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REPORT OF THE SUPERINTENDENT OF INSURANCE ON THE FEASIBILITY OF INCLUDING SELF-INSURERS IN "FRESH START" FOR THE YEAR 1988

This report is pursuant to 1987 Public Law Chapter 559, page 24.

Under the "Fresh Start" system established by 24-A MRSA Section 2367, if the sum of 1) the premium collected from insureds in the residual market (The Accident Prevention Account and the Safety Pool) and 2) the investment earning of such premium is less than the sum of losses and expenses in that market, the Superintendent of Insurance is required to determine the rate of return for the insurance industry system-wide. If the system-wide rate of return is inadequate, then the Superintendent must assess, through a surcharge on premium, the insureds in both the voluntary and involuntary markets an amount sufficient at least to meet the annual cash deficit in the residual market.

24-A M.R.S.A. Section 2367 (6) directs the Superintendent to report to the Legislature on the question of whether it would be feasible to extend this assessment or surcharge to employers who have elected to self-insure. This report is intended to set forth for the consideration of the Legislature the principal arguments on both sides of this issue.

An immediate advantage to employers in the voluntary and involuntary market, of course, would be a reduction in the amount they would be surcharged. Based on Bureau of Insurance self-insurance data the calculation shows that spreading the surcharge to self-insurers would reduce the assessment of employers in the voluntary and involuntary markets by 26%, i.e., for each dollar to be assessed under the existing law, only 74 cents would be required. The corollary to this savings, of course, is that the cost to self-insurers would increase dollar for dollar.

The argument against a surcharge on self-insurers is that any added expense to them is manifestly unjust. The point is that self-insurers have voluntarily assumed unto themselves all of the costs and risks of their own compensation

insurance, and to require that they share losses in the voluntary and involuntary market for which they bear no responsibility is contrary to reason. The factors in a shortfall, it is pointed out, are claims, expenses, premium, and investment returns, and none of these fall within the purview of self-insurers. Self-insurers do not participate in or benefit from the insurance mechanism and so should not bear responsibility for its deficits.

The counter argument is based on the belief that deficits in workers' compensation insurance are to some degree systemic and to some degree the direct responsibility of certain employers with high loss ratios. They are not intrinsic to the insurance mechanism. If this is so, then responsibility for deficits reaches beyond insurance to all employers. Proponents of this position contend that there is no reason to exempt self-insurers from Fresh Start while including those employers who already pay more in premiums than the total of their own losses and the associated expenses.

Small and mid-sized employers might argue that an exemption for self-insurers is doubly discriminatory. Small employers cannot benefit from the reduced administrative costs and favorable reserve and cash flow treatments afforded self-insurers and then they must also bear a disproportionate burden for deficits.

Whatever the policy decision of the Legislature, the corollary issue of the treatment of those companies insured on November 20, 1987 but which have since become self-insured should be addressed.

Respectfully submitted,

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