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NEW RULES FOR SETTLEMENT OF INSURANCE CLAIMS MARCH 2008

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Effective December 20, 2007, insurance companies that settle claims in Massachusetts must comply with a new set of rules. The rules are designed to prevent nefarious plaintiffs' lawyers from absconding with settlement funds. The rules came about because of one attorney, Anthony Bott, who – in three separate cases – forged his clients' names to settlement documents, received settlement checks from insurers, and forged his clients' endorsements on the checks. Through this scheme, he stole over \$300,000.

The rule is officially an Insurance Commission "Bulletin," which is one step below a regulation. Although compliance is voluntary, a "bulletin" means that the Insurance Commissioner directs that insurers comply. The Bulletin explicitly provides that it does not create a cause of action against an insurer that fails to comply. It is also not intended to create a defense based on compliance.

The Bulletin requires the following in cases where an insurance company issues a settlement check for \$5,000 or more: when the check is mailed to the client's attorney, the insurance company must mail a notice, at the same time, directly to the plaintiff or claimant. This notice must be sent to the plaintiff's last-known address. The notice must state the amount of the check as well as the party to whom the check was mailed and the address to which it was mailed. A copy of the check must be enclosed with the notice. If payment is made by wire, the wiring instructions must be included. Lastly, the notice must include the following statement: "If you have any questions about this notice, please contact your attorney."

Although not specifically required by the rule, it is probably a good idea also to identify the litigation or claim and indicate which defendant is insured by the company issuing the check. Also, a copy of the notice should be sent to the plaintiff's lawyer at the same time that it is sent to the plaintiff.

The Bulletin applies to any third party liability claims. Thus, it would include automobile claims, general liability claims, professional liability claims, and the like.

Typically, insurers (and their lawyers) are prohibited from communicating directly with adverse parties who are represented by counsel. Obviously, the Bulletin creates an exception to the prohibition; indeed, the Bulletin requires direct communication. However, the plaintiff will be protected if his or her lawyer receives a copy of the notice and the notice is limited to the facts required by the statute.

The Bulletin does not address whether the notice must be sent directly from the insurer or whether defense counsel may write to the plaintiff on behalf of the insurer. Until the issue is clarified, it makes sense for the insurer to send the notice on its letterhead, signed by the responsible file handler. In addition, it should be relatively convenient for the insurer to send the notice at the same time that the settlement check is issued.

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An issue in the Bott cases was whether the insurer who sent the checks to the malefacing attorney was responsible to the claimants who lost their settlements. The insurer has a solid argument that it is not responsible under the ordinary circumstances. The addressed Bulletin provides support for this position. Until the Insurance Commissioner spoke to the problem, there was no guidance on handling settlements. Typically, insurance adjusters deal only with plaintiffs' lawyers when settling claims. They have to trust that the lawyer is acting on behalf of his clients, with authority to settle their claims. Indeed, it is noteworthy that the Bulletin only requires notice to the claimant or plaintiff at the time the check is issued. The Bulletin does not require that the insurer verify anything directly with the plaintiff before it issues the settlement check.

If you have any questions or need assistance in regard to the new Insurance Commission Bulletin, please contact Joseph S. Berman, Esq. at 617-951-2800 or jberman@lgllp.com.

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