

STATE OF MAINE  
DIRIGO HEALTH AGENCY

RE: DETERMINATION OF )  
AGGREGATE MEASURABLE COST )  
SAVINGS FOR THE FOURTH )  
ASSESSMENT YEAR (2009) )

**FILING COVER SHEET**

**TO:** Board of Directors, Dirigo Health Agency  
Attn: Ruth Ann Burke  
53 State House Station  
Augusta, ME 04333-0053

**DATE FILED:** July 10, 2008

**PARTY:** Maine Automobile Dealers Association Insurance Trust

**DOCUMENT:** Maine Automobile Dealers Association Insurance Trust's  
Motion To Recuse

**CONFIDENTIALITY:** None

/s/ Roy T. Pierce  
Bruce C. Gerrity, Bar No. 2047  
Roy T. Pierce, Bar No. 7541

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STATE OF MAINE  
DIRIGO HEALTH AGENCY

RE: DETERMINATION OF	)	MAINE AUTOMOBILE
AGGREGATE MEASURABLE COST	)	DEALERS ASSOCIATION
SAVINGS FOR THE FOURTH	)	INSURANCE TRUST'S
ASSESSMENT YEAR (2009)	)	MOTION TO RECUSE

NOW COMES the Intervenor, the Maine Automobile Dealers Association Insurance Trust (the "Trust"), by and through its undersigned counsel, and, pursuant to 5 M.R.S.A. § 9063(1), moves for the recusal of Rebecca M. Wyke and Trish Riley in this matter due to their bias in favor of the positions advanced by the Dirigo Health Agency ("DHA").

**I. ARGUMENT**

Rebecca M. Wyke is the Commissioner of the Maine Department of Administrative & Financial Services. Ms. Riley is the Director of the Governor's Office of Health Policy & Finance ("GOHPF"). Commissioner Wyke and Ms. Riley are *ex officio* members of the Board. See 24-A M.R.S.A. § 6904(1)(B).

Commissioner Wyke has testified in support of the methodology offered by the DHA at every one of the prior adjudicatory hearings concerning the Aggregate Measurable Cost Savings ("AMCS") determination. As the Director of GOHPF, Ms. Riley has similarly been an advocate on DHA's behalf, and, in prior years, has even been involved in the development of the savings methodology presented to the Board.

Ms. Riley has recently cautioned the proponents of the current Peoples' Veto effort to be careful what they wish for since the subject legislation's tax on 1.8% of paid claims could be replaced by a SOP "as high as 4 percent of claims" or nearly \$80 million should the veto effort be successful. See *Lincoln County News* article dated June 11, 2008 attached hereto as Exhibit

A. Of course, the SOPs assessed in years past have come nowhere close to either 4 percent or \$80 million. Ms. Riley's own public statements lay bare her lack of objectivity when it comes to Dirigo.

In addition, the AMCS savings methodology presented to the Board this year by the DHA and its consultant, Schramm-Raleigh Health Strategy ("SRHS"), includes \$6.6 million in so-called "MLR Savings" representing amount that Aetna refunded to small group employers earlier this year pursuant to the implementation of a minimum loss ratio requirement. See SRHS June 2, 2008 Report at 1, 19. A March 3, 2008 Bureau of Insurance Press Release announcing the refund contains the following headline: "**Aetna Life will Refund \$6.6 million to Small Group Employers 'Dirigo reforms are working,' states Trish Riley Director of Health Policy & Finance.**" The text of the Press Release goes on to state, in pertinent part:

The Bureau of Insurance today announced that Aetna Life Insurance Company, an insurer of Preferred Provider Organization (PPO) plans in Maine, will refund approximately \$6.6 million to small employers *as a result of Dirigo Health's rate regulation in the small group health insurance market....*

"This is good news for Maine's small employers. *I see this as an important first step in the broader Dirigo reforms* to control the amount of money paid for health care, and we must continue our work to reign in costs that make health care coverage unaffordable to too many" stated Trish Riley Director, Governor's Office of Health Policy and Finance....

(Emphasis added). SRHS actually included the Press Release in an earlier draft of its report dated May 30, 2008 as Appendix F. See dha\_discovery\_02.pdf at p. 81 (copy attached as Exhibit B). In short, Ms. Riley made up her mind *four months ago* that the proposed MLR savings were attributable to the operations of Dirigo Health.

Under 5 M.R.S.A. § 9063(1), an agency member is obligated to recuse herself when biased or financially interested in the matter under review. Although as *ex officio* members of the Board, Commissioner Wyke and Ms. Riley are not entitled to vote on the ultimate disposition

of this matter, the Trust submits that given their involvement on DHA's behalf in prior AMCS determinations and Ms. Riley's predetermination of one of the issues currently before the Board, it would be wholly inappropriate for them to participate in any way in the hearing or in the Board's deliberations

## **II. CONCLUSION**

For all of the foregoing reasons, the Trust's motion to recuse should be granted.

Dated: July 10, 2008

Respectfully submitted,

/s/ Roy T. Pierce

Bruce C. Gerrity, Bar No. 2047

Roy T. Pierce, Bar No. 7541

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**CERTIFICATE OF SERVICE**

I, Roy T. Pierce, attorney for the Maine Automobile Dealers Association Insurance Trust, hereby certify that on this date I made service of the above document as follows:

One electronic copy to:

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Dated: July 10, 2008

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