

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE IMPOSITION OF)
A SURCHARGE FOR RECOUPMENT OF)
THE NEW JERSEY PROPERTY-LIABILITY) ORDER
INSURANCE GUARANTY ASSOCIATION)
ASSESSMENT DUE DECEMBER 1, 2004 AND)
IMPOSED PURSUANT TO N.J.S.A. 17:30A-8a(3))

This matter having been opened by the Commissioner of Banking and Insurance ("Commissioner") pursuant to the authority of N.J.S.A. 17:1-8.1, 17:1-15e, and 17:30A-1 et seq., and N.J.A.C. 11:1-6, and all powers expressed or implied therein; and

IT APPEARING that N.J.S.A. 17:30A-8a(3) requires the New Jersey Property-Liability Insurance Guaranty Association ("Association") to assess its member insurers in amounts necessary to pay covered claims of insolvent insurers under N.J.S.A. 17:30A-1 et seq., the expenses of handling covered claims, the costs of examinations, and other authorized expenses; and

IT FURTHER APPEARING that P.L. 2003, c.89, enacted June 9, 2003 (the "Act"), consolidates within the Association several administrative functions related to payment of automobile insurance claims, including the elimination of the Unsatisfied Claim and Judgment Fund ("UCJF") Board and the transfer of the powers and duties of the UCJF Board to the Association; and

IT FURTHER APPEARING that the Act amended N.J.S.A. 17:30A-8a(3) to provide that the Association shall also assess member insurers in amounts necessary to reimburse an insurer

for medical expense benefits in excess of \$75,000 per person per accident (“EMB”) as provided in N.J.S.A. 39:6-73.1 for injuries covered under an automobile insurance policy issued prior to January 1, 2004; and

IT FURTHER APPEARING that by notice dated October 15, 2004, the Association assessed each member insurer 0.75 percent of the net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies, which assessment is to be paid on or before December 1, 2004; and

IT FURTHER APPEARING that N.J.S.A. 17:30A-1 et seq. applies to all kinds of direct insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance, and pet health insurance; and

IT FURTHER APPEARING that N.J.S.A. 17:30A-16a requires the Commissioner to promulgate rules by which member insurers may recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) by way of a surcharge on premiums; and that N.J.S.A. 17:30A-16c provides that member insurers shall recoup amounts assessed for reimbursement of EMB within two years of the date the assessment has been paid; and

IT FURTHER APPEARING that in order to implement the provisions of N.J.S.A. 17:30A-16a, the Commissioner adopted administrative rules at N.J.A.C. 11:1-6, effective September 3, 1991, which require that, upon a determination that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), the Commissioner shall by order permit member insurers to impose a surcharge on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies;

and adopted amendments to these rules effective December 15, 2003 to reflect N.J.S.A. 17:30A-16c; and

IT FURTHER APPEARING that since, by notice dated October 15, 2004, each member insurer has been assessed in an amount equal to 0.75 percent of the net direct written premiums on insurance policies written by the member insurer to which N.J.S.A. 17:30A-1 et seq. applies, it is appropriate and reasonable to permit member insurers that pay or have paid the assessment due by December 1, 2004 pursuant to N.J.S.A. 17:30A-8a(3) to recoup the amount of the assessment by imposing a surcharge on net direct written premiums written by the member insurer in an amount of 0.75 percent; and

IT FURTHER APPEARING that since the net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies for the calendar year ended December 31, 2003 was approximately \$12.8 billion, such a surcharge should permit member insurers to recoup the assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time and is otherwise consistent with the time period for recoupment set forth in N.J.S.A. 17:30A-16c with respect to assessments for EMB; and

IT FURTHER APPEARING that, on February 24, 2004, the Commissioner issued Order No. A04-106, which permitted insurers to recoup the assessment due on March 17, 2004 by imposing a surcharge in the amount of one percent on policies to which N.J.S.A. 17:30A-1 et seq. applied that were issued or renewed on or after April 1, 2004 and, accordingly, the maximum amount of surcharge on any policy to which such a surcharge may be applied to recoup the March 17 and December 1, 2004 assessments may not exceed 1.75 percent of the policy premium per annum; and

IT FURTHER APPEARING that consistent with procedures established in Order No. A94-224 and utilized with respect to recoupment of all subsequent assessments, this Order provides that, to the extent an insurer had recouped in excess of this or any prior assessment, such an insurer shall utilize those excess monies as an "offset" to the assessment and shall not impose any surcharge to recoup the assessment unless and until the offset is exhausted and the insurer at that time has not fully recouped the assessment; and

IT FURTHER APPEARING that the procedures established by this Order should permit member insurers to recoup the assessment due on or before December 1, 2004 and paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time and consistent with N.J.S.A. 17:30A-16c; and

IT FURTHER APPEARING that it is reasonable and appropriate to provide member insurers sufficient time to implement or modify necessary recordkeeping and other systems to impose the surcharge in accordance with N.J.A.C. 11:1-6 and the terms of this Order, and it is appropriate to permit member insurers to impose a surcharge on policies which are issued or renewed on or after January 1, 2005.

THEREFORE IT IS on this 3rd day of November, 2004

ORDERED that:

1. Except as provided in paragraph 3 below, every member insurer of the Association that has paid an assessment to the Association due December 1, 2004 pursuant to N.J.S.A. 17:30A-8a(3) may impose a surcharge in an amount not to exceed 1.75 percent of the net direct written premiums per annum, inclusive of the surcharge that previously may have been imposed pursuant to Order No. A04-106, for all kinds of insurance written by the member insurer except life insurance, accident and health insurance, workers' compensation insurance,

title insurance, annuities, surety bonds, credit insurance, mortgage guarantee insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance, and pet health insurance, on policies which are issued or renewed on or after January 1, 2005.

2. Insurers imposing a surcharge pursuant to the terms of this Order shall comply with the requirements set forth in N.J.A.C. 11:1-6.

3. To the extent a member insurer has recouped amounts in excess of any prior assessment through imposition of the surcharge established pursuant to an applicable Order of the Commissioner, the insurer shall utilize those excess monies as an offset against the assessment due December 1, 2004 in lieu of imposing a surcharge to recoup such assessment until such offset is exhausted. If each offset is exhausted and the insurer at that time has not fully recouped the current assessment due December 1, 2004, the insurer shall be permitted to impose a surcharge in accordance with the terms of this Order.

4. Every member insurer that has fully recouped the assessment due December 1, 2004 through imposition of the surcharge set forth in paragraph 1, or through utilization of the offset set forth in paragraph 3, shall not impose the surcharge or shall cease the imposition of the surcharge, as appropriate, at such time as the insurer has fully recouped the assessment.

5. Every member insurer that recouped amounts through imposition of any surcharge in excess of the assessment due December 1, 2004 paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) shall hold and separately account for such monies and shall not expend or utilize such excess monies under any circumstances except as may be authorized by the Commissioner.

Failure to comply with the terms of this Order may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33-2.

/s/ Donald Bryan
Donald Bryan
Director
Division of Insurance

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