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

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"),[1] a member of the IHC Program, for the 1997/1998 and 1999/2000 two-year calculation periods, for which Time seeks reimbursement. For the reasons set forth below, the IHC Board has determined that Time has failed to meet the conditions for reimbursement of losses for the 1997/1998 and 1999/2000 calculation periods and orders that Time repay monies that were remitted and credited to Time by the Board in anticipation of Time's satisfaction of the conditions for reimbursement for Time's reported losses, with interest.

Background

The IHC Board was created pursuant to N.J.S.A. 17B:27A-10 as part of the enactment of L. 1992, c. 161 (N.J.S.A. 17B:27A-2 et seq.) (the "IHC Act"). The IHC Act was enacted to address a crisis in the availability of "individual" health coverage -- that is, medical and hospital coverage for people not eligible to be insured under a group health insurance policy or Medicare (definition of "eligible person" at N.J.S.A. 17B:27A-2). To increase availability of individual health coverage, the IHC Act provides two incentives for carriers to offer individual health

[1] 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

benefits plans. As one incentive, the IHC Act permits a carrier that writes individual health benefits plans to seek reimbursement of some of the losses the carrier incurs for its individual health benefits plans (N.J.S.A. 17B:27A-12a(1)(b)). Reimbursements for the losses are funded by assessments on members of the IHC Program ("loss assessments"). With rare exception, carriers that have inforce health benefits plans in New Jersey are IHC Program members, regardless of whether a carrier offers health benefits plans in the individual, small employer, and/or large employer markets.[2] Thus, carriers bear some liability for loss assessments *whether or not they actively participate* in the individual market. However, as the second incentive for carriers to offer individual health benefits plans, the IHC Act permits a carrier that writes individual health benefits plans in New Jersey to elect to become exempt from liability for loss assessments **if** the carrier enrolls an assigned number of individual lives (N.J.S.A. 17B:27A-12d).[3]

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. The IHC Board set forth standards for reporting losses at N.J.A.C. 11:20-8. In order to collect uniform information about the net paid losses asserted to have been incurred by IHC Program members for their individual market business (that is, unaudited net paid losses), the Board developed the Assessment Report.[4] Every IHC Program member was required to file an Assessment Report no later than March 1

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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.

[2] Pursuant to N.J.S.A. 17B:27A-2, a carrier is not considered to be a member of the IHC Program if the carrier's combined average Medicare, Medicaid, NJ FamilyCare and NJ KidCare enrollment represents more than 75% of its average total enrollment for all health benefits plans or whose combined Medicare, Medicaid, NJ FamilyCare and NJ KidCare net earned premium for the two-year calculation period represents more than 75% of its total net earned premium for the two-year calculation period.

[3] A carrier may not seek both reimbursement for losses and exemption from loss assessments for the same time periods. (N.J.A.C. 11:20-9.2(b)3.)

[4] The Assessment Report – originally called the "Carrier Market Share and Net Paid Loss Report" – actually is used multiple ways: to derive net paid losses, to determine loss assessment allocations, and to determine target

following the end of each calculation period.[5] However, the IHC Board does not accept the unaudited net paid losses reported by IHC Program members as the basis for reimbursable losses without further testing of the information. N.J.S.A. 17B:27A-11 authorizes the IHC Board to establish standards for determining whether reported unaudited net paid losses are appropriate for reimbursement. To evaluate whether the losses for which a carrier is seeking reimbursement qualify as net paid losses, the IHC Board commissions independent audits of the information supporting the reported losses pursuant to N.J.A.C. 11:20-8.8 (loss audits). The IHC Board's contracted independent audit firm is charged with auditing the elements on the Assessment Report that comprise the net paid loss amount: (1) premium earned; (2) claims paid; and (3) net investment income. Upon the conclusion of an independent loss audit, and based on the findings set forth in the independent loss audit report, the IHC Board may determine it necessary to adjust the reimbursable net paid losses set forth in the Assessment Report. A carrier is obligated to cooperate in the conduct of an audit. N.J.A.C. 11:20-8.8.

As required by N.J.A.C. 11:20-8.2, Time filed a 1997/1998 Assessment Report on April 22, 1999 and a 1999/2000 Assessment Report on March 9, 2001. Following a review of Time's 1997/1998 Assessment Report, it became apparent that Time used a different methodology than that set forth in the Board's rules in calculating net investment income.[6] At the Board's request, Time subsequently revised the Assessment Reports for both calculation periods with respect to

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enrollment numbers on which exemptions from assessment are later based. Note, the reporting form is more commonly referred to as Exhibit K because it is found at Exhibit K of the Appendix to the IHC Board's regulations.

[5] The loss calculation period was originally a one year period, but became a two-year cycle pursuant to P.L. 1997, c. 146. Thus, the Assessment Report for the 1997/1998 calculation cycle was due in March 1999, and the Assessment Report for the 1999/2000 calculation cycle was due in March of 2001. (Note: the filing date for Assessment Reports is now April 1, beginning with the 2005/2006 calculation cycle.)

[6] A point of contention between the Board and Time is how net investment income is calculated based on "inception to date." Time disagrees with the standard set forth in the IHC Board's rules (and further clarified by Bulletin 99-IHC-02), and did not originally submit its Assessment Reports for either calculation period consistent with the rules.

the reported net investment income, with the most recent revisions submitted on July 19, 2001.[7] The IHC Board commissioned independent audits for the carriers that sought reimbursements for the 1997/1998 and/or 1999/2000 calculation periods, including Time.

In the meantime, the IHC Board authorized interim distributions to be made to Time (and other carriers seeking reimbursement for losses) from the loss assessments that had been collected, contingent upon receipt of a signed certification from all such carriers setting forth wire transfer information and the carrier's agreement to return any overpayments with interest to the Board. The IHC Board voted on December 21, 1999, April 11, 2000, and August 8, 2000, to make distributions towards loss reimbursements for the 1997/1998 period. As noted in IHC Board minutes for December 21, 1999, the distribution was contingent upon receipt from the carrier of a signed certification agreeing that the losses were subject to audit, and advanced monies would be returned to the IHC Program, with interest, if the advance exceeded what could be determined to be due to the carrier. Time submitted a signed certification for the 1997/1998 distribution dated March 3, 2000. The IHC Board voted on July 9, 2002 to make distributions towards loss reimbursements for the 1999/2000 period. Time signed a certification dated August 1, 2002 with respect to the distributions for the 1999/2000 period. The Board provided Time with partial payments, assessment credits and advanced payments of audit fees [8] totaling $1,940,653.22 for 1997/1998 and $664,267.29 for 1999/2000.

The auditor contracted by the Board to perform the independent audits, Deloitte & Touche (D&T), requested that every carrier provide information supporting the carrier's reported

[7] Time agreed to revise its Assessment Reports, without conceding its arguments on the issue.

[8] In instances in which an affiliate company owes loss assessments, the Board may authorize an affiliate's loss assessment total to be offset by the loss reimbursement reportedly due to another affiliate. In the case of Time, its affiliates, John Alden Life Insurance Company and Fortis Benefits, received credits against loss assessments. In addition, the IHC Board pays the audit fees as they occur, and then deducts 50% of the costs from the reimbursable losses owed to the carrier.

premium earned, claims paid and net investment income. Among other things, in the context of an audit, D&T considers information regarding cash flow and accounting methods, and appropriateness of premium billing, collection and allocation. D&T also reviews samples of actual claims that the carrier identifies as belonging to its IHC book of business to determine the appropriateness of the claim payments and inclusion of such claims in the IHC book of business. See N.J.A.C. 11:20-8.5(c). D&T requested information from Time to address certain questions that arose during D&T's audit concerning several issues. For instance, D&T requested further information regarding Time's cash flow statements, re-rating implementation delays, claims handling and allocation of settlements to claims data. Time provided some, but not all, of the information. Thus, at this time, the independent audits of Time for the 1997/1998 and 1999/2000 calculation periods remain incomplete because Time has repeatedly failed to provide all information necessary for D&T's evaluation, in particular data concerning the claims paid by Time. D&T's review of claims data resulted in unacceptable error rates for sampling purposes, which prompted D&T to request more claims detail for both the 1997/1998 and 1999/2000 calculation periods. It should be noted that although Time and the Board disagree regarding the calculation of the net investment income[9] (Time's calculation would result in greater reimbursable losses for the periods in question), the net investment income issue is **not** a barrier to completion of the net paid loss audits because Time revised its Assessment Reports, and D&T used the revised reports to evaluate the net investment income factor for the net paid losses.

The IHC Board requested that Time cooperate with the auditor on multiple occasions. By letters dated December 29, 2004, May 4, 2005, and June 7, 2006, the IHC Board requested that Time provide appropriate claim files to the auditors for testing and that Time consent to the

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[9] Net investment income is one element of the net paid loss amount, and thus, is part of the loss audit. N.J.A.C. 11:20-8.5.

testing. On July 16, 2007, as part of a response to correspondence from Time, dated February 21, 2007, the IHC Board again gave Time notice that Times' information submitted to date was insufficient for D&T's audit, and that Time still needed to present a signed management representation letter to D&T. The IHC Board requested that Time respond to D&T's prior requests for information and the management representation letter no later than August 31, 2007.

While Time has provided some additional information in response to requests, the information submitted continues to be inadequate, including the information submitted most recently at the end of August 2007. Specifically, Time has failed to provide detail sufficient for D&T to determine whether incurred claims during the calculation period on which Time's reported losses are based were limited to claims paid for individuals who were New Jersey residents, and whether claims were paid consistent with the terms of the IHC Program contracts and law. D&T has stated that it cannot complete the audit without the requested information. In addition, Time still has not signed a management representation letter. A management representation letter sets forth the responsibility of an organization's management with respect to its financial statements and typically states that management has provided all documentation to the auditors that management believes had or may have an impact upon the financial statements and the attendant audit.[10]

<u>Discussion</u>

IHC Program members are eligible to receive reimbursement of losses incurred with respect to individual health benefits plans offered in New Jersey. By law, individual health

[10] On January 7, 2008, Keith DeCroix, a Senior Manager of D&T's Audit & Enterprise Risk Services, sent an email to IHC Program staff updating progress on multiple audits for which D&T had been engaged. With respect to Time, Mr. DeCroix stated "…the August 31, 2007 letter and attachments [from Time] did not include revised claims activity, (sic) illustrating amounts that the board would determine are representative of covered claims. Instead, the package included support for previously made selections. It was our understanding that [Time] would be revising their "claims listing" to one that complies with the board's view of acceptable, or reimbursable claims. This revised

benefits plans are only available to eligible persons, who must be New Jersey residents at the time the policy is issued and remain New Jersey residents during the period of coverage. Additional requirements are set forth at N.J.A.C. 11:20-8.5(c) with respect to those claims that should (and should not) be included on the Assessment Report. Among other things, claims should only be included if paid in accordance with the terms and conditions of the individual health benefits plans, and the IHC Board may adjust the carrier's reported losses if an audit determines that claims were not paid consistently with the terms of applicable contracts and applicable law. (See N.J.A.C. 11:20-8.8(c)). For example, if a carrier pays a claim for an uncovered service, such as cosmetic surgery, the claim would not be reimbursable.

The IHC Board has a fiduciary duty set forth by law to review each IHC Program member's reported losses to determine whether the reported losses are appropriate, and to assure that losses are equitably distributed among IHC Program members.[11] N.J.S.A. 17B:27A-11 and 12. Accordingly, the IHC Board has promulgated regulations requiring that IHC Program members seeking reimbursements for losses respond to requests for additional information, and cooperate with audits, so that the IHC Board may accomplish its oversight activity and assure equitable distribution of losses. See N.J.A.C. 11:20-2.8(c) and 8.8. Carriers are required to respond to requests for information in a timely manner. The IHC Board has always retained the option of terminating an audit in the event that a carrier being audited is not cooperative and the audit can not be completed. N.J.A.C. 11:20-8.8(b). Simply put, the Board must assure itself that the reported losses are appropriate before reimbursing a carrier for the losses. If a carrier fails to

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claims listing would then be subjected to audit procedures." Mr. DeCroix went on to note that Time still had not corresponded with D&T regarding the management representation letter either.

[11] Even IHC members entitled to reimbursement of losses bear some liability for their losses; hence claims paid for all health benefits plans during the two-year calculation period must exceed 115% of the net earned premium and any investment income thereon for the two-year calculation period before being considered eligible for reimbursement.

fully cooperate with the audit, it is impossible for the Board to carry out its statutory and fiduciary responsibilities.

Although Time has provided documentation to the auditing firm, including multiple sets of the same claims data, Time has not submitted sufficient supporting documentation for D&T to fully evaluate identified claims about which D&T continues to have questions regarding, for instance, move-out dates, classification of services received, application of coverage penalties and claims settlements. The information is necessary for D&T to determine whether the claims and claim amounts are appropriately allocated to the IHC book of business in accordance with the Board's regulations. Time has not effectively cooperated with further claims testing or provided a signed management representation letter that would be necessary for the audit to be completed. Time's failure to provide the requested documentation and consent appears not to be merely a matter of oversight or misunderstanding; Time has indicated that it would be willing to comply with all of the requests upon the condition that the IHC Board give Time a written statement waiving certain rights in a lawsuit by Time with respect to the net investment income dispute. Because there is no provision in the Board's rules for conditional cooperation by carriers seeking loss reimbursements, the IHC Board has declined to issue such a statement.

Because of Time's actions, it now appears that the audit can not be completed, and consequently, Time's reimbursable losses cannot be verified. Accordingly, the IHC Board finds that Time is not entitled to reimbursement for net paid losses as set forth on the Assessment Report for the 1997/1998 and 1999/2000 calculation periods, and further finds that Time is not entitled to any adjusted amount of net paid losses that might have been determined from the completed audits specifically because the audits can not be completed. In addition, the IHC Board finds that, because Time is not eligible for any reimbursable losses for the 1997/1998 and

1999/2000 calculation periods, Time is not entitled to either the monies advanced by the IHC Board to Time pending completion of the audits or the credits against assessments afforded to Time's affiliates pending completion of the audits.

Finally, the IHC Program shares the cost of the audits performed for reimbursable losses with the carrier being audited on an equal basis. (See N.J.A.C. 11:20-8.8(b).) The IHC Board pays the full costs of the audit as they occur, and later charges 50% of the cost back to the carrier. In most instances, the IHC Board will reduce the carrier's audited loss reimbursement by the amount the IHC Board advanced the carrier for the carrier's share of the audit expenses. Because the IHC Board finds Time is not entitled to reimbursement of any losses, there is nothing against which to offset Time's share of the audit expenses for the 1997/1998 or 1999/2000 calculation periods. Accordingly, the IHC Board finds that Time owes the IHC Board 50% of the costs billed by D&T and paid for by the IHC Board for the performance of the audits of Time for the 1997/1998 and 1999/2000 calculation periods.

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 11th day of February, 2008, ORDERED that:

1. Time's requests for reimbursement for losses for the 1997/1998 calculation period is hereby denied; and

2. Time's requests for reimbursement for losses for the 1999/2000 calculation period is hereby denied; and

3. Time shall return the monies the Board paid and credited to Time in consideration of Time's reported losses for the 1997/1998 calculation period and related audit expenses, totaling

$1,940,653.22 (reimbursement amounts = $1,006,743.39; assessment credits = $887,225.08; and, audit expenses = $46,684.75) with interest at 1.5% per month accruing from the date that the IHC Board issued and credited the funds to Time or paid the audit expenses, in accordance with the dates as set forth on the attached transaction report, incorporated herein by reference; and

4. Time shall return the monies the Board paid and credited to Time in consideration of Time's reported losses for the 1999/2000 calculation period and related audit expenses, totaling $664,267.29 (reimbursement amounts = $600,316.90; assessment credits = $23,510.39; and, audit expenses = $40,440.00), with interest at 1.5% per month accruing from the date that the IHC Board issued and credited the funds to Time or paid the audit expenses, in accordance with the dates as set forth on the attached transaction report, incorporated herein by reference; and

5. Time shall comply with paragraph 3 and 4 above no later than 30 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; and

7. Consistent with N.J.A.C. 11:20-8.8(b), Time continues to be responsible for audit expenses related to the audits of Time's reported 1997/1998 and 1999/2000 losses that may be billed by D&T subsequent to the date of this Order; and

6. In the event that Time appeals the IHC Board's determination in accordance with N.J.A.C. 11:20-8.9, the IHC Board shall, upon Time's request, place the monies returned or newly paid by Time (and its affiliates) to the IHC Board, in a segregated interest-bearing account until such time that the matter shall be resolved.

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

New Jersey Individual Health Coverage Program Activity Related to the 1997/1998 Losses for Fortis (Time)			
Date	Description	Transaction Amount	Totals
11/17/99	Assessment Credit – Time	281,014.04	
11/17/99	Assessment Credit – John Alden	606,211.04	
3/23/00	Reimbursement	294,774.70	
4/12/00	Reimbursement	497,954.22	
8/22/00	Reimbursement	214,014.47	
8/3/01	Audit fees*	3,055.00	
9/12/01	Audit fees	16,315.00	
10/12/01	Audit fees	5,265.00	
11/14/01	Audit fees	2,470.00	
1/14/02	Audit fees	4,225.00	
5/22/02	Audit fees	1,755.00	
9/18/02	Audit fees	3,185.00	
8/11/03	Audit fees & expenses	7,841.75	
9/15/04	Audit fees & expenses	2,573.00	
	Assessment Credits		887,225.08
	Reimbursements		1,006,743.39
	Audit fees & expenses		46,684.75
	Total		**1,940,653.22**

New Jersey Individual Health Coverage Program Activity Related to the 1999/2000 Losses for Fortis (Time)			
Date	Description	Transaction Amount	Totals
8/3/01	Audit fees*	2,448.00	
9/12/01	Audit fees	17,136.00	
10/12/01	Audit fees	204.00	
11/14/01	Audit fees	952.00	
1/14/02	Audit fees	6256.00	
3/25/02	Assessment credit – Fortis	7,005.52	
3/25/02	Assessment credit – Time	16,504.87	
5/22/02	Audit fees	2,380.00	
8/16/02	Reimbursement	600,316.90	
9/18/02	Audit fees	2,448.00	
8/11/03	Audit fees	6,606.00	
9/15/04	Audit fees	2,010.00	
	Assessment credits		$ 23,510.39
	Reimbursements		600,316.90
	Audit fees & expenses		40,440.00
	Total		**$ 664,267.29**

*All audit fees and expenses represent 50% of the amount billed by the auditor.