% of the audit/AUP costs to date, the IHC Board demanded payment from Protective totaling \$621,965.01 by July 31, 2009.

Protective filed a response to AO 09-01 on July 21, 2009, requesting an independent adjudicatory hearing to create a factual record, elicit testimony and to examine witnesses regarding the facts and recitations set forth in AO 09-01 and AO 04-01. Protective's July 21, 2009 response states that it incorporates the prior request for a hearing and the statement of

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<sup>6</sup> The interim reconciliations for these two calculation periods resulted from resolution of multiple events unrelated to the facts of this matter, including adoption of new rules, resolution of a dispute with a carrier, adjustments to net earned premium based on successful appeals by carriers, and adjustments to net earned premium based on completion of several audits and AUPs.

<sup>7</sup> These reconciliations followed completion of audits of the administrative expenses of the IHC Program.

<sup>8</sup> Through the reconciliations, the IHC Board determined Protective owed \$86,503.36 less with respect to the loss assessment for the 1997/1998 calculation period, \$225.54 less with respect to the loss assessment for the 1999/2000 calculation period, and \$4,587.01 less for the administrative expense assessments, in total, that occurred for the 1993 through 1999 fiscal years of the IHC Program.

<sup>9</sup> Interest accrued on the amounts advanced and credited based on what the money in question would have earned had it been in the IHC Board's account, and was reported based on funds held in Wachovia until December 8, 2008. Interest accrued on the additional amount owed for the 1996 assessment at 1.5% per month, in accordance with N.J.A.C. 11:20-2.17(f).

material facts filed with the IHC Board on August 29, 2005. Protective's July 21, 2009 response requests a hearing in the event the IHC Board disputes any of the facts or characterizations set forth in Protective's response.

Contrary to the terms of AO 09-01, which required Protective to submit payment in full of the amounts in question regardless of any other legal action Protective intended to take, Protective did not submit a check for the total amount demanded. AO 09-01 required Protective to submit a total of \$621,965.01, specifying that the IHC Board would place the funds into a segregated interest-bearing account in the event Protective sought an appeal. Instead, Protective submitted a check relevant to the amount it was assessed based on the 2006 reconciliation of the 1996 loss assessments, plus interest at 1.5% per month as calculated by Protective to have accrued from April 2006 through July 31, 2009.<sup>10</sup> Thus, Protective submitted a check for \$147,788.98 for the 1996 loss assessment, plus \$88,673.39 in interest, for a total of \$236,462.37. Protective submitted no funds with respect to the return of advances or credits in favor of its reported net paid losses for the 1997/1998 calculation period, which include credits towards payment of Protective's share of the AUP expenses.

As specified in AO 09-01, and as requested by Protective, the IHC Board will place the funds received from Protective on July 31, 2009, into a segregated interest-bearing account.

### **DISCUSSION**

Protective's request for an adjudicative hearing on any of the facts or characterizations set forth in its July 21, 2009 response that the IHC Board disputes or disagrees with does not reflect the appropriate standard upon which to review a hearing request. There is no requirement for an agency to conduct a hearing unless there are *material* facts in dispute. Disputes about

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<sup>10</sup> The IHC Board calculates interest for late payment from the date of the invoice, which is also the date payment is due, although the IHC Board does not charge a late fee if payment is remitted within 30 days following the date of the invoice. See the section on Calculation of Interest for more discussion on the interest issues.

facts that are *immaterial* and disputes about how a fact may be characterized by use of conjecture and/or legal argument do not warrant a hearing. Because the IHC Board does not rely on any disputed adjudicative facts in reaching its conclusion, a hearing is not warranted and the Board will rule on Protective's challenge to AO 09-01 and AO 04-01.<sup>11</sup>

Protective has presented facts and opinions in support of its argument that the IHC Board should find Protective to be in *substantial* compliance with the relevant rules. Protective has stated that: it produced policy-specific premium and claim information for 13 months of the 24-month 1997/1998 calculation period; it produced the 1999 Topel Report commissioned by American Chambers, which included review of certain data for the January through November 1997 time period, and was an attestation engagement in accordance with the AICPA standards; and, it indicated that other lines of business are included in its Annual Statements, resulting in differences between information provided in the 1997 and 1998 Annual Statements and the 1997/1998 Assessment Report. These facts are not in dispute. Protective also states it has fully established its entitlement to the 1997/1998 loss reimbursement, but that is argument, not fact. Further, it is the IHC Board that establishes the criteria and process for determining whether a company's reported losses are reimbursable, and whether the company has met the requirements set forth in the Board's regulations. Protective does not dispute that it has been unable to comply with the requirements set forth in N.J.A.C. 11:20-2.8(c), but rather, argues that the IHC Board could and should relax the regulations under the circumstances. The IHC Board has not done so.

Protective has included conjecture and characterized facts in such a way as to suggest that actions or omissions of the IHC Board and/or D&T have had an adverse impact upon

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<sup>11</sup> *High Horizons Dev. Co. v. New Jersey Dept of Transp.*, 120 N.J. 40, 49 (1990); *IMO the Final Agency Decision of the Bd. of Ex. of Electrical Contractors as to Conduit Installation by J. Fletcher Creamer & Son, Inc.*, 356 N.J. Super. 42, 49 (App. Div. 2002), cert den. 176 N.J. 72 (2003); and, *Sloan ex rel. Sloan v. Klagholtz*, 342 N.J. Super. 385, 392 (App. Div. 2001).

Protective's situation, compounding Protective's potential losses and the accumulation of interest on disputed amounts. While the IHC Board takes issue with Protective's argument that the IHC Board and/or D&T should have acted more swiftly with respect to the 1997/1998 reported losses, Protective's argument in this regard does not raise a dispute as to any material facts. Protective also states that the IHC Board should have made offsets against the amount owed by Protective as a result of the 2006 reconciliation of the 1996 loss assessment, rather than offsetting against the advances demanded to be returned to the IHC Board. Again, the IHC Board disagrees with Protective's argument, but Protective's assertions on this point also raise no dispute as to the material facts at issue in this matter; rather, Protective seeks a different conclusion.

The relevant material facts are set forth in AO 04-01 and AO 09-01. Distilled, they are as follows:

1. Protective reported losses for the 1997/1998 calculation period.
2. Protective submitted to an AUP by D&T as required by IHC Program regulations.
3. Protective received money and credits from the IHC Board based on Protective's reported losses in advance of completion of the AUP.
4. Protective agreed that it could only keep the advanced funds and credits contingent upon a verification of Protective's losses, a determination of which would be based upon the audit/AUP commissioned by the IHC Board.
5. Protective agreed that if it was required to repay funds to the IHC Board, repayment would be with interest.
6. The IHC Board contracted with a single accounting firm, D&T, to perform independent audits or AUPs in accordance with IHC Program rules with respect to the reported losses of all carriers seeking reimbursement for the 1997/1998 calculation period.



7. Protective has been and continues to be unable to produce the required records for 11 consecutive months of the 24-month 1997/1998 calculation period.

8. Protective did not comply with the IHC Board's demand in AO 04-01, issued August 5, 2004, for return of the monies advanced and credited, with the interest then accrued.

9. The IHC Board did not pursue enforcement of AO 04-01 while Protective and D&T continued to exchange correspondence and documentation in an effort to bring the AUP report to a normal conclusion, but warned Protective that interest was still accruing.

10. In June 2005, the IHC Board notified Protective that the IHC Board would not accept the Topel Report offered by Protective as a substitute for the 11 months of missing information.

11. Protective signed a management representation letter in January 2007, but appended documentation to it.

12. D&T reviewed the documentation Protective appended to the 2007 management representation letter, proposed revisions to the AUP report and sent Protective a revised management representation letter, which Protective has not signed.

13. The IHC Board determined that Protective was not eligible for reimbursement of the losses it reported for the 1997/1998 calculation period, both in AO 04-01 and AO 09-01.

14. The IHC Board sent an invoice on or about March 6, 2006 to Protective for \$147,788.98 arising from the 2006 reconciliation of the 1996 loss assessment, stating that payment was due within 30 days following the date of receipt.<sup>12</sup>

15. The IHC Board sent notice of the interim reconciliations of loss assessments for the 1997/1998 and 1999/2000 calculation periods on or about December 18, 2006.

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<sup>12</sup> The invoices were sent by certified mail, return receipt. Protective received the invoice on March 14, 2006.

16. The IHC Board sent notice of the interim reconciliation of administrative assessments for fiscal years 1993 through 1999 on September 19, 2008.

17. The IHC Board offset Protective's refunds against the reimbursements and credits due from Protective.

18. Under the IHC Program as it existed from 1993 through 2008, changes in the determination of reimbursable losses and loss reimbursement assessment liability has an impact upon the interests of all members of the IHC Program based upon a carrier's market share and enrollment exemption status.

Protective's challenge to the IHC Board's determination that Protective is ineligible for reimbursement of its reported losses is based on Protective's opinions and legal arguments, not a dispute of the *material* fact. Indeed, Protective does not dispute the central fact in this matter: Protective cannot provide 11 months worth of records that N.J.A.C. 11:20-2.8(c) requires carriers reporting losses for reimbursement to submit for a full or partial audit conducted by an independent auditor selected by the IHC Board (N.J.A.C. 11:20-8.8(b)). Protective argues that it has provided information that should be sufficient for the IHC Board to conclude that reimbursement is warranted, but that is a legal conclusion for the IHC Board to make, not a factual one. As set forth more fully in AO 09-01, the IHC Board has already determined the information Protective has provided does not constitute substantial compliance with the Board's rules. Neither Protective's August 29, 2005 submission nor its July 21, 2009 submission present disputed adjudicative facts that warrant a hearing, as required by N.J.A.C. 11:20-20.2(a)1iv; the general statement in Protective's July 21, 2009 submission that it "challenges the factual predicates" upon which the Board's Orders are premised, falls far short of the requirement that it identify the material facts in dispute. Rather, Protective disputes the IHC Board's legal

conclusions, and asks the IHC Board to find in Protective's favor *notwithstanding* the undisputed material facts. Not only is there no requirement for an evidentiary hearing in such circumstances, there is nothing to be gained from an evidentiary hearing in this instance. The matter can be decided on the papers. Accordingly, the IHC Board also will not exercise its discretion pursuant to N.J.A.C. 11:20-20.2(a)3 to seek to transfer the matter to the Office of Administrative Law.

For 11 of the 24 months under consideration, Protective has been unable to provide the detailed premium data required by N.J.A.C. 11:20-2.8(c) to D&T, the auditor contracted to perform full or partial audits upon carriers seeking reimbursement for losses reported incurred in the 1997/1998 calculation period. There is no dispute about this. Protective has offered the Topel Report in lieu of the missing information. In AO 09-01, the IHC Board set forth the reasons it would not accept the Topel Report as a substitute for access to the records. Protective's July 21, 2009 submission states that Protective "challenges the IHC Board's conclusion that it has no discretion, under the unique and special circumstances presented, to consider substitute data, reports and affidavits in evaluating Protective's reported losses[.]" However, Protective mischaracterizes the basis for the IHC Board's decision. The IHC Board rejected the Topel Report because it is not a substitute for access to the premium records the IHC Board considers vital to an audit of reported losses, as clearly specified at N.J.A.C. 11:20-2.8(c). Further, the IHC Board determined that inaccessibility of nearly half of the required premium data was not a mere technical violation of the rules. Protective has offered no additional facts or arguments that would cause the IHC Board to change its position on these issues. Accordingly, the IHC Board continues to find that the Topel Report is not a substitute for the 11-months of premium records required pursuant to N.J.A.C. 11:20-2.8(c), and continues to find that

Protective has failed to provide sufficient supporting documentation to evaluate Protective's reported losses for the 1997/1998 calculation period.

Protective raises the issue of whether D&T and/or the IHC Board's actions have had an adverse impact upon Protective's situation, causing Protective to incur greater interest liability than might otherwise be the case. With respect to the interest the IHC Board has calculated to have accrued on the funds advanced and credited to Protective, the IHC Board notes that: (1) Protective knew when it took the advances that any repayment would be required to be made with interest; (2) Protective could have complied with AO 04-01 without prejudicing its appeal; and, (3) Protective was advised more than once that interest was continuing to accrue after Protective chose not to remit the funds demanded by AO 04-01. Protective chose to accept the advances and credits subject to the terms offered, and Protective made the decision not to comply with AO 09-01.

Protective also argues that it was inappropriate for the IHC Board to apply Protective's refunds against the 1997/1998 calculation period advances and credits because the IHC Board lacked authority to do so. However, Protective then argues that it had a reasonable expectation that the IHC Board would apply the refunds against Protective's 1996 loss assessment liability, even though at the time Protective owed the increased loss assessment – in March of 2006 – Protective could not have known it would be owed a refund based on reconciliations issued in December 2006 and September 2008. Clearly, Protective does not really argue that the IHC Board lacks authority to use the refunds to offset other liabilities; rather it would prefer that the IHC Board had offset the refunds differently. Consequently, Protective argues that it owes no interest on the payment of the 2006 reconciliation of the 1996 loss assessments. Had Protective paid the assessment within 30 days of the date of the invoice, that would be true. However,

Protective did not pay the invoice for more than three years, and in accordance with N.J.A.C. 11:20-2.17(f)1i, interest begins to accrue at 1.5%/month if the invoice has not been paid within 30 days following the date of the invoice.

### **Calculation of Interest**

Protective brought to the attention of the IHC Board that AO 09-01 suggests an inaccurate calculation of the interest accruing at 1.5% per month with respect to the \$147,788.98 amount assessed Protective as a result of the 2006 reconciliation of the 1996 loss assessment. Although not stated explicitly, AO 09-01 indicates that the amount of interest accrued through July 31, 2009 on the \$147,788.98 totals \$7,716.14. The actual accrued amount is much larger. Based on the number of days payment was overdue (from March 9, 2006 through July 31, 2009), the interest accrued totaled \$92,580.48. Because AO 09-01 explicitly required Protective to render \$621,965.01 by July 31, 2009, the IHC Board would have accepted that amount as compliance with AO 09-01 had Protective submitted a check in that amount by the due date. However, Protective did not. Protective withheld the monies stipulated in AO 09-01 to be paid to the IHC Board as return of funds advanced or credited to Protective in consideration of Protective's reported net paid losses, plus interest on those amounts. In addition, although Protective remitted far more with respect to the late payment penalty than was indicated due in AO 09-01, the amount Protective remitted was \$3,907.09 less than the amount the IHC Board calculates as due for the late payment of the 2006 reconciliation of the 1996 loss assessment. This difference may result in large part because Protective has assumed interest accrues beginning at some point in April 2006, rather than March 9, 2006.<sup>13</sup> The IHC Board is seeking the additional late payment interest as part of this Order.

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<sup>13</sup> See footnote 10, as well as N.J.A.C. 11:20-2.17(f).

Also, interest continues to accumulate with respect to the advances and credits made to Protective. The interest included in AO 09-01 was calculated through early December of 2008. The IHC Board has received the interest calculation from the New Jersey Department of Treasury applied from December 5, 2008 through June 30, 2009. Had Protective complied with AO 09-01, the IHC Board would not seek any additional interest on the advances and credits Protective owes to the IHC Program. However, the IHC Board is seeking additional interest totaling \$2,966.10 as part of this Order, because the principle amount owed is still outstanding.

### **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 \* day of August, 2009, ORDERED that:

1. Protective's request for an adjudicatory hearing is denied.
2. Protective's request for reimbursement of losses reported on its Assessment Report for the 1997/1998 calculation period is hereby denied.
3. Within seven (7) days of receipt of this Order, without regard to any other action Protective may take or intend to take in this matter, in accordance with the instructions set forth in paragraph 4, Protective shall submit \$473,334.18, which includes: \$379,148.56 as the sum of Protective's portion of the audit costs plus the cash advanced and credits made by the IHC Board to Protective minus Protective's refunds due from the 1993-1999 administrative assessment reconciliation and the refunds due from the 1997/1998 and 1999/2000 loss assessment reconciliations; \$90,278.53 as the sum of the interest accrued on the cash advances and credits to December 2008 plus the additional interest accrued from December 2008 through June 30, 2009; and \$3,907.09 as the sum of the interest that remains uncollected following Protective's

payment with interest of its additional assessment resulting from the 2006 reconciliation of the 1996 loss assessment. The IHC Board shall place the additional \$473,334.18 in the same segregated interest-bearing account in which funds remitted by Protective by check (#1295901) on July 31, 2009 were placed, until such time that the matter shall be resolved through settlement or by order of a court of competent jurisdiction.

4. Protective shall comply with paragraph 3 by:

a. Issuing a check payable to “Treasurer – State of New Jersey/Individual Health Coverage Program” and mailing the payment to the IHC Program to the attention of Rosaria Lenox at 20 West State Street, 11th Floor, P.O. Box 325, Trenton, NJ 08625-0325; or

b. Remitting the funds by wire transfer to Wachovia Bank, N.A. (P.O. Box 7618, Philadelphia, PA 19101-7618), instructions for which can be obtained by contacting Rosaria Lenox, Program Accountant, Individual Health Coverage Program by fax at (609) 633-2030, by email at [rosaria.lenox@dobi.state.nj.us](mailto:rosaria.lenox@dobi.state.nj.us), or by phone at (609) 633-1882 ext. 50303.

5. This Order amends and supplements AO 04-01, issued August 5, 2004 and AO 09-01, issued June 29, 2009, and is a final decision from which Protective may make an appeal with the Superior Court, Appellate Division, within 45 days from the date of this Order.

6. Nothing in this Order shall be construed to limit the rights of the Commissioner of Banking and Insurance to take action against Protective as may be available to the Commissioner under law.

/s/ Mary Taylor, Chair  
Individual Health Coverage Program Board of Directors  
\*issued August 19, 2009