



JOEL M. PRESSMAN
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents

*600 Washington Street
Boston, Mass. 02111*

AUGUST 30, 1989

CIRCULAR LETTER NO. 243

TO: INSURERS, SELF-INSURERS, WORKERS' COMPENSATION AGENTS OF DEPARTMENTS OF THE COMMONWEALTH AND OF COUNTIES, CITIES, TOWNS AND DISTRICTS SUBJECT TO M.G.L. C. 152, AND OTHER INTERESTED PARTIES

RE: PROVISION OF CLAIMS SERVICES TO SELF-INSURERS BY INSURANCE COMPANIES

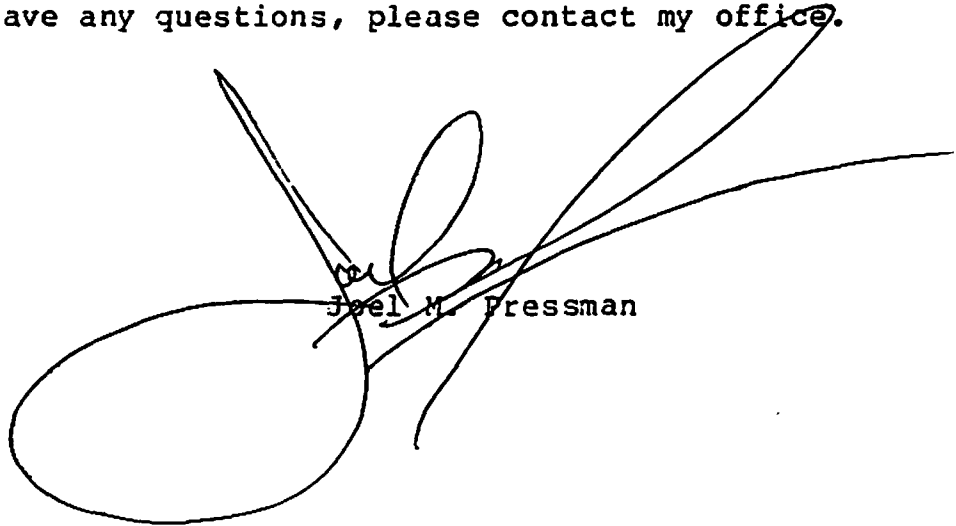
After receiving a request for a self-insurance license by an employer intending to utilize an insurance company to perform claims services, the DIA sought guidance from the Division of Insurance as to whether such activity on the part of insurance companies is appropriate or permissible under the provisions of M.G.L. c. 175, §47A. The Division determined that the services to be provided by the particular domestic insurer as part of the self-insurance program were permissible under section 47A. I have attached a letter from Commissioner Gailey indicating the Division's position that there is nothing in the insurance laws which prohibits insurers from engaging in the servicing of claims for licensed self-insurers and further indicates that such activities are in principle consistent with and complementary to other services provided by domestic workers' compensation insurers.

M.G.L. c. 152, §25A gives the DIA broad discretion in the granting of self-insurance licenses, by providing that licenses may be revoked, or renewals may be refused "because of the failure of [a] self-insurer promptly to make payments of compensation provided for by this chapter, or for any other reasonable cause." In addition, this section is expressly intended to promote the "health, safety and welfare of employees."

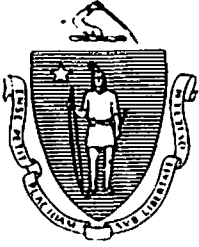
M.G.L. c. 152, §25G similarly grants broad discretion to the DOI in the granting of approval to self-insurance groups. This being so, we have deemed it prudent to require as a precondition for approval to self-insure or group self-insure that, where the employer or group intends to contract with an insurance company to investigate, adjust, or settle claims, the attached agreement be executed and filed with both agencies.

Filing of this agreement indicates that the signatories understand that the insurance company will be subject to the provisions of M.G.L. c. 176D in its handling of claims. If the insurer is found to have violated chapter 176D and does not pay any fines imposed and/or does not comply with any orders issued relating to such activities, the self-insurer's or self-insurance group's license will be subject to suspension or revocation.

If you have any questions, please contact my office.



Joel M. Pressman



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE
280 FRIEND STREET, BOSTON 02114
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TIMOTHY H. GAILEY
COMMISSIONER OF INSURANCE

August 28, 1989

Joel M. Pressman
Commissioner
Department of Industrial Accidents
600 Washington Street
Boston, MA 02111

Dear Commissioner Pressman:

As you know, the Division of Insurance has determined pursuant to M.G.L. c. 175, §47A that a domestic insurance company may engage in the business of providing claims handling and related services to a workers' compensation self-insurer. There appears to be no reason other domestic workers' compensation insurers could not offer similar services, provided they can satisfy the Division that they have the necessary qualifications and financial wherewithal or otherwise satisfy the requirements of section 47A. Similarly, nothing in the Massachusetts insurance laws precludes foreign insurance companies from providing similar services to workers' compensation self-insurers if the activities are permitted under their domiciliary state laws and under their by-laws and if they have satisfied all requirements under Massachusetts law.

It is the position of the Division that when insurance companies investigate, negotiate, settle or otherwise handle claims for workers' compensation benefits on behalf of licensed self-insurers and provide excess coverage to those self-insurers, they are subject to the laws and regulations governing claims settlement practices under M.G.L. c. 176D.

The Division does not believe that in providing services to a licensed self-insurer an insurance company is acting as an agent or broker for an insurer in violation of M.G.L. c. 175, §47A or is otherwise exposing itself to potential conflicts of interest. First, there is, by definition under M. G. L. c. 175, no "insurer"

involved. Second, since the services are being provided pursuant to an excess reinsurance policy, eventually there may be claims against the insurer. Finally, similar or identical services are provided by many health insurance companies to employers purchasing excess reinsurance or stop-loss coverage policies from those insurers, but who are otherwise self-insured. Accordingly, we believe that the provision of claims services to self-insurers is in principle consistent with and complementary to other services provided by domestic workers' compensation insurance companies. In any event, M.G.L. c. 175, §47A grants the Division the authority to approve such activities by domestic insurers. Since the Division has not been presented with a situation where the insurance company handling claims for a self-insurer does not also provide the required excess coverage, we express no opinion about the applicability of chapter 176D in that situation.

I understand that you are concerned about the possible rate impact of the involvement of insurance companies in the servicing of claims for self-insurers. While we cannot at this time predict the rate impact, if any, of such activity, we know that the market forces that are driving insureds to self-insurance would not abate if insurers were prohibited from servicing claims against self-insurers. Businesses, in all likelihood, would simply respond by finding other ways of self-insuring, and the impact, if any, on the rates and on the relative size of the residual market would be the same. The Division is prepared to exercise its extensive authority over the residual market should there be a need. We are currently studying the condition of the entire workers' compensation market to determine what changes are necessary to address concerns of employers and insurers. Our review will include an evaluation of the rating and assigned risk mechanisms.

I hope you will find this helpful. If you have any questions or comments please feel free to call me.

Sincerely,



Timothy H. Gailey
Commissioner of Insurance

AGREEMENT BETWEEN INSURER PROVIDING
CLAIMS HANDLING SERVICES
AND WORKERS' COMPENSATION SELF-INSURER OR SELF-INSURANCE GROUP

WHEREAS, the Division of Insurance ("DOI") and the Department of Industrial Accidents ("DIA") are responsible for administering the provisions of the workers' compensation laws, including those governing the option available to employers to self-insure or to form self-insurance groups; and

WHEREAS, G.L. c. 152, §25A allows employers to fulfill their obligations to their employees through self-insurance, but requires such employers to obtain a license to self-insure or to be part of a self insurance group which can be obtained only after an evaluation of the effect of such licensure on the health, safety and welfare of employees; and

WHEREAS, DOI has concluded that it is permissible for domestic insurance companies, under G.L. c. 175, §47A, to engage in the business of investigating, adjusting and settling claims for employers regardless of any general or special law to the contrary; and

WHEREAS, DOI and DIA desire to ensure equal treatment for all employers and insurers under such programs;

THEREFORE, the undersigned representative of a licensed insurance company and the undersigned representative(s) of an employer or employers seeking licensure from DIA as a self-insurer or from DOI as a self-insurance group hereby agree, as a precondition for the employer(s) to obtain such licensure, that the insurer offering to provide the claims handling and administrative services shall be subject to the provisions of G.L. c. 176D governing unfair or deceptive acts or practices, and specifically to G.L. c.176D, §3(9) governing claims handling standards and unfair claims settlement practices.

A copy of this agreement shall be filed in the offices of both the DIA and the DOI.

Authorized Representative or
Officer of Insurance Company

Authorized Representative or
Officer of Employer(s)

Date