



**THE WORKERS' COMPENSATION  
RATING AND INSPECTION BUREAU**

*Administrator  
Massachusetts Assigned Risk Pool*

September 9, 2003

**NOTICE TO POOL CARRIERS NO. 03-2**

**The Supreme Judicial Court Will Not Review The  
Massachusetts Appeals Court Decision (*In Re: Dearmon*) Regarding the  
Non-Renewal of Assigned Risk Pool Policies**

On July 14, 2003, we issued Notice to Pool Carriers No. 03-1 which advised that outside counsel for the Assigned Risk Pool would file an Application for Further Appellate Review of *In Re: Dearmon* by the Supreme Judicial Court (SJC). On Friday, September 5, 2003, the SJC denied the Application for Further Appellate Review. The SJC did not give any explanation for its decision, which is its usual practice with regard to such applications.

*In Re: Dearmon* held that an assigned risk pool policy remained in effect beyond its policy expiration date because the carrier's notice of non-renewal (that was sent in accordance with the Assigned Risk Pool Procedures Manual) did not comply with Massachusetts General Laws chapter 152, section 65B ( a copy of the statute is attached). As a result, even though the policy term was from June 1, 1995 to June 1, 1996 and the insured did not pay the renewal deposit premium, the carrier was required to pay benefits for an injury that occurred on June 5, 1996. While the appeal to the SJC was pending, the Bureau continued to review the *Dearmon* decision as it relates to our Assigned Risk Pool Procedures. The results of that review and appropriate changes to the Assigned Risk Pool Procedures will be discussed by the Bureau's Governing Committee at its meeting on September 25, 2003.

We will keep you advised of further developments. In the meantime, if you have any questions you may contact Dan Crowley, Director of Customer Service, at 617-646-7594 or [dcrowley@wcribma.org](mailto:dcrowley@wcribma.org) or me at 617-646-7553 or [ekeefe@wcribma.org](mailto:ekeefe@wcribma.org).

Ellen F. Keefe, CPCU  
General Counsel

*Attachment*

## 152 § 65A

### Note 1

where insurer sent notice of its desire to cancel policy to employer via certified mail, it was returned unclaimed, employer had forwarded new address to insurer during interim period, insurer never attempted to send additional notice to the

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new address, Department of Industrial Accidents (DIA) was not sent notice until approximately six weeks after policy was "cancelled," and DIA never actually approved the cancellation. Case of Armstrong (1999) 716 N.E.2d 114, 47 Mass.App.Ct. 693.

### § 65B. Cancellation or termination of policy; review

If, after the issuance of a policy under section sixty-five A, it shall appear that the employer to whom the policy was issued is not or has ceased to be entitled to such insurance, the insurer may cancel or otherwise terminate such policy in the manner provided in this chapter; provided, however, that any insurer desiring to cancel or otherwise terminate such a policy shall give notice in writing to the rating organization and the insurer of its desire to cancel or terminate the same. Such cancellation or terminations shall be effective unless the employer, within ten days after the receipt of such notice, files with the department's office of insurance objections thereof, and, if such objections are filed, the commissioner, or his designee shall hear and decide the case within a reasonable time thereafter. Further appeal of the decision of the department may be taken to the superior court for the county of Suffolk.

Amended by St.1990, c. 462, § 2; St.1991, c. 132, § 2; St.1991, c. 398, § 90A.

### Historical and Statutory Notes

#### 1990 Legislation

St.1990, c. 462, § 2, in the second sentence, substituted "eleven C" for "eight".

St.1990, c. 462, was approved Dec. 29, 1990. Emergency declaration by the Governor was filed Dec. 31, 1990.

#### 1991 Legislation

St.1991, c. 132, § 2, approved July 9, 1991, in the first sentence, deleted " , with the approval of the department," preceding "may cancel" and, in the proviso, inserted "however," and substituted "rating organization" for "department"; and, in the second sentence, deleted "The department may approve" from the beginning, inserted "shall be effective" and "and the rating organization".

Section 3 of St.1991, c. 132, provides:

"This act shall be deemed substantive pursuant to section two A of chapter one hundred and fifty-two of the General Laws and shall apply to notices issued on or after the effective date of this act." [Amended by St.1991, c. 398, § 98.]

St.1991, c. 398, § 90A, without reference to St.1991, c. 132, § 2, rewrote the section, which prior thereto read:

"If, after the issuance of a policy under section sixty-five A, it shall appear that the employer to whom the policy was issued is not or has ceased to be entitled to such insurance, the insurer may cancel such policy in the manner provided in this chapter; provided, however, that any insurer desiring to cancel such a policy shall give notice in writing to the rating organization and the insured of its desire to cancel the same. Such cancellation shall be effective unless the employer shall within ten days after the receipt of such notice file with the department and the rating organization objections thereto, and, if such objections are filed, a member of the department shall hear and decide the case within a reasonable time thereafter, subject to review as provided where a claim for a review referred to in section eleven C is filed."

Section 107 of St.1991, c. 398, provides:

"Except as specifically provided by sections one hundred and three to one hundred and six, inclusive, of this act, all sections of this act shall, for purposes of section two A of chapter one hundred and fifty-two of the General Laws, be deemed to be procedural in character."

St.1991, c. 398 was approved Dec. 23, 1991, and by § 111 made effective upon passage. Emergency declaration by the Governor was filed Dec. 24, 1991.

### Notes of Decisions

#### Assigned risks 3

##### 3. Assigned risks

Insurer designated to issue worker's compensation insurance policy to employer as an assigned risk could not unilaterally rescind, or otherwise terminate, the policy issued upon realizing that the initial premium fee had not been paid, without giving timely notice to rating organization that assigned the policy, and thus, coverage remained

effective, where insurer was again assigned to provide coverage and deposited employer's certified check after claimant had been injured, but before "effective" date of coverage in subsequent policy. Case of Cummings (2001) 754 N.E.2d 715, 52 Mass.App.Ct. 444.

Before an "assigned risk" workers' compensation insurance policy issued pursuant to statute can be cancelled, two steps are required by statute: (1) written notice must be sent to both the insured employer and the Department of Industrial Acci-