

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO) ORDER ON OBJECTIONS TO
HEALTH FOR THE FIRST) INFORMATION REQUEST
ASSESSMENT YEAR)
)
)
Docket No. INS-05-700)

The Superintendent issues this Order on the Dirigo Health Board of Director's ("Dirigo" or the "Board") October 6, 2005 objections to the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust (collectively, the "Trusts") October 5, 2005 information request (the "Information Request"), also having considered the response of the Trusts, dated October 6, 2005. The Information Request contains 85 inquiries, seeking both document production and interrogatory responses. Dirigo objects to 16 requests on the basis of relevance and/or burdensomeness. Dirigo further seeks an extension of time within which to respond, which extension request was not explicitly objected to by the Trusts.

Bureau of Insurance Rule Chapter 350(10)(B)(2), governing the scope of discovery in insurance proceedings, states: "Informational requests shall be relevant to the issues involved in the proceeding, and shall not be unduly burdensome or repetitious." The Bureau's rules of practice and procedure governing adjudicatory proceedings further establish that Chapter 350 "shall be liberally construed to secure just, speedy and economic determination of all matters pending before the Superintendent and his staff." Chapter 350(2)(B).¹

Pursuant to P.L. 2005, ch. 400: "The superintendent shall approve the [Dirigo] filing upon a determination that the aggregate measurable cost savings filed by the board are reasonably supported by the evidence in the record." P.L. 2005, ch. 400, § B-2(2)(B). Issues involved in the proceeding are those found by the Superintendent to bear on whether or not Dirigo's determination of aggregate measurable cost savings "are reasonably supported by the evidence in the record."²

¹ By the September 22, 2005 Order granting the consolidated intervention of the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust, the Trusts were instructed that they "may commence discovery immediately." Nonetheless, the Trusts issued their first information request nearly two weeks later at 2 p.m. on October 5, 2005. The Superintendent also issued his First Information Request on October 5, 2005. Compared to the Trusts' 85 question submission (approximating 100 questions inclusive of subparts), the Superintendent's inquiry contains 10 questions (approximating 20 questions inclusive of subparts). Moreover, Dirigo made no objection, either on relevance, burdensomeness or otherwise, to the Superintendent's inquiry.

² The Superintendent recognizes that counsel to the Trusts actively participated in the Dirigo Working Group process since its inception in late June 2005, and counsel publicly stated its representation of the Trusts before the Dirigo Board on August 29, 2005. Given this historic involvement with the issues now presented in this proceeding, waiting two weeks in a six week adjudicatory process to issue voluminous discovery appears disruptive.

Objections to Requests 37 through 44 – relevance. These requests contain interrogatories about and seek production of documents related to Dirigo's engagement of consultants (Mercer and Nancy M. Kane, DBA), including the date of such engagement, copies of contracts for services, and amounts paid. These information requests seek public record information. The Superintendent denies Dirigo's objections.

Objections to Requests 45 through 46 – relevance and burdensomeness. These requests seek production of documents for all communications between Dirigo and its consultants (Mercer and Nancy M. Kane, DBA) concerning the Dirigo Health Program. The Trusts agree that the objection of burdensomeness is "well taken." The Superintendent deems these requests withdrawn.

Objections to Requests 62 through 64 – relevance and burdensomeness. These requests contain interrogatories about and seek production of documents related to all communications generally relating to the need for savings offset payments to maintain the financial viability of Dirigo. The Trusts argue that these requests bear directly on the legitimacy of the methodology used by the Dirigo Board and the credibility of those involved in its preparation and/or adoption. The Superintendent grants Dirigo's objections.

Objections to Requests 83 through 85 – relevance and burdensomeness. These requests contain interrogatories about and seek production of documents related to all communications generally relating to whether the Legislature contemplated that an adjudicatory hearing would be held by Dirigo and/or the Superintendent related to the determination of aggregate measurable cost savings, and the procedures to be followed by Dirigo and/or the Superintendent. The Trusts argue that these requests relate to their "plan to once again raise the failure of the Dirigo Board to hold an adjudicatory hearing at the appropriate time." The Superintendent grants Dirigo's objections.

ORDER

By reason of the foregoing: (1) the October 6, 2005 objections of Dirigo are DENIED in part with responses required to information requests 37-44 of the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust; (2) the October 6, 2005 objections of Dirigo are GRANTED in part with no responses required to information requests 45-46, 62-64, and 83-85 of the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust; (3) the deadline for Dirigo to respond to the October 5, 2005 Information Request of the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust is extended to 5:00 p.m. on October 14, 2005; (4) the deadline for Dirigo to respond to the October 5, 2005 First Information Request of the Superintendent is extended to 5:00 p.m. on October 14, 2005; and (5) the 3:00 p.m. October 11, 2005 deadline for issuance of information requests set in the September 19, 2005 Procedural Order remains unchanged.

The Trusts remark that since the Superintendent ruled that the statutory filing deadline in P.L. 2005, ch. 400, § B-2 is not mandatory, Dirigo could ask the Superintendent to postpone the hearing in order to provide Dirigo additional time for responding to discovery, thereby implying that the statutory 6-week decision issuance deadline of October 29, 2005 is similarly not

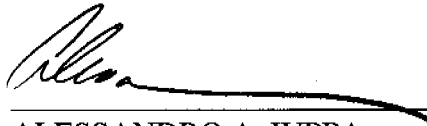
mandatory. The Superintendent hereby clarifies and re-states his finding on page 2 of the October 4, 2005 Order on Motion to Dismiss to read as follows:

Upon consideration of the filings by the parties, the legislative enactment and history, and the relevant case law, the Superintendent finds that the provision for a filing "no later than the effective date of the Act" is not jurisdictional.

In other words, by the October 4th Order the Superintendent found that the failure of Dirigo to make its filing by September 17, 2005 did not remove jurisdiction from the Superintendent to conduct this proceeding. The October 4th Order did not make any findings regarding the statutory 6-week decision issuance deadline in P.L. 2005, ch. 400, § B-2. Except as clarified and re-stated in this paragraph, the October 4, 2005 Order remains in full force and effect without modification.

PER ORDER OF THE SUPERINTENDENT

DATED: October 7, 2005


ALESSANDRO A. IUPPA
Superintendent of Insurance