

August 15, 2002

Memorandum 2002-8A

TO: All Licensed Motor Vehicle Insurers in Hawaii
FR: Wayne Metcalf, Insurance Commissioner
RE: Self-Insured Automobiles

It has recently come to the Commissioner's attention that a number of insurers may be allowing some of their insureds to self-insure for a portion of their liability and personal injury protection risks without the insured first demonstrating compliance with Hawaii Revised Statutes ("HRS") § 431:10C-105.

These situations are occurring when insurers are issuing large deductible policies with contractual agreements that allow the insured to adjust and pay all claims falling within the deductible portion of coverage. Some of the policies include provisions which claim that if the insured becomes insolvent, the insurer is only responsible for those losses over the amount of stated deductible.

These types of policies are essentially "excess policies" and do not satisfy the mandated requirements of HRS § 431:10C-301 or the insurer's responsibility under HRS § 431:10C-119. An excess policy is only allowed on automobile coverage if there is an underlying policy or self-insured program which meets all the provisions mandated by the applicable Hawaii statutes and rules. Commercial Auto forms in compliance with mandatory coverages must be filed with the State of Hawaii Insurance Division, pursuant to HRS § 431:10C-201, *et seq.*

Specifically, these policies must be written in a manner that insurers, rather than insureds, will be responsible for first dollar coverages. Insurers may then obtain reimbursement from their insured for all payments made on their behalf up to the amount of the deductible.

The Commissioner has also become aware of certain claims adjustment practices by some commercial insurers. Specifically, these companies, although providing first dollar coverage, have delegated claims adjustment authority to their insureds for those claims not exceeding the insureds deductible. Insurers engaging in such activities will be held responsible for any violations committed by their insureds. Consequently, it is recommended that these delegations of authority be thoroughly reviewed by your legal counsel before implementation.

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If your company has issued any policies in Hawaii that fail to comply with the requirements for first dollar coverage, they must be rewritten and/or amended immediately. An officer of the company must sign and date the Attachment to Commissioner's Memorandum 2002-8A ("Attachment") and return a copy to the State of Hawaii Insurance Division within fifteen (15) working days of the date of this memorandum or no later than September 9, 2002.

If you determine your company has in-force policies including the aforementioned prohibited practices, you must so indicate on the Attachment within fifteen (15) working days of the date of this memorandum or no later than September 9, 2002. Companies that are not presently writing commercial auto policies should indicate this by checking the appropriate on the attachment. You may fax your response to (808) 587-6714, Attention: Cecelia Chock, Chief Investigator. If you have any questions, please contact Chief Investigator Cecelia Chock at (808) 586-2790.

ATTACHMENT TO COMMISSIONER'S MEMORANDUM 2002-8I

Name of Insurer(s):

(Check as applicable)

- () 1. Does not write commercial auto insurance
- () 2. Does write commercial auto insurance and has no in-force policies including the aforementioned prohibited practices.
- () 3. Does write commercial auto insurance and has in-force policies that include the aforementioned prohibited practices. Please provide the following information in section (a) through (f) for each affected policyholder. (Attach extra sheets of this page as necessary.)
 - (a) Insured: _____
 - (b) Policy No.: _____
 - (c) Policy Limits: _____
 - (d) Amount of Deductible or Self-Insured Retention Level: _____
 - (e) Original issue date: _____
 - (f) Policy amendment date to achieve compliance with "first-dollar" coverage: _____

Officer's Name _____ Title: _____
(Print)

Officer's Signature _____ Date: _____
(Signature)

PLEASE RESPOND TO:

Attn: Cecelia Chock, Chief Investigator
STATE OF HAWAII INSURANCE DIVISION
P. O. Box 3614
Honolulu, HI 96811-3614
FAX (808) 587-6714

ON OR BEFORE SEPTEMBER 9, 2002