Magic Words Required For West Virginia Claim Denial Letters

By Louis C. Long, Esquire and Mary Margaret Hill, Esquire Pietragallo, Bosick & Gordon LLP

West Virginia has recently enacted revised legislative rules regarding the prevention of unfair trade practices by insurers. Section 114 CSR 14-6.18 of the revised legislative rules requires all insurers **rejecting any element of a claim** to give certain information to the claimant. The insurer must notify the claimant of the option of contacting the West Virginia Insurance Commissioner and must include the Commissioner's contact information within the claim denial letter. The insurance commissioner's mailing address, telephone number, and website address must be provided.

This requirement applies to letters written by insurance carriers as well as letters written by agents acting on an insurance carrier's behalf, such as claims adjusters, third party administrators and attorneys. Although the legislation only requires inclusion of this information in letters denying all or part of a claim, our recommendation is to include the mandatory information in all reservation of rights letters sent by or on behalf of an insurance carrier as well.

Insurers may wish to use the following sample language in all denial and reservation of rights letters:

"If you have any questions regarding our determination, please feel free to contact me at (signatory's phone number) to discuss our decision. However, please note that you also have the option of contacting the West Virginia Insurance Commissioner. The Commissioner's address is: West Virginia State Insurance Department, Consumer Services, P.O. Box 50540, Charleston, WV 25305; (888) 879-9842; www.WVInsurance.gov." ◆

Statute Of Limitations Began To Run When Insurer First Notified Insured That No Coverage Exists; Joinder Of Insurance Agent After Statute Of Limitations Expired Does Not Defeat Diversity Jurisdiction

By Wesley R. Payne, Esquire, White and Williams LLP and Brian Dougherty, Esquire, White and Williams LLP

In *Baer v. Harford Mutual Insurance Company*, 2005 WL305435 (E.D. Pa. 2005), Judge Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania predicted and held that a two year statute of limitations is applicable to a bad faith action brought pursuant to *42 Pa.C.S.A. § 8371*. The Court further held that a Pennsylvania plaintiff could not defeat diversity jurisdiction by joining an insurance agent, a Pennsylvania resident, after the statute of limitations had expired on an alleged negligence claim against the agent.

On April 9, 1999 Plaintiff Stephen Baer sent Harford a General Liability Notice of Occurrence/Claim based upon notification that a minor resident in an apartment owned by Baer was diagnosed with lead poisoning. On May 4, 1999 Harford sent Baer a denial of coverage letter because Baer's policy contained a lead exclusion. Harford sent subsequent denial of coverage letters on October 7, 1999 and April 9, 2002 after receiving letters from Baer's counsel. Baer's tenants did not initiate suit until May 8, 2003, at which time Baer again submitted the claim to Harford, which was again denied pursuant to the lead exclusion. On January 5, 2005, over five years after the initial denial of coverage, Baer initiated a breach of contract action against Harford which included a count for bad faith pursuant to *42 Pa.C.S.A. § 8371*. Harford argued that Baer's claim for bad faith pursuant to *42 Pa.C.S.A. § 8371* must be dismissed because: 1) the statute of limitations on Baer's claim began to run on May 4, 1999 when Harford first denied coverage under the policy; and 2) the statute of limitations applicable to a bad faith action brought pursuant to *42 Pa.C.S.A. § 8371* is two years. The Court agreed with Harford and reasoned that Baer should have and could have brought a declaratory judgment action seeking coverage as soon as he was aware that Harford would not defend and indemnify for the lead exposure claim. The statute of limitations began to run at the time Harford initially denied coverage on May 4, 1999. The Court also held that Baer would have had to file the bad faith action on or before May 4, 2001, to have successfully filed suit within the applicable limitations period. In adopting the two year statute of limitations for actions pursuant to *42 Pa.C.S.A. § 8371*, the Court recognized that the Supreme Court of Pennsylvania has yet to address the issue. However, the Court cited the Pennsylvania Superior Court case of *Ash v. Continental Insurance Company*, the companion Eastern District Case of *Nelson v. State Farm Auto. Insurance Company*, and the Third Circuit Court of Appeals cases of *Haugh v. Allstate Insurance Company* and *Sikirica v. Nationwide Ins. Co*., which all held that a two year statute of limitations is applicable in actions for bad faith brought pursuant to *42 Pa.C.S.A. § 8371*.

Additionally, Bear also filed a count against Harford for violation of the Unfair Trade Practices and Consumer Protection laws *(UTPCPL)*. The judge granted Harford's motion to dismiss the *UTPCPL* claim, finding that Harford's alleged failure to notify Baer of the lead exclusion was not made with the intention to deny Baer the benefit of coverage previously negotiated. The judge noted that the allegation that Harford may have failed to provide notice of the change is, at best, relevant to the breach of contract claim.

Finally, upon motion by Harford, the judge determined that Baer's negligence claim against the agent was also barred by the statute of limitations and, as such, on its face was not a colorable claim sufficient to defeat diversity jurisdiction. Based on the dismissal of the agent, the judge explained that federal diversity jurisdiction existed and that Baer's motion to remand was moot. ◆