

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 FEBRUARY 12, 2003 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 by notice dated December 27, 2002, the Association assessed each member insurer one-fourth of one 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 February 12, 2003; 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

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

IT FURTHER APPEARING that since each member insurer has been assessed in an amount equal to one fourth of one 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 have paid the assessment due by February 12, 2003 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 one fourth of one 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, 2001 was approximately \$9.9 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

IT FURTHER APPEARING that the Association had assessed each member insurer one third of one percent of the net direct written premiums for policies written by the insurer to which N.J.S.A. 17:30A-1 et seq. applies, which assessment was to be paid on or before April 15, 1991 ("April 15, 1991 assessment"); and similarly assessed each member insurer in the same amount, which was to be paid on or before December 1, 1994 ("December 1, 1994 assessment");  
and

IT FURTHER APPEARING that, consistent with the procedures established by N.J.A.C. 11:1-6, the Commissioner issued Order No. A91-324 on October 3, 1991, which permitted every member insurer of the Association that paid an April 15, 1991 assessment to the Association, which assessment had not been recouped as of September 3, 1991, to impose a surcharge in the amount of one third of one percent of the net direct written premiums for all kinds of insurance written by the insurer to which N.J.S.A. 17:30A-1 et seq. applies, on policies which were issued or renewed on or after November 1, 1991; and issued Order No. A94-224 on December 29, 1994, which permitted member insurers that paid the December 1, 1994 assessment to impose a surcharge to recoup that assessment in the same amount and manner as provided in Order No. A91-324; and

IT FURTHER APPEARING that the Association did not assess its members pursuant to N.J.S.A. 17:30A-8a(3) in 1992, 1993 or 1995; and

IT FURTHER APPEARING that the Commissioner ordered in Order No. A92-331, issued on December 3, 1992, that to the extent an insurer had recouped amounts through imposition of the surcharge in excess of the April 15, 1991 assessment, that insurer shall hold

such monies collected in a separate liability account and shall not expend such monies under any circumstances, pending distribution pursuant to procedures established by the Commissioner; and that Order No. A94-224 provided the same requirements with respect to the December 1, 1994 assessment; and

IT FURTHER APPEARING that pursuant to Order No. A94-224, the Commissioner ordered that to the extent an insurer had recouped in excess of the April 15, 1991 assessment, such an insurer shall utilize those excess monies as an "offset" to the assessment due December 1, 1994 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 these same procedures were utilized with respect to the recoupment of the assessments due in subsequent years; and

IT FURTHER APPEARING that it is also reasonable and appropriate to utilize these same procedures to the extent an insurer has recouped in excess of any prior assessment; and

IT FURTHER APPEARING that the procedures established by this Order should permit member insurers to recoup the assessment due on or before February 12, 2003 and paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time; and

IT FURTHER APPEARING that it is reasonable and appropriate to provide member insurers sufficient time to provide 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 March 1, 2003.

THEREFORE

IT IS on this 30<sup>th</sup> day of January, 2003

ORDERED that:

1. Except as provided in paragraph 3 below, every member insurer of the Association that pays or has previously paid an assessment to the Association due February 12, 2003 pursuant to N.J.S.A. 17:30A-8a(3) may impose a surcharge in the amount of one fourth of one percent of the net direct written premiums 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 March 1, 2003.

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 February 12, 2003 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 February 12, 2003, 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 February 12, 2003 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 February 12, 2003 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/ Holly C. Bakke  
Holly C. Bakke  
Commissioner

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