

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

Combined Management, Inc.)	
)	
vs.)	
)	
Maine Employers' Mutual Insurance Company)	FINAL DECISION AND ORDER
)	
Docket No. INS-02-789)	
)	

The Superintendent issued an interim Decision and Order in the above-captioned proceeding on January 31, 2003.¹ The procedural process of this adjudicatory proceeding having come to a conclusion, the Superintendent hereby issues a final decision in this matter.

¹ The January 31, 2003, Decision and Order was initially framed as final agency action, which procedural posture was modified by Order dated February 28, 2003, thereby making the January 31st Decision and Order an interim order not ripe for appeal to the Superior Court pursuant to 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, et seq. and M.R. Civ. P. 80C.

I. PROCEDURAL HISTORY

The procedural history of this proceeding up until January 31, 2003, is contained in the interim Decision and Order. Procedural developments since issuance of the January 31, 2003, Decision and Order are set forth below.

By motion filed February 10, 2003, Combined Management, Inc. ("CMI") requested that the Superintendent amend the January 31st Decision and Order to include an additional ruling awarding costs, attorney fees, and expert witness fees in favor of CMI. Maine Employers' Mutual Insurance Company ("MEMIC") filed an objection to CMI's motion. By Order issued February 18, 2003, the Superintendent denied CMI's Motion to Amend Order.

By correspondence dated February 27, 2003, MEMIC provided the results of its de novo underwriting of the CMI account in the form of a revised final premium bill, together with supporting re-pricing exhibits and explanations of the application of MEMIC's rating system to the CMI client lessee companies. MEMIC's revised final premium bill for the CMI account totaled \$60,607.00.

By Order issued February 28, 2003, the Superintendent modified the January 31st Decision and Order to make it an interim order as opposed to final agency action. The Superintendent also determined that MEMIC had complied with ordering paragraphs 2, 3, 4, and 5 of the January 31st Decision and Order. With respect to ordering paragraph 6 of the January 31st Decision and Order (pursuant to which CMI and MEMIC were required to communicate in writing with one another and the Superintendent if there was any ongoing dispute regarding the final premium bill), the Superintendent ordered CMI's written

notice of dispute, if any, to be delivered on or before March 21, 2003, and the written response by MEMIC to be delivered within twenty-one (21) days following receipt of CMI's written notice of dispute, if any.

By motion filed on March 10, 2003, CMI requested that the Superintendent extend the time for CMI to make its written notice of dispute, if any, to MEMIC's revised premium billing until April 14, 2003. By Order issued March 12, 2003, the Superintendent granted the motion for extension of time.

By motion filed on March 11, 2003, CMI requested that the Superintendent order MEMIC to produce or make available for copying "any and all documents, memoranda, reports, etc. authored by Mr. Dan Cote or Mr. Dave Slattery referring in any way to CMI, including, but not limited to, any such documents, memoranda, reports, etc. related to the visit/inspection by Mr. Cote and Mr. Slattery to CMI" for underwriting and loss prevention purposes. MEMIC filed an objection to CMI's motion. To assist the Superintendent in making a ruling on CMI's Motion for Production, by Order issued March 21, 2003, MEMIC was directed to respond to an information request of the Superintendent. MEMIC's response to the Superintendent's information request was made on March 28, 2003. By Order issued April 9, 2003, the Superintendent denied CMI's Motion for Production.

By motion filed on April 1, 2003, CMI requested that the Superintendent reconsider his February 18, 2003, Order denying CMI's Motion to Amend Order. MEMIC filed a Motion to Dismiss and Memorandum in Opposition. By Order issued April 10, 2003, the Superintendent denied CMI's Motion for Reconsideration.

On April 16, 2003, CMI submitted to the Superintendent a binder of material entitled "Combined Management Response to MEMIC's De Novo Underwriting of Combined Management's Clients Workers' Compensation Policies." CMI asserted that it is owed a revised premium refund from MEMIC in the amount of \$67,924.25.

By objection and motion filed on April 17, 2003, MEMIC objects to the receipt of an untimely "notice of dispute" from CMI and moves that the Superintendent order CMI to pay final premium to MEMIC in the amount of \$60,607.00 as determined pursuant to MEMIC's February 27, 2003, de novo underwriting of the CMI account. By filing made on April 23, 2003, CMI responded to MEMIC's objection and motion. In its response, CMI asserts that its late filing "was due to excusable neglect and is harmless error" and that "the mistake was not intentional." CMI then explains the factual basis for its failure to meet the filing deadline. By Order issued April 29, 2003, the Superintendent denied MEMIC's objection and motion, and further ordered MEMIC to provide a detailed written response to CMI's April 16th submission. On June 2, 2003, MEMIC filed its response.

II. DISCUSSION

In this proceeding the Superintendent is asked to consider a premium dispute regarding workers' compensation insurance issued by MEMIC to the account of CMI, an employee leasing company that had under contract ninety (90) client lessee companies under an employee leasing arrangement during the coverage period of the dispute. The initial premium was determined for an annual policy period and totaled in excess of \$1,000,000.00, with MEMIC receiving a quarterly installment payment from CMI in the amount of \$250,721.75. CMI did not pay the next installment billing as it had secured workers' compensation insurance coverage with another carrier effective March 29, 2002. Because the coverage lapsed due to non-payment of premium, MEMIC canceled the CMI policies pro-rata. The resulting MEMIC coverage period for the CMI account was December 15, 2001, through March 29, 2002. Following a final premium audit, MEMIC billed CMI for additional premium owed in the amount of \$82,859.25. That is the premium subject to dispute in this proceeding.

The following is a chronology of the premium dispute claims made beginning with the final audit bills and thereafter asserted during the pendency of this proceeding (identifying the date of each assertion, the amount claimed, and by who claimed):

DATE	AMOUNT CLAIMED	BY WHO CLAIMED
June 20, July 16 and 18, 2002	CMI owes MEMIC \$82,859.25	MEMIC (final audit bills)
September 18, 2002	MEMIC owes CMI \$35,940.25	CMI (response of Robert Murch stating amount in dispute)
November 12, 2002	CMI owes MEMIC \$150,467.00	MEMIC (proposed rerating of the CMI account)
December 17, 2002	MEMIC owes CMI \$36,175.75	CMI (expert opinion of Rosemary McAndrew)
February 27, 2003	CMI owes MEMIC \$60,607.00	MEMIC (de novo underwriting pursuant to the Superintendent's orders)
April 16, 2003	MEMIC owes CMI \$67,924.25	CMI (response to MEMIC's de novo underwriting)
June 2, 2003	CMI owes MEMIC \$60,607.00	MEMIC (detailed written response to CMI)

Based on the totality of the record of this proceeding, the Superintendent finds that as of June 2, 2003, MEMIC has exercised due diligence and good faith in responding to the premium dispute of CMI and justifying the additional premium owed of \$60,607.00.

III. ORDER

By reason of the foregoing and pursuant to the interlocutory rulings made in this proceeding which are hereby affirmed, the Superintendent ORDERS that the revised premium bill that MEMIC provided to CMI by correspondence dated February 27, 2003, and confirmed on June 2, 2003, for workers' compensation insurance coverage provided by MEMIC to the CMI account for the policy period of December 15, 2001, through March 29, 2002, in the amount of \$60,607.00 is affirmed.

IV. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: June 6, 2003

ALESSANDRO A. IUPPA
Superintendent