



August 7, 2002

Therese M. Vaughan  
Commissioner of Insurance  
Iowa Division of Insurance  
330 Maple Street  
Des Moines, Iowa 50319-0065

VIA E-MAIL

**RE: St. Paul Tail Coverage – Relief for Physicians**

Dear Commissioner Vaughan:

The purpose of this letter is to provide further clarification re: the request of the Iowa Medical Society for Insurance Division review regarding tail coverage payments made by physician insureds to St. Paul over the many years that St. Paul provided professional liability coverage to doctors in the state of Iowa.

IMS stated the following regarding this issue in its written materials provided at the Division's June 24 meeting:

Nearly all professional liability coverage carried by physicians is "claims-made" in nature, thereby requiring tail coverage any time the physician makes a move in practice. Tail coverage is very expensive and a weighty factor for many doctors. IMS particularly brings to the Insurance Commissioner's attention the expressed concerns of St. Paul covered doctors that in seeking new coverage, they must independently bear the financial weight of tail costs, yet over the many years in which they were St. Paul insureds, a portion (IMS understands up to 3%) of their professional liability premium was in recognition of a "tail" factor. IMS believes, as do its member physicians, that St. Paul is unduly enriched in its withdrawal from the market and its appropriation of that portion of premium dollars doctors paid to support tail coverage for general business use. Physicians, on the other hand, are negatively and inappropriately impacted by St. Paul's independent decision to withdraw from the market.

A related aspect of the tail coverage issue, and further evidence of unjust enrichment enjoyed by St. Paul in electing to withdraw from the Iowa (and national) professional liability market relates to its contractual commitment to physician insureds relative to promised coverage for future claims (essentially tail coverage). By way of example, St. Paul's contract language states that it will provide a "reporting endorsement" for no additional premium "to you if you retire completely from all professional practice, have been continuously insured with us for the last 10 years under a claims-made policy before you retire and meet the following qualifications ... if you retire on or after January 1, 1995 and are at least 55 years of age." The policy further extends the reporting endorsement for no additional premium "if you retire completely from all professional practice, are at least 65 years of age and have been continuously insured with us for the last 5 years under a claims-made policy before you retire."

St. Paul's above cited contract language includes the phrase "if this agreement hasn't ended" and St. Paul likely would argue that the agreement has or will be ending. However, the agreement has ended solely upon St. Paul's unilateral election and determination that withdrawal from the market is in its best business and profit interests. The decision to not renew the contract has nothing to do with the individual physician insured's claims history or failure to satisfy contract terms and nothing to do with any determination by the Insurance Division relating to solvency of the company.

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A highlighted example sheds light on IMS' concern. A 61-year old physician who has been a St. Paul insured for 18 years received notice of nonrenewal effective in September 2002 solely due to St. Paul's election to withdraw from the Iowa market. This physician had planned to retire at age 65. In order to enjoy the benefits of the reporting endorsements that this physician has been faithfully paying for, the physician, a fully competent and actively practicing doctor in Iowa, must either retire early (i.e. prior to the notice of nonrenewal date), which is not what the physician wants to do, or purchase new coverage, including a tail, and work at least five (5) more years to "earn" the policy benefit of a restrictive endorsement that, hopefully, would be part of the physician's new coverage. This physician and others similarly situated bear significant new costs to assure coverage that St. Paul had promised to them; St. Paul, on the other hand, walks with the dollars that physicians have invested over many years; those doctors will realize no benefit for the burden that they bore in good faith for many years.

IMS renews its request that the Insurance Division assist physicians on this matter. IMS believes that remedy must be fashioned to address this inequitable result. For instance, St. Paul might be required, as a condition of approval for leaving the market to remit dollars to doctor insureds that reflect tail payments, thereby assisting doctors with the cost they must now bear due to St. Paul's unilateral withdrawal in order to obtain coverage that St. Paul had promised would be there for them at no additional cost.

Thank you for your assistance on both aspects of this matter. And, thank you again for convening the series of meetings on the overall challenges faced by doctors in locating and paying for professional liability coverage in this state.

Yours truly,

Jeanine Freeman  
Vice President of Legal Affairs

cc: Michael Abrams