

M.D. NEWS

A BUSINESS AND LIFESTYLE MAGAZINE FOR PHYSICIANS

HAMPTON ROADS EDITION | MAY/JUNE 2003

VOL. 6, No.3

WILL IT STILL BE RECIPROCAL?

The Doctors' Insurance Reciprocal and the Impact of Rehabilitation

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Reciprocal is by definition an exchange of benefits. Consequently, physicians and healthcare facilities have paid hundreds of thousands of dollars in premiums to the Doctors' Insurance Reciprocal (DIR), expecting that in the unfortunate event a malpractice claim was filed against them, DIR would assume the cost of defending the claim and fully pay any judgment entered against them. By sharing the risks of malpractice claims, members of DIR reduced their insurance cost and ensured that they would not be personally obligated to pay any adverse judgment. Their personal and business assets were therefore protected.

However, that may have changed on February 5, 2003, when DIR was placed into rehabilitation and insurance regulators in Tennessee were ordered to take control of DIR due to its "hazardous financial condition."

DIR's trouble began when the Virginia State Corporation Commission took control of the Reciprocal of America on January 29, 2003 because of its own financial condition. Like a proverbial house of cards, Reciprocal of America's difficulties were, according to the SCC, the result "of poor claims experience and the inability of its Bermuda-based reinsurer, First Virginia Reinsurance, Ltd., to honor its reinsurance obligations."

The financial health of Reciprocal of America is significant to DIR because Reciprocal of America had assumed DIR's risk by reinsuring DIR's potential and actual losses. Because of Reciprocal of America's financial uncertainty, DIR could no longer depend on Reciprocal of America to cover its losses. Concern over whether DIR has sufficient reserves and assets to cover its own losses apparently led to its rehabilitation.

The order entered by the Tennessee Court authorizes the rehabilitator to take control of DIR's operations and to place DIR into liquidation if it is deemed to be insolvent. While DIR could emerge from rehabilitation, the last medical malpractice carrier placed into rehabilitation was PHICO Insurance Company. After being placed into rehabilitation, PHICO was declared insolvent and ordered to liquidate. Because of its rehabilitative status, the certainty of the protection once provided by DIR is no longer guaranteed. If DIR is ordered to liquidate, the consequences may be catastrophic to physicians insured with DIR.

Ordinarily, the Virginia Property and Casualty Insurance Guaranty Association Act would control the management and disposition of claims pending against any physician who was insured by an insolvent insurance carrier. The Act provides up to \$300,000 in "coverage" for payment of out-standing claims and bears the cost of defending any pending claims.

However, the Virginia Code expressly provides that while it applies to all classes of direct insurance written by member insurers, it shall not be applicable to "any class of insurance written by...risk retention groups." DIR is a risk retention group.

Therefore, physicians insured by DIR would not be afforded any benefit provided by the Act. Consequently, in the event DIR is declared insolvent and ordered to liquidate its assets, the physicians and facilities insured by DIR, who are defendants in pending claims, could become uninsured if there are not funds available to pay all losses. Accordingly, unless these physicians or facilities can find an insurer willing to cover these pending claims, a prospect which is improbable, they may need to personally assume the financial burden of defending themselves. Further, without the benefit of insurance coverage, their personal and business assets may be attached to pay any judgment entered against them. Premiums that have been paid may also be lost because physicians and facilities become unsecured creditors that step in line behind all other se-cured creditors of DIR.

Litigation against DIR, Reciprocal of America and various individuals who share relationships with these entities has begun. The impact of DIR's rehabilitation and possible liquidation has not yet been realized but is expected to be tremendous. In the end, physicians and facilities insured with DIR may find that it will not be reciprocal after all.

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