

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

March 12, 1990

Administrative Letter
1990-4

**TO: ALL LICENSED INSURERS WRITING WORKERS' COMPENSATION
BUSINESS IN VIRGINIA**

RE: WORKERS' COMPENSATION INSURANCE RATES

On February 16, 1990 and February 21, 1990, the State Corporation Commission entered the attached orders in Case No. INS880340 amending workers' compensation insurance rates for policies effective from November 30, 1989 through February 15, 1990. These orders follow a January 23, 1990 hearing by the State Corporation Commission which was necessitated by a decision of the Virginia Supreme Court following an appeal on procedural grounds by the Division of Consumer Counsel of the Office of the Attorney General of the Commission's September 28, 1988 rate setting order (as amended). The purpose of this Administrative Letter is to advise insurers on the implementation of the State Corporation Commission's orders of February 16, 1990 and February 21, 1990.

The Commission's orders require that policies issued or renewed effective on and after February 16, 1990 be issued at the rates adopted in the Commission's orders of September 28, 1988 and October 21, 1988 (rates approved for policies issued or renewed effective on and after November 1, 1988). However, for policies issued or renewed effective during the interim period from November 30, 1989, up to and including February 15, 1990, the rates shall be those that were adopted in 1987 by the Commission for policies issued or renewed effective on and after October 15, 1987.

Insurers that have issued or renewed policies effective during this interim period must endorse all policies with the appropriate adjustment in rates by June 1, 1990. At the option of the insurer, additional premiums may be waived until final audit. Return premiums created by this adjustment shall be returned to each insured, except that returns of \$250.00 or less may be made subject to audit, unless the return premium is specifically requested by the insured.

1990 FEB 16 PM 2:56 COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 16, 1990

APPLICATION OF

NATIONAL COUNCIL ON
COMPENSATION INSURANCE

CASE NO. INS880340

For Revision of Workers'
Compensation Insurance Rates

OPINION AND ORDER

Opinion, Harwood, Commissioner:

On October 21, 1988, we entered herein an order which amended our order of September 28, 1988 by making the rates adopted therein effective November 1, 1988. These orders were appealed on procedural grounds by the Division of Consumer Counsel of the Office of the Attorney General (Consumer Counsel). The case was remanded by the Supreme Court of Virginia "for further proceedings consistent with the views expressed in the written opinion of this Court." The Commission received the court's mandate on November 30, 1989.

On December 13, 1989, we entered an order vacating our orders of September 28, 1988 and October 21, 1988; and, on December 14, 1989, we entered an order scheduling a hearing for January 16, 1990 for the purpose of further cross-examination of Staff witness Presley.

Prior to the hearing scheduled for January 16, 1990, which was ultimately held on January 23, 1990 as the result of our granting a continuance requested by Consumer Counsel, an informal

of bias. To the contrary, Mr. Presley has for many years advocated before this Commission, and we have accepted, the use of a trend factor in the determination of appropriate workers' compensation rates. Mr. Presley's consistency in this regard merely demonstrates to us a professional adherence to what he believes is an appropriate rate-making principle. Accordingly, we are of the opinion and find that the rates adopted to be effective November 1, 1988 should be re-affirmed and adopted for policies issued or renewed on and after the date of this order.

Effect of mandate. At our request, and subsequent to the January 23rd hearing, counsel filed argument as to the effect of the language of the Court's mandate on these proceedings. In addition to counsels' argument: we note specifically the absence of any refund authority in Chapter 20 of Title 38.2 of the Code; the fact that premiums charged by insurers during the period November 1, 1988 to November 30, 1989 were authorized by the Commission; and the fact that no party to this proceeding petitioned the Supreme Court for a suspension order pursuant to Virginia Code § 8.01-676.1.H. Based thereon, and given the principle, cited by Consumer Counsel, that a mandate of reversal with a remand for further proceedings must necessarily be construed with reference to the facts and circumstances of a particular proceeding, we believe that the Supreme Court's mandate must be given effect prospectively from the date of the Commission's receipt thereof, - November 30, 1989.

Accordingly, for rates for the interim period November 30, 1989 until the date of this order, we are of the opinion and find

Morrison, Commissioner, took no part in the determination of this case.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Joanne M. Porter, Director, National Council on Compensation Insurance, Suite 302, 2568A Riva Road, Annapolis, Maryland 21401; Barry Llewelyn, National Council on Compensation Insurance, One Penn Plaza, New York, New York 10119; C. William Waechter, Jr., Esquire, 1700 Bayberry Court, Suite 300, Richmond, Virginia 23226; Charles G. James, Commissioner, Industrial Commission of Virginia, 1000 DMV Drive, Richmond, Virginia 23220; Fred H. Coddling, Esquire, P.O. Box 225, Fairfax, Virginia 22020; Gail Starling Marshall, Esquire, Deputy Attorney General, Office of the Attorney General, 101 North Eighth Street, Richmond, Virginia 23219; and to the Bureau of Insurance in care of Deputy Commissioner Robert A. Miller.

A True Copy
Teste: -

George W. Bryant, Jr.

Clerk of the
State Corporation Commission