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Jim Tompkins
Rules Coordinator
P. O. Box 40258
Olympia, WA 98504-0258

Re: Insurance Commissioner Matter No. R 2015-06

Dear Mr. Tompkins:

We are writing to support the Washington Office of Insurance Commissioner's adoption of a rule which will require insurance companies to provide notice of a settlement to third-party claimants.

We represent Providence Health Plans ("PHP"), which is licensed as a health care service contractor in Washington as well as in Oregon. In that context, PHP routinely has dealings with lawyers representing its members who bring third-party claims in which PHP (either on its own behalf or as a TPA for a self-funded health plan) has a financial interest or obligation to collect. We also represent other national TPL collection firms facing similar issues.

When a member of PHP pursues a claim against a party responsible for the injuries which necessitated the member's medical care, it either goes well or it does not. When trouble arises, PHP often asks us to provide assistance in protecting its subrogation rights to recoup the money PHP paid for the medical care from any money the member receives from the responsible party. The reasons PHP has difficulty in a given case vary, but a common circumstance aggravating the situation is its member's (or their counsel's) failure or refusal to advise PHP of a pending or consummated settlement.

Whatever the merits of PHP's claim may be in a given case, nothing useful eventuates from parties with potential claims in such payments not knowing that money is about to be distributed (and potentially dissipated). It might be said that it is in our law firm's economic interest for the status quo to continue, because of the legal energy required to resolve these unfortunate situations, but that is perhaps a significant part of our point. In numerous cases, it has been necessary to bring litigation against such members and (in extreme cases) against their counsel, who not uncommonly do not appreciate their obligations under Washington Rule of

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Professional Conduct 1.15A(g) and Washington State Bar Association Advisory Op. 2166 (2007) to keep the money in the trust account until the dispute is resolved, by agreement with the insurance company or through interpleader. Thus, because of ignorance or contempt of the process, such counsel can both expose their clients to litigation for breach of their obligations and expose themselves to disciplinary action before the Bar. We would rather spend our legal energy creating value for our clients as compared to attempting to rescue our clients from situations created by poor choices by our members or their lawyers.

The notion of a rule requiring carriers to ensure that all parties with interests in their payments be informed of a potential distribution is a simple, elegant solution to this problem. The liability and UIM carriers do not generally care about third-party lien claimants, but also do not ultimately have any reason to deny those claimants' interests. Such carriers are in the best position, provided they have been given notice of the lien interest, to notify all interested of the pending settlement or payment, which will ensure the opportunity for all parties to take appropriate protective action. Such notice clearly would reduce unnecessary litigation, and it would reduce the very significant possibility that insureds may be forced to litigate their improvident use of money which is not theirs, perhaps exposing them to financial difficulty or bankruptcy in a difficult time of life. Most insureds are not familiar with the nuances of third-party liens, and too often their lawyers by ignorance or otherwise are less than helpful (to their clients or otherwise) in managing the problem.

Thus, if liability insurance companies gave timely notice to third-party claimants of settlements, those third-party claimants could timely enforce their claims and insureds can work these issues out before being drawn into litigation that benefits no one but the lawyers fighting over the disbursed funds. Competing claims to the settlement proceeds are always easier to resolve before the money is spent, and our society does not benefit from costly and time-consuming litigation.

We therefore commend you for proposing such a rule, and urge that you adopt one.

Thank you for considering our comments.

Very truly yours,



Arden J. Olson

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