

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF
THE MEDICAL MALPRACTICE
RATE INCREASE OF:

HEARING NO. 06-HR-0777

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG, PA
FILE NO. #AIC-05-EO-06

ORDER

I, Michael T. McRaith, Director of the Illinois Department of Financial and Professional Regulation, Division of Insurance hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Timothy M. Cena, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, attached hereto and made a part hereof.

I, Michael T. McRaith, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Sections 155.18, 401, 402 and 403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/401, 5/402 and 5/403) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et. seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1 et. seq.). This Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 3/101- et. seq.).

NOW IT IS THEREFORE ORDERED THAT:

- 1) National Union Fire Insurance Company of Pittsburg, PA, Filing #AIC-05-EO-06 is approved;
- 2) National Union Fire Insurance Company of Pittsburg, PA shall pay as costs of this proceeding, within 35 days of the date of this Order, the sum of \$190.00, directly to the Illinois Division of Insurance, Tax and Fiscal Service Unit, 320 W. Washington, 4th Floor, Springfield, Illinois 62767.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the
State of Illinois;

DIVISION OF INSURANCE

Date: March 5, 2007



Michael T. McRaith
Director

STATE OF ILLINOIS



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HEARING NO. 06-HR-0777

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Timothy M. Cena, Hearing Officer in the above captioned matter and offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On November 14, 2005, National Union Fire Insurance Company of Pittsburg, PA (the Company) submitted for review to the Illinois Division of Insurance (Division) its Dentist Professional Liability Program Rate and Rule Filing #AIC-05-EO-06 (the Filing) (see Division Exhibit # 1).
- 2) On November 6, 2006 the Illinois Director of Insurance, Michael T. McRaith (Director) issued a Notice of Hearing to the Company pursuant to Section 155.18 of the Illinois Insurance Code (215 ILCS 5/155.18). The Notice required the Company to appear at a Hearing at the Division's Offices in Springfield, Illinois in order to determine if the Company's Filing was in compliance with Section 155.18 (see Hearing Officer Exhibit # 2).

- 3) On November 6, 2006, the Director appointed Timothy M. Cena as Hearing Officer in this matter (see Hearing Officer Exhibit # 1).
- 4) The Hearing in this matter was convened on November 30, 2006 at 10:00 AM at the Division's Offices in Springfield, Illinois at which time were present in Springfield, Illinois; Joseph T. Clennon, on behalf of the Division; George Hroziencik, on behalf of the Company; Rob Kane, with ISMIE Mutual Insurance Company; Craig Lounsberry, with the Illinois Trial Lawyers Association; Julie Anderson, Judy Pool Boutchee, John Gatlin, Pam Donnewald, and Gayle Neuman, all with the Division of Insurance. Due to inclement weather the Hearing Officer conducted the Hearing, by agreement with the Company, telephonically from the Division's Offices in Chicago, Illinois.

The purpose of this proceeding is for the Hearing Officer to take information regarding the Filing and to determine if the policy is in compliance with Section 155.18 of the Insurance Code.

- 5) Mr. Hroziencik declined to make an opening statement in this matter. Mr. Clennon, in his opening statement indicated that the Division had performed an extensive review of the Filing. The review determined that the Filing was complete, including all required documentation, transmittal forms and certifications. Correspondence between the Division and the Company was exchanged seeking to clarify the Company's submission. An analysis of the actuarial indications and supporting documentation was performed. Consideration was given to the Company's rate-making methodology. After consideration of the rate filing and supplemental correspondence the Division indicated that it had no reason to object to filing pending additional questioning at the Hearing.
- 6) After completion of opening statements the Hearing Officer received into the Record the Company's Filing # AIC-05-EO-06. In the Filing the Company proposes to increase rates for its Dental Professional Liability Program by 22.04%. The rate change consists of a base rate increase and the implementation of a new class plan. Since the Company has only offered this program for one year there is no credible loss data for this program. The Company, therefore, based its rate change on the most recent historical countrywide data. The Company took this program over from another insurer that withdrew from the Illinois market in 2004. The rate increase is based on data from 2000-2004 on a country-wide basis using specific loss development triangles. The rate increase affects approximately 90 dentists in Illinois. The analysis of the loss experience gives an indicated rate change of 35.5%. The Company elected not to take the full indication opting instead for the 22.04% increase.

In assembling this Plan the Company reviewed programs of different insurers and selected as their model a program established by Medical Protective Insurance Company. The program divides dentists into five classes depending on the types of procedures performed by the dentist.

- 7) The Company uses a discount and surcharge program during its underwriting process. The Company maintains a schedule of debits and credits that are applied to a particular risk based on how that risk measures up to rating criteria developed by the company. An individual dentist's rates will go up or down based on how he/she scores on those rating criteria. The schedule of debit and credits is used in conjunction with the class plan put in place by this program.
- 8) In Division Exhibit # 1, Packet # 2, Exhibit # 1, the Company lists its Trended Loss and Loss Adjustment Expense from 2000 to 2004. The Trend indicates steadily increasing ratios from a low in 2000 of .597, to a high in 2004 of 1.389. The Company's target loss and loss adjustment expense is .755. The Company considers the 1.059 and 1.389 ratios indicated for 2003 and 2004 respectively to be disturbing upward trends in losses.
- 9) The Company did not look at the trends indicated by the national ratios in Exhibit # 1 on a state-by-state basis. In Illinois, for example, the policyholder population is about 90 dentists. The Company stated that trends can not be tracked with a breakdown that small and maintain mathematical credibility.
- 10) The Company does not analyze trends individually for allocated loss adjustment expenses, severity of claims or frequency of claims, but rather, looks at these ratios as a whole. The Company stated that the total premium volume, even for the combined country-wide programs, are not large enough to generate credible numbers for individual break-outs of ALAE, frequency or severity. In the Company's opinion all three factors are driving the rate increase that is the subject matter of this proceeding.
- 11) The Company testified that it is standard practice, in setting up case reserves, to consider tort reform legislation enacted in a State.
- 12) At the close of the Hearing, the Hearing Officer left the Record in this matter open in order to allow the Company an opportunity to respond to various questions, posed by the Division during the Hearing, but to which the Company was unable to respond.

On December 20, 2006, Counsel for the Division issued a letter to the Company requesting responses to 10 questions therein contained (see Hearing Officer Exhibit # 3).

- 13) On January 10, 2007, the Company provided a written Response to the Division's questions (see Hearing Officer Exhibit # 4). As a part of Hearing Officer Exhibit # 4, the Company filed a revised Illinois Manual of Rates and Rules which included the Company's proposed Quarterly Payment Plan (Rule 28).
- 14) After reviewing the Post-Hearing submissions and the Company's responses to the questions presented at the Hearing, the Division indicated to the Hearing Officer that it had no objections to the Company's Filing.
- 15) Capital Reporting Service Inc. transcribed the testimony taken in this matter and charged the Division \$190.00 for the court reporter's attendance and a transcript of the proceeding (Hearing Officer Exhibit # 5).

CONCLUSIONS OF LAW

Based upon the above-stated Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Timothy M. Cena was duly appointed as Hearing Officer in this matter by the Director of Insurance pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 155.18, 401, 402 and 403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/401, 5/402 and 5/403).
- 3) The purpose of this proceeding is to determine if the National Union Fire Insurance Company of Pittsburg, PA, Filing # AIC-05-EO-06 is in compliance with Section 155.18 of the Illinois Insurance Code.

Section 155.18 of the Insurance Code provides, in part, as follows:

- “(a) This Section shall apply to insurance on risks based upon negligence by a physician, hospital or other health care provider, referred to herein as medical liability insurance.
- (b) The following standards shall apply to the making and use of rates pertaining to all classes of medical liability insurance:
 - (1) Rates shall not be excessive or inadequate nor shall they be unfairly discriminatory. . .

- (2) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this State, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both countrywide and those especially applicable to this State, and to all other factors, including judgment factors, deemed relevant within and outside this State.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by companies to their policyholders, members or subscribers.

- (3) The systems of expense provisions included in the rates for use by any company or group of companies may differ from those of other companies or groups of companies to reflect the operating methods of any such company or groups with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

- (4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which established standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Such classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations and shall apply to all risks under the same or substantially the same circumstances or conditions. The rate for an established classification should be related generally to the anticipated loss and expense factors or the class.

- (c) (1) Every company writing medical liability insurance shall file with the Secretary of Financial and Professional Regulation the rates and rating schedules it uses for medical liability insurance. A rate shall go into effect upon filing, except as otherwise provided in this Section.

- (2) If (i) 1% of the company's insureds within a specialty or 25 of the company's insureds (whichever is greater) request a public hearing, (ii) the Secretary at his or her discretion decides to convene a public hearing, or (iii) the percentage increase in a company's rate is greater than 6%, then the Secretary shall convene a public hearing in accordance with this paragraph (2). A public hearing under this paragraph (2) must be concluded within 90 days after the request, decision, or increase that gave rise to the hearing. The Secretary may, by order, adjust a rate or take any other appropriate action at the conclusion of the hearing.
 - (3) A rate filing shall occur upon a company's commencement of medical liability insurance business in this State and thereafter as often as the rates are changed or amended.
 - (4) For the purposes of this Section, any change in premium to the company's insureds as a result of a change in the company's base rates or a change in its increased limits factors shall constitute a change in rates and shall require a filing with the Secretary.
 - (5) It shall be certified in such filing by an officer of the company and a qualified actuary that the company's rates are based on sound actuarial principles and are not inconsistent with the company's experience. The Secretary may request any additional statistical data and other pertinent information necessary to determine the manner the company used to set the filed rates and the reasonableness of those rates. This data and information shall be made available, on a company-by-company basis, to the general public.
- (d) If after a public hearing the Secretary finds;
 - (1) that any rate, rating plan or rating system violates the provisions of this Section applicable to it, he shall issue an order to the company which has been the subject of the hearing specifying in what respects such violation exists and, in that order, may adjust the rate; . . . ”

The information presented in this matter to the Hearing Officer does not indicate that the Filing is excessive or inadequate or that it is unfairly discriminatory. The Hearing Officer, therefore, concludes that National Union Fire Insurance Company of Pittsburg, PA, Filing # AIC-05-EO-06 is in compliance with Section 155.18 of the Illinois Insurance Code.

The Hearing in this matter was required by Section 155.18 of the Insurance Code by virtue of the greater than 6% rate increased filed by the Company. The Hearing Officer, therefore, concludes that the costs of the Hearing should be assessed against the Company. The costs of the Hearing consist entirely of the costs charged to the Division by the court reporting firm for the preparation of the transcripts of the testimony taken in this matter.

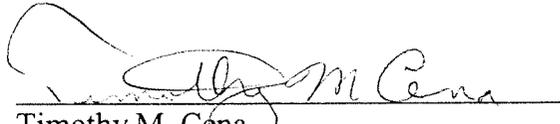
RECOMMENDATIONS

- Based upon the above-state Findings of Fact, Conclusion of Law and the entire Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance.

- 1) That the Company's rule/rate Filing #AIC-05-EO-06, as contained in this Record, be approved; and
- 2) That the Company be assessed the costs of this proceeding.

Respectfully submitted,

Date: 2/26/07



Timothy M. Cena
Hearing Officer