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July 22, 2015

Jonathan W. Shaw
PMD Club Founder
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(704) 920-9127
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Re: **Interpretive Opinion No. 06-15, Whether an Association Covering Payment of Automobile Insurance Deductibles Constitutes Insurance**

Dear Mr. Shaw,

This letter is written in response to your inquiry submitted on or about May 4, 2015 to the Division of Insurance of the Tennessee Department of Commerce and Insurance ("Division"). Your inquiry requested that the Division conclude your company, The Pay My Deductible Club ("PMDC"), is not operating as an insurance program under the Tennessee Insurance Laws. The Division is treating your inquiry as a request for an interpretive opinion.

You asked whether a membership organization which offers financial assistance to members involved in automobile accidents is engaged in the business of insurance. Specifically, you asked whether PMDC, an organization selling monthly and annual memberships in a program designed to pay a member's automobile insurance deductible upon the member's filing of a claim on that policy, is engaged in the business of insurance. PMDC does not provide coverage for automobile incidents, nor is PMDC affiliated with any insurance companies. Rather, PMDC compensates members for deductible payments ancillary to a member claim filed with the member's automobile insurance provider.

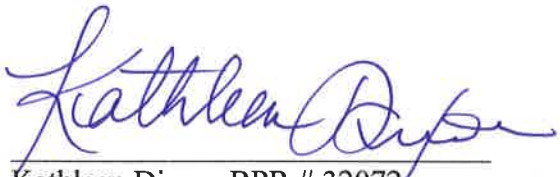
Tennessee Code Annotated ("Tenn. Code Ann.") defines a contract of insurance as "an agreement by which one party, for consideration, promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury, loss or damage of something in which the other party has an insurable interest[.]" Tenn. Code Ann. § 56-7-101(a) (2012). Identifying whether a contract is one of insurance necessitates application of the service-indemnity test to the contract in question. *H&R Block E. Tax Servs. v. State*, 267 S.W. 3d 848, 863 (Tenn. Court App. 2008). The service-indemnity test contemplates a contract in its entirety and considers whether the contract intends to serve as a guarantee of a future service, or as a promise of indemnity. *Id.* A contract predominantly providing a service shall not be considered insurance, whereas one providing indemnity is insurance. *Id.* In essence, to qualify as insurance, the contract must condition payment of an obligation on some unforeseeable act. *Id.* at 865.

The element of contingency exists when some outside event triggers the protection provided by the contractual agreement. *See id.* A contract is insurance when it indemnifies the aggrieved party on a contingent basis. *See id.* Compensation through PMDC is contingent on outside events; involvement of a member in some automobile insurance incident and that member's filing of a claim against his automobile insurance. Simply stated, PMDC seeks to indemnify members for their automobile insurance deductible payments when a member is involved in an automobile incident and files a claim for that incident against his automobile insurance. This coverage is not ancillary to some other service provided by PMDC. Rather, coverage by PMDC is solely contingent upon these defined, albeit outside, events, and seeks to indemnify members for automobile insurance deductible payments arising out of this contingency. Based on this business structure, PMDC provides contracts for insurance under Tennessee Insurance Law. As such, PMDC is engaged in the business of insurance.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation relating to the interpretation of Tenn. Code Ann. § 56-7-101(a) and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Mr. Jonathan W. Shaw could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.



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