DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

MEMORANDUM

TO: All Companies Writing Automobile Insurance in North Dakota

FROM: Jim Poolman, Commissioner

DATE: July 19, 2005

SUBJECT: Effect of Repeal of N.D. Cent. Code § 26.1-41-17 on a Request for Arbitration

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Senate Bill No. 2047 passed by the 2005 Legislative Assembly repealed N.D. Cent. Code § 26.1-41-17 which provided for binding arbitration between insurers to settle disputes over payments of no-fault benefits.

The change will take effect August 1, 2005.

1. Issue

The change raises the issue as to what is the effect of the repeal of N.D. Cent. Code § 26.1-41-17 on pending claims.

2. Finding

Research suggests that a request for binding arbitration on a pending claim must be made prior to August 1, 2005, to be effective. After that date the arbitration panel will no longer have the power or the jurisdiction to receive a request for arbitration.

3. Discussion

In Trengen v. Mongeon, 200 N.W.2d 50 (N.D. 1972), the Supreme Court considered the repeal of N.D. Cent. Code § 28-37-32, a law that allowed a trial de novo in the supreme court on an appeal taken from the judgment of a district court in an action tried to the court without a jury. The law was repealed during the 1971 legislative session, effective July 1, 1971.

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In Trengen, the lawsuit was started before July 1, 1971, and a trial was held prior to July 1, 1971, but the judgment was not entered until August 3, 1971, and the appeal was not taken until August 20, 1971.

The Supreme Court held that the law that was repealed was no longer effective when the judgment was entered in the case. It found that until the judgment was rendered, there was no basis or right of appeal. p. 53.

The Trengen decision suggests that the Supreme Court would find that upon the repeal of N.D. Cent. Code § 26.1-41-17, the arbitration board will no longer have the power or jurisdiction to hear an arbitration request received after August 1, 2005.

It is most probable that the Supreme Court would find that a request for arbitration under N.D. Cent. Code § 26.1-41-17 must be made before August 1, 2005, to be effective, regardless as to when the claim arose.

4. Conclusion

Thus, it is the Department's position that any request for binding intercompany arbitration made after the law expires on August 1, 2005, is too late and ineffective.

5. Disclaimer

It is recognized that the above opinion is purely advisory and not binding on any court or company.

Questions or comments should be directed to Charles E. Johnson, General Counsel, at (701) 328-4984 or cejohnso@state.nd.us.

JP/njb