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Inter-Departmental Memorandum Date September 27, 1976To Frank M. Hogerty, Jr., Superintendent Dept. Bureau of InsuranceFrom S. Kirk Studstrup, Assistant Dept. Attorney GeneralSubject Examination Expense Reimbursement Re Union Mutual Group

Your memorandum of September 9, 1976, requested our opinion on two questions which have been raised by Everard Stevens of your staff concerning payment of examination expenses by the Union Mutual Group. Union Mutual is presently being examined and these questions have current importance. The questions are posed in light of the provisions of 24-A M.R.S.A. § 228.

Section 228 provides three basic options for payment of examination expense by a domestic insurer of the size of Union Mutual. Opinion of the Attorney General, February 13, 1976. The three choices are as follows:

- (1) Payment of the actual expense of the examination, as provided in subsection 1; or
- (2) Annual payment of an amount equal to .001 of the company's total admitted assets, as provided in the first part of subsection 3; or
- (3) Payments made in accordance with paragraph C of subsection 3, if this amount is less than the actual examination expenses as provided in subsection 1.

Mr. Stevens' questions are as follows:

- (1) "Since annual prepayments, as required by law, have not been made, does Union Mutual still have this option left open to it?"
- (2) "How can the statute be implemented if Union Mutual is given the option of selecting the lesser payment respecting actual charges or that absolute dollar amount resulting from application of the formula?"

The answer to the first question is that since Union Mutual has not made the annual payments in accordance with the first part of subsection 3 of section 228, this option is no longer available with respect to the present examination. The election of the annual payment option must take place prior to any specific examination in order to be effective.

The answer to the second question is not entirely clear from the wording of section 228. Prior to the recent amendment of this section, the answer would have been quite simple. The insurer would have the

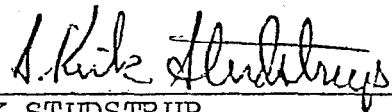
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option of paying a lump sum amount equivalent to either the actual expense of examination or a formula amount equal to .001 of the first \$10,000,000 of assets, plus .0002 of the next \$15,000,000 of assets, plus .000175 of the remainder of the assets. The decision would be simply which of these two amounts is less. However, subsection 3, paragraph C of section 228 was amended by P.L. 1975, Chapter 467. The formula for determining the amount to be paid, in terms of fractions of the insurer's assets at different levels, remains the same. However, instead of a lump sum payment of this amount, assuming that it is less than the actual examination expense, there is to be an annual payment of an examination expense allotment of 1/5 of the formula amount. There is no indication of how many of these annual payments the insurer must make with respect to any given examination.

There is no legislative history of record which would help to clarify this ambiguity. There is a general principle of statutory construction, however, to the effect that the Legislature's intention must be deduced by examining all parts of the statute and reading them as a whole. Inman v. Willinski, 65 A.2d 1 (Me., 1949). In addition, such ambiguities should be resolved keeping in mind the assumption that the Legislature did not intend an absurd result. Farris ex rel. Bowker v. Libby, 44 A.2d 216 (Me., 1945). Since the Bureau is required to examine each domestic insurer not less frequently than every 5 years (24-A. M.R.S.A. § 221), and since the Legislature used a fraction of 1/5 of the formula amount in specifying the annual payments to be made under paragraph C, it is reasonable to assume that the Legislature intended to spread the formula payment option over the five year intervening period between examinations if that option is chosen. The answer to the question, then, is that the insurer who chooses the formula payment option as opposed to the actual expense of examination will make five annual payments in accordance with the formula set forth in paragraph C. It should be noted, however, that according to the wording of the amended paragraph C, the five annual payments might not be equal since the formula would be reapplied each year on the basis of the assets shown by the insurer's financial statement filed for the preceding calendar year.



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