

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: IDOI-1711-CO05-1213-02

IN THE MATTER OF:)
)
ISTA INSURANCE TRUST, Respondent)
150 W. Market Street)
Indianapolis, IN 46205)
Respondent)
)
Type of Agency Action: Enforcement)
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)
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FILED
MAY 08 2009
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

The Commissioner of the Indiana Department of Insurance, *sua sponte*, having personally received the multiple employer welfare arrangement (“MEWA”) registration application of the ISTA Insurance Trust (“the ISTA”) and having received the preliminary report of the Department’s consultants on the ISTA MEWA registration effort, pursuant to I.C. 27-1-34 *et. seq.*, now enters this order on his own motion.

The Indiana Department of Insurance (“the Department”) and the ISTA entered into an Immediate Interim Agreement (“Agreement”) that was adopted by Final Order on February 13, 2009 (“Final Order”). This Agreement and Final Order called for completed registration as a MEWA on April 1, 2009. On April 1, 2009, the Department granted ISTA’s request for an extension of time for purposes of completing its registration as a MEWA. The Department granted that extension through Saturday, May 2, 2009.

The Department received ISTA’s MEWA registration application on Monday, May 4, 2009. As an addendum to that application, the Department received a signed commitment letter

from UnitedHealthcare (“UHC”) wherein UHC and ISTA agreed to transition all lives anticipated to be registered within the MEWA on July 1, 2009, to fully insured plans. The commitment letter reflects that the ISTA will continue present operations without interruption, including all claims payments, through June 30, 2009.

The Commissioner of Insurance now being duly advised as to the plan and intent of conversion to fully insured plans finds the following:

1. The ISTA has delivered a MEWA registration packet and materials pursuant to the amended order of April 1, 2009 in a timely fashion.
2. The Department has received the above described commitment letter signed by the ISTA leadership.
3. Pursuant to the Agreement and Final Order, the Department has utilized Noble Consulting Services, Inc. (“Noble”) to review the ISTA MEWA registration effort and related financial issues. In light of Noble’s preliminary report to the Department concerning the ISTA MEWA registration effort, the Department would need additional time to review the MEWA submission. The successful transfer of the medical arrangement to fully insured status will remove the need for MEWA registration and satisfy the Agreement and Final Order.
4. Noble’s preliminary report to the Department identified certain facts and issues with the ISTA MEWA registration effort:
 - a. The ISTA has two main programs, long term disability (“LTD”) and a medical arrangement (“Medical”). The scope of Noble’s review was limited to the medical arrangement only. However, the ISTA assets related to both LTD and Medical are commingled. Therefore, the review had to consider underlying financial issues related to both programs.

- b. The Medical portion of the ISTA provides benefits to approximately 7,000 members and their dependents.
- c. Annual medical premiums revenue in the ISTA is approximately \$76 million. The ISTA paid approximately \$64 million in Medical claims during the last twelve months. This does not include the cost of reinsurance and the cost of administration.
- d. Medical claims incurred but not reported (referred to as IBNR in the Agreement) cannot be accurately estimated at this time.
- e. In the event of insolvency there is no state guarantee fund for the ISTA, either as a registered MEWA or in its current unregistered status. All unpaid obligations remain with employer school corporations. Claims payments were noted as current.
- f. All key services performed by the ISTA are outsourced including investments, product pricing, risk management and actuarial. UHC's prior role was solely as the ISTA's third party administrator.
- g. Assets related to the ISTA benefit obligations are not segregated. These benefit obligations include long term disability reserves, unpaid claims and experience refunds (referred to in ISTA reports as claim stabilization reserve ("CSR"), or rate stabilization reserve ("RSR")).
- h. Based on information provided by and discussions with management personnel at the ISTA, the asset portfolio has experienced a substantial loss in market value in relation to the original cost basis. A material portion of the invested assets also have a disturbingly low liquidity in the open market due to the nature and structure of the underlying assets; such assets are described as private placements and structured securities. The Department would regard a high concentration of private equities as an inappropriate investment for a Department-regulated entity.
- i. Recent liquidations of select private equity investments yielded less than half the reported carrying value, based on review of the relevant transactions.
- j. The ISTA has not provided a general ledger or trial balance to support its December 31, 2008 financial statements.
- k. The ISTA's independent auditors are delayed in issuing their opinion on the fiscal year end August 31, 2008 financial report.
- l. Prior internal financial statements and audit reports failed to include CSR amounts owed to school corporations.
- m. The August 31, 2007 actuarial opinion for the LTD portion of the ISTA has been withdrawn due to the inability of the current assets to adequately fund the liabilities.

- n. LTD reserves as currently calculated could be understated for the discounted value that assumes full value of performing assets in the calculation.
- o. Overall, under-reported liabilities and over-valued commingled assets render the net worth (capital position) of the ISTA at an estimated negative \$67 million.
5. In light of the foregoing, the Department supports the negotiated agreement between the ISTA and UHC to transition all Medical coverage to a fully insured status, as a method of resolving the dispute between the Department and ISTA as to the ISTA's previous failure to register the Medical insurance arrangement as a MEWA.
 6. Neither the order nor the transition contemplates, or addresses or provides a remedy for, any issues relating to the CSR, RSR, or experience refunds to plan participants.
 7. The Commissioner has been advised that the ISTA issued a Memorandum dated April 28, 2009, attached hereto as Exhibit A.
 8. This Memorandum incorrectly avers that the ISTA has been meeting and working with the Department on restructuring the LTD portion of the ISTA.
 9. The Department to date has focused on the Medical and not the LTD portion of the ISTA. ISTA continues to contend that the LTD is a federally regulated benefit plan.
 10. The Department anticipates working with any applicable federal regulators as to any LTD issues.

Having considered all of the foregoing, the Commissioner now ORDERS the following:

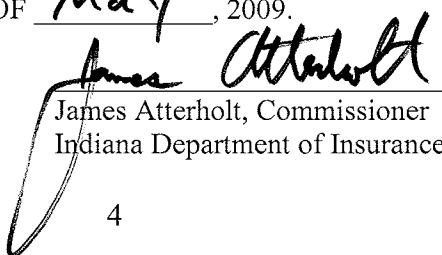
The Enforcement Division of the Department will decline to act with regard to ISTA's MEWA registration submitted on May 4, 2009, through July 1, 2009, in order to allow the transition to fully insured status with UHC to be fully implemented.

The ISTA is ordered to place \$4.7 million, within five business days from the date of the order, into a trust or joint custodial account so as to secure the cash necessary to facilitate the transition, pursuant to a form of trust or custodial agreement acceptable to the Department.

The ISTA shall cease and desist any reference or representation as to the Department's role in any related matter without the Department's consent.

Failure to comply with this order may result in additional consequences. This is a final order pursuant to I.C. 4-21.5 *et seq.*

SO ORDERED THIS 8 DAY OF May, 2009.


James Atterholt, Commissioner
Indiana Department of Insurance

Distribution:

Richard Darko, Interim Director
ISTA Insurance Trust
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ISTA Insurance Trust
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Carol Mihalik
Indiana Department of Insurance
311 W. Washington Street; Ste. 200
Indianapolis, IN 46204

Memorandum

To: UniServ Directors and ISTA Financial Services Corporation Field Representatives
From: Richard J. Darko, Interim Director of the ISTA Insurance Trust and
ISTA Financial Services Corporation
Date: 4/28/2009
Re: Long Term Disability Coverage

Many of you have communicated to us questions, concerns, and issues raised by school board members, administrators, and local leaders in regard to long term disability coverage carried through the ISTA Insurance Trust. In particular, we have received multiple messages that the proposed 20% premium increase will cause an immediate loss of a significant amount of LTD coverage.

Consequently, we have made the decision to postpone the 20% premium increase. No school district whose policy is about to renew will be required to pay an automatic 20% increase. Further, if a school corporation has agreed to renew, with a 20% increase, we will rescind that increase for this policy year.

The ISTA Insurance Trust has never missed a claim payment due to an LTD participant. Our product has been one of the least expensive, best administered, long term disability products in the country.

The Trust and ISTA Financial Services Corporation are vigorously and extensively working on a restructuring of our products. We are meeting every day with our consultants, the Indiana Department of Insurance and its representatives, and multiple insurance carriers. Our goal as to long term disability is to transition the coverage now provided by the Trust to a fully-insured product, from a commercial vendor. We hope to couple this fully-insured status with the continuation of ISTA servicing and identification.

It is CRITICAL that you remind your local leaders that long term disability insurance, and all other insurance, is a mandatory subject of bargaining. A school corporation cannot drop an insurance plan, add an insurance plan, or change an insurance plan, without the agreement of the local collective bargaining agent.

EXHIBIT

A

April 28, 2009

We implore you to suggest strongly to your local leaders that there be NO AGREEMENT on a change in regard to long term disability coverage carried by the Trust, for the next 30 days.

ISTA's Programs and Legal departments will vigorously assist any local association in filing proceedings with the Indiana Education Employment Relations Board to stop attempted, unilateral, changes in long term disability coverage.

We all intend to come out of this process with an LTD product which is fully-insured, thereby offering additional benefits and protection to all of our members, together with all of the benefits of ISTA support and identification,

But we can't do it overnight. The ISTA Insurance Trust, ISTA Financial Services Corporation, and ISTA have achieved the incredible gains which have been made for our members over the past 25 years. Please work with your local leaders to give us 30 days to improve the product which we are offering to them. We promise that we will immediately share with you all significant developments in regard to improvement of our LTD product.

Please call me if you have any questions.