

INSURANCE

Dave Heineman

Governor

Bruce R. Ramage

Director

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Bruce R. Ramage

External Appeals for Insured Plans in Nebraska

On September 15, 2010, the Department of Insurance issued bulletin CB-123 to inform all health insurers and insureds that the federal government provided additional guidance to states that do not have external review laws for adverse benefit decisions for health insurance plans.

Amendments to CB-123 were issued by the Department on July 25, 2011. The bulletin was amended to alert all health insurers and insureds that since the issuance of CB-123, the federal government has issued amended rules and regulations regarding internal and external appeals. A copy of CB-123 (Amended) can be found on the Department's website located at www.doi.ne.gov/bulletin/cb123.pdf.

Insurers are strongly encouraged to read and review the changes to the rules and regulations and adjust accordingly. Following are relevant links to the additional regulations and guidance issued by the federal government:

<http://www.federalregister.gov/articles/2011/06/24/2011-15890/group-health-plans-and-health-insurance-issuers-rules-relating-to-internal-claims-and-appeals-and>

<http://www.dol.gov/ebsa/newsroom/tr11-02.html>

Questions regarding CB-123 (Amended) may be directed to Martin Swanson, Counsel, at 402-471-2201 or via email at martin.swanson@nebraska.gov.

FRAUD DIVISION

Insurance Fraud Awareness Week

On July 13, 2011, Governor Dave Heineman signed the “Insurance Fraud Awareness Week” proclamation. Insurance Fraud Awareness Week is a campaign to educate consumers and insurers on the costs associated with insurance fraud. Costs of insurance fraud in Nebraska during 2010 are broken down as follows:

Cases Reporting Actual Loss	79	16% of Cases
Cases Reporting Potential Loss	111	(22% of Cases)
Cases Reporting Monetary Loss	190	of Cases Reported Losses

Actual Losses	\$27,445,319.16	79 Cases Reported Actual Losses = 16%
Potential Losses	\$3,656,058.24	111 Cases Reported Potential Losses = 22%
Reported Losses	\$31,101,377.40	\$31.1 Million Reported Losses – 32% of Cases Reported Losses

Financial Abuse of the Elderly

The Insurance Fraud Prevention Division (IFPD) continues to receive investigative referrals regarding financial abuse of the elderly. Unfortunately, what often appears to be a “good deed” is nothing more than confidence building with the potential elderly victim. The IFPD has seen these “good deeds” in the form of yard work, snow removal, and on one occasion an individual purchased a puppy for the potential elderly victim. Numerous schemes may lack personal contact and may be in the form of telephone or computer relationship building with victims that often feel isolated from their families and friends.

The IFPD would like to remind insurance company special investigators to be alert to the warning signs that elderly financial abuse may be occurring. Unusual patterns should be noted including financial transactions that seem out of the ordinary for the insured, frequent changes in address and/or contact information, and suddenly having a new “friend” who may be handling their financial affairs. Suspected elderly fraud or abuse should be reported to authorities for review, not only to protect the victim’s assets, but those of the insurance company which may ultimately be the victim should restitution become a factor.

Court Actions

Buffalo County Court, CR10-2876

State v. Fredrick A. Brayton

Pursuant to a plea agreement, Fredrick A. Brayton pled no contest to false reporting, a Class I misdemeanor. Mr. Brayton was fined \$250 plus court costs and ordered to serve 12 months’ probation.

Douglas County Court, CR10-27968

State v. Hessonite Mock

Hessonite Mock was charged in Douglas County and pled guilty to a Class I misdemeanor for violating Neb.Rev.Stat. §28-631(1)(h) “knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders.” Mr. Mock was ordered to pay a \$300 fine plus the cost of prosecution.

Douglas County District Court, 185099

State v. Mary R. Wong

Mary R. Wong, a formerly licensed insurance agent, was charged in Douglas County with one felony count of theft by deception as the result of an IFPD investigation. Ms. Wong, who contracted as a territorial manager to sell supplemental health insurance policies, devised a scheme to submit bogus insurance applications resulting in her collecting advanced commissions. On January 3, 2011, Ms. Wong was sentenced by District Court Judge Thomas Otepka to serve a 20-month sentence at a Nebraska Department of Correctional Services facility and ordered to pay \$154.50 in court costs. In addition, Ms. Wong must submit to a DNA test and associated costs. Ms. Wong was previously convicted in Federal Court (Case 8:09cr328-001) for a high profile Ponzi scheme after being accused of scamming several investors. United States District Judge Laurie Smith Camp referred to Ms. Wong as “a great danger to society” and sentenced her to 63 months in prison. Ms. Wong will have three years of federal supervision upon her release.

Hall County Court, CR10-3679

State v. Angelica Mendoza-De Erives

In an investigation conducted by the IFPD, it was found Angelica Mendoza-De Erives allowed another person to use her insurance card to obtain medical care. Ms. Mendoza-De Erives was charged with one count of theft by deception. Ms. Mendoza-De Erives was found guilty and ordered to pay a \$200 fine plus court costs and restitution in the amount of \$267.04.

Lancaster County Court, CR10-21329

State v. Nawanda A. Peacock

Nawanda Peacock was charged in Lancaster County with a violation of the Insurance Fraud Act, a Class IV felony. Ms. Peacock was accepted into the Lancaster County Diversion Services Program requiring her to abide by terms and conditions of the program.

Lancaster County Court, CR11-224

State v. Joseph C. Vaughn

On January 7, 2011, Joseph Vaughn pled guilty to one count of false reporting and was ordered to pay a \$1,000 fine plus court costs.

Lincoln County Court, CR10-1542

State v. Matthew W. Anderson

On January 20, 2011, Matthew Anderson pled no contest to false reporting, a Class I misdemeanor. Mr. Anderson was sentenced to six months' probation and fees totaling \$220.

Madison County District Court, CR10-235

State v. Trent R. Larson

Pursuant to a plea agreement, Trent Larson pled guilty to the charge of theft by unlawful taking, a Class IV felony. Mr. Larson's sentence included a \$500 fine, \$2,237.34 in restitution, 24 months' probation plus fees, chemical testing plus fees, 180 days jail, 80 hours community service, moral reconnection therapy, and a letter of apology to the victims.

**Saunders County Court, CR10-504
State v. Sean M. Williams**

Sean Williams was charged in Saunders County with one count of insurance fraud relating to an automobile accident. During the course of the accident investigation, Mr. Williams advised the responding officer that he had automobile insurance, however, did not have his insurance information with him. Mr. Williams purchased a policy shortly after the accident in an attempt to bind coverage for the automobile accident. Mr. Williams was ordered to pay \$500 in restitution to the claimant driver as reimbursement for their policy deductible, \$2,675.31 to the insurance company for damages they paid to their insured, and court costs and probationary fees. Mr. Williams will serve a 12-month probationary sentence and perform 40 hours of community service at the direction of the probation office.

If you didn't receive the survey, but would like to share your thoughts on the marketplace in your area, please contact Bev Anderson at 402-471-4654 or by email at bev.anderson@nebraska.gov.

Once the filing is made in SERFF, all changes need to be submitted in SERFF—submitting editorial changes as paper filings will delay final action.

PROPERTY & CASUALTY DIVISION

State of the Marketplace Survey

We are once again going to be sending a survey to various producers throughout the state asking about the state of the marketplace. Neb.Rev.Stat. §44-7507 requires that the Director monitor competition and the availability of insurance in commercial insurance markets. We also feel that we need to be aware of the marketplace for personal lines insurance, so the questionnaire will include questions relating to both. If you are a producer who didn't receive the survey, but would like to share your thoughts on the marketplace in your area, please contact Bev Anderson at 402-471-4654 or by email at bev.anderson@nebraska.gov.

SERFF Reminder

We have been on a SERFF-only method of submission for over a year, and we are happy to report that things have gone quite well. Please be reminded, however, that once the filing is made in SERFF, all changes need to be submitted in SERFF. We are finding that the initial filing is made in SERFF as required, but after it has been accepted, a paper filing with "editorial changes" will be received. This paper filing will be returned to the carrier, along with a directive that the filing be resubmitted through SERFF. It is important to note that submitting as a paper filing will delay final action.

Temporary Property Coverage Requirements

Under most commercial property coverages and some homeowner and related dwelling-type policies, there are limitations of coverage for personal property removed from the insured premises.

On June 14, 2011, a notice was issued by Director Ramage to all property and casualty insurers and producers to provide information regarding temporary property coverage requirements as a result of the recent flooding. Nebraska has a number of disaster areas related to the flooding with numerous individual residences and businesses being located in evacuation zones. Leaving personal property in areas that are or potentially are in evacuation zones increases the risk that the personal property will be subject to covered perils such as fire, theft and vandalism.

Under most commercial property coverages and some homeowner and related dwelling-type policies, there are limitations of coverage for personal property removed from the insured premises. These same policies also exclude coverage for neglect of personal property. Some policies also provide coverage for preservation of property.

It is not reasonable to compel insureds to comply with neglect and/or preservation of property provisions while at the same time subjecting their property to drastically reduced levels of coverage.

The Director has determined it is not reasonable to compel insureds to comply with neglect and/or preservation of property provisions while at the same time subjecting their property to drastically reduced levels of coverage. It is, therefore, strongly encouraged that any property removed from its insured premises on or after May 25, 2011, from areas flooded or in danger of flooding, should be covered at the same amount as if the property were located at the insured premises. After July 15, 2011, insurers may subject the personal property to any applicable reduced coverages as provided for in the policy for being located away from the insured premises.

It is strongly encouraged that any property removed from its insured premises on or after May 25, 2011, from areas flooded or in danger of flooding, should be covered at the same amount as if the property were located at the insured premises.

The July 15, 2011 time frame applicable to personal property removed does provide producers and their insurers time to extend or add coverage as may be needed by affected insureds. In order to expedite the providing of additional coverage for relocated personal property, a suspension of certain rate and form filing requirements is hereby provided. For any policy form issued in this state, which will add or enhance coverage for personal property located away from the insured premises for dates of coverage commencing between June 1, 2011 and September 1, 2011, insurers are reminded of their ability to use forms immediately upon filing.

Upon request and without charge, insurers must provide duplicate copies of policies to insureds.

Provisions of the June 14 notice apply to any insurer providing coverage to an affected person in this state whether the coverage is provided on an admitted or surplus lines basis.

To avoid misunderstanding when providing a list of preferred shops, insurers are encouraged to include a notice reminding the claimant of the right to choose an alternate facility.

Upon request and without charge, insurers must provide duplicate copies of policies to insureds in order to provide affected insureds with the information necessary to make claims and to take other steps as may be provided for or required under the terms of the policies.

If, for reasons such as administrative efficiency, an insurer wishes to comply with this notice by providing coverage to insureds on a wider basis than the identification of specifically affected insureds, such more favorable treatment is specifically permitted by the June 14 notice. The more favorable treatment can include but is not limited to application of the notice on a territory, zip code or statewide basis.

Provisions of the June 14 notice apply to any insurer providing coverage to an affected person in this state whether the coverage is provided on an admitted or surplus lines basis. Affected persons include coverage either upon individuals or their property located in this state.

Questions concerning the notice regarding temporary property coverage requirements may be directed to Bev Anderson at 402-471-2201. The notice is located on the Department's website at www.doi.ne.gov/notices/notc2011/notice07.pdf.

CONSUMER AFFAIRS DIVISION

Use of Vehicle Repair Facilities

Recently, a body shop owner contacted the Department to report that an interpreter for a non-English speaking claimant had been provided with a list of designated repair shops. Because of the language barrier, the business owner was concerned the claimant would not understand he had a choice as to which vehicle repair facility to use.

To avoid misunderstanding when providing a list of preferred shops, insurers are encouraged to include a notice reminding the claimant of the right to choose an alternate facility. Please feel free to reference the Department of Insurance Consumer Alert, "Choosing a Vehicle Repair Facility". The alert can be found at www.doi.ne.gov/brochure/conalert/out07163.pdf.

LIFE & HEALTH DIVISION

Sherry Brouillette has joined the division as a staff assistant for the Rate Review and Exchange programs.

New Staff

We welcome Sherry Brouillette to the Life and Health staff. Sherry is the staff assistant for the Rate Review and Exchange programs, and will be heavily involved in assisting with the daily activities of both.

Any compliance statement submitted after December 1 will not be accepted.

Prompt Payment

As described in Neb.Rev.Stat. §§44-8005 and 44-8006, prompt payment compliance statements for 2011 can be submitted now through December 1, 2011. All compliance statements must be submitted through SERFF. Any compliance statement submitted after December 1 will not be accepted.

Effective Rate Review Program

On July 1, 2011, the Nebraska Department of Insurance was notified by the Federal HHS that we have been deemed to have an Effective Rate Review Program in all markets.

Some of the determining factors for an Effective Rate Review Program are as follows:

- The state must have the Authority to collect and analyze information required in the Patient Protection and Affordable Care Act.
- The state must provide access from its website to Parts I and II of the Preliminary Justifications for the proposed rate increases it reviews.
- The state must provide a means for public input on proposed rate increases.
- The state must provide CMS its final determination as to whether a rate increase is unreasonable within five days of determination.

As a reminder, due to reporting requirements presented in the Patient Protection and Affordable Care Act, all health rate filings must be submitted separately from all health forms. If you have any questions, please contact the Life and Health Administrator at 402-471-2201.

Outreach and Transparency

Secondary to the requirements presented under the Patient Protection and Affordable Care Act, the Nebraska Department of Insurance has set forth an effort to promote transparency and consumer education by implementing a web-based tool that will provide the Nebraska

consumers descriptive information regarding rate increases. The tool also contains a subscription service allowing consumers to sign up for email notification when their insurance company files for a rate adjustment.

In addition to the web-based tool, the Department has created a brochure outlining common components in a rate increase. An email address for consumers to submit their comments to the Department on rate increases has also been created. The quantified information presented in the comments will be analyzed by the appropriate Department staff. The results of the quantified information will be conveyed to the insurers to determine if there are any additional cost containment measures that can be taken to mitigate premium increases and also to assist them in identifying rate or plan specific complaints that may not otherwise reach them. A preview of these outreach and transparency features can be found on the Department's website at www.doi.ne.gov.

PRODUCER LICENSING DIVISION

Continuing Education Requirements Effective January 1, 2012

In order to follow NAIC uniform guidelines for continuing education requirements, a change has been implemented in regards to the continuing education requirements for producers holding one or more major lines of authority. All licensees with one or more major lines of authority will be required to complete a total of 24 hours of continuing education in a two-year renewal period beginning January 1, 2012.

Licensees qualified to solicit one or more major lines of authority shall be required to complete the following approved continuing education activities and three hours of ethics in each two-year period beginning January 1, 2012.

Life	21 hours
Health	21 hours
Combined Life and Health	21 hours
Property	21 hours
Casualty	21 hours
Combined Property and Casualty	21 hours
Personal Lines	21 hours
Title	6 hours
Crop	3 hours
Variable	21 hours

The current continuing education requirements still apply through December 31, 2011. Licensees qualified to solicit one or more major lines of authority shall be required to complete the following approved continuing education activities and three hours of ethics in each two-year period through until December 31, 2011.

Life	6 hours
Health	6 hours
Combined Life and Health	12 hours
Property	21 hours
Casualty	21 hours
Combined Property and Casualty	21 hours
Personal Lines	21 hours
Title	6 hours
Crop	3 hours
Variable	6 hours

Ethics Requirement

In addition to the hours required above, licensees are required to complete three hours of approved continuing education activities on insurance industry ethics.

Insurance consultants and brokers shall be required to complete 21 hours of continuing education activities and three hours of approved continuing education activities on insurance industry ethics in each two-year period.

No licensee shall be required to complete more than 24 cumulative hours in any two-year period.

Reminders to Continuing Education Providers

- All updated forms for continuing education providers are located on our website under Continuing Education and Prelicensing Course Information. Please visit the Department's website at www.doi.ne.gov/license/ce_index.htm to access the forms. Incorrect forms have recently been received. This does not apply to providers offering prelicensing courses.
- Continuing education courses do not expire. Please notify the Department when a course is no longer being offered.
- The Department requires the NAIC Uniform Continuing Education Reciprocity Course Filing Form for all course approvals. The Nebraska specific course filing form is no longer required.
- Do not submit course filings in duplicate. Duplicate filings are no longer required.
- All course filings must be received 30 days prior to first offering.
- All course offering dates, times, and locations must be submitted 14 days prior to offering.

- Course approval notifications are emailed to providers. Please provide a current email address on all course submissions. Approval letters are no longer mailed out.
- All new providers must submit a contact and signer information sheet found at www.doi.ne.gov/license/Contact_Signer_Letter_Instr.pdf.

Any questions concerning producer licensing may be directed to the division at 402-471-4913.

LEGAL DIVISION

Enrolling in the Pre-Existing Condition Insurance Plan

The U.S. Department of Health and Human Services (HHS) announced new steps to reduce premiums and make it easier for Americans to enroll in the Pre-Existing Condition Insurance Plan. Premiums for the Federally-administered Pre-Existing Condition Insurance Plan (PCIP) will drop in Nebraska and eligibility standards will be eased. The Pre-Existing Condition Insurance Plan was created under the Affordable Care Act and serves as a bridge to 2014 when there will be guaranteed issue under the Federal law.

Starting July 1, 2011, people applying for coverage can simply provide a letter from a doctor, physician assistant, or nurse practitioner dated within the past 12 months stating that they have or, at any time in the past, had a medical condition, disability, or illness. Applicants will no longer have to wait on an insurance company to send them a denial letter. This option became available to children under age 19 in February, and this pathway is being extended to all applicants regardless of age. Applicants will still need to meet other eligibility criteria, including that they are U.S. citizens or residing in the U.S. legally and that they have been without health coverage for six months.

To further enhance the program, beginning this fall, HHS will begin paying agents and brokers for successfully connecting eligible people with the PCIP program. The **monthly** premiums for Nebraska are:

Age	Standard Option	Extended Option	HSA Option
0 to 18	\$132	\$177	\$137
19 to 34	\$198	\$266	\$205
35 to 44	\$237	\$320	\$246
45 to 54	\$303	\$408	\$315
55+	\$421	\$568	\$438

In addition to monthly premium, there is a \$1,000 to \$3,000 deductible, which varies by plan option, for covered medical benefits (except for preventive services) before the plan starts to pay. A plan option may have a separate drug deductible. After the deductible, a \$25 copayment for doctor visits, \$4 to \$40 for most prescription drugs, and 20% of the costs of any other covered benefits will be applied. Out-of-pocket costs cannot be more than \$5,950 per year. These costs may be higher outside of the plan's network.

For more information, including eligibility, plan benefits and rates, as well as information on how to apply, visit www.pcip.gov and click on “Find Your State.” Then select your State from a map of the United States or from the drop-down menu. The PCIP Call Center is open from 8:00 a.m. to 11:00 p.m. (EST) and may be reached toll-free at 1-866-717-5826 (TTY 1-866-561-1604).

Reimbursement of Medical Services to Veterans

A new and final rule introduced by the Department of Veteran Affairs (VA) concerning the reimbursement of medical services delivered to veterans for non-service connected conditions will become effective July 25, 2011.

Under federal statute a third-party payer, typically a private medical insurer, must pay the United States the reasonable charges for medical care provided to a veteran by the VA for non-service related conditions, so long as the veteran would regularly be eligible to receive payment for such care from the third party. Occasionally, third-party payers are, or believe they are, owed a refund from the VA for overpaying for a veteran’s care. It is a common business practice for third-party payers to offset a future and unrelated payment to effectively recoup what they believe they are owed. As a result, VA accounting principles are disrupted and complicated. Additionally, this practice damages the VA’s ability to validate an alleged overpayment and pursue a review of the debt.

The VA proposed an amendment to their regulations concerning reimbursement on October 8, 2010 in the Federal Register and allowed for a 60-day comment period. Several minor changes were made to the rule before introducing the final rule. Under the new rule, a third-party payer may not offset or reduce “any payment due...on the grounds that payer considers itself due a refund from a VA facility. A written request for a refund must be submitted and adjudicated separately from any other claims.” The VA intends timely review of these written requests with a goal of 90 days.

For more information on this new rule, please visit the federal register page located at www.federalregister.gov/articles/2011/06/24/2011-15854/reimbursement-offsets-for-medical-care-or-services.

Regulation Updates

Company Bulletins

CB-123 (Amended) - EXTERNAL APPEALS FOR INSURED PLANS IN NEBRASKA

CB-123 was amended on July 25, 2011 for the purpose of alerting all health insurers and insureds that the federal government has issued amended rules and regulations—since the issuance of CB-123—regarding internal and external appeals. A copy of CB-123 (Amended) can be found on the Department’s website at www.doi.ne.gov/bulletin/cb123.pdf.

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1888 Bankers Life and Casualty Company Illinois	Violated <u>Neb.Rev.Stat.</u> §§44-1539, 44-1540(2), (4), (7), & (8), and NAC Chapter 61 §§008.01, 008.02, 008.03, 008.04, & 008.08. Unfair Insurance Claims Settlement Practices Act; and Unfair Life, Sickness and Accident Claims Settlement Practices rule.	Consent Order \$2,500 admin. fine 6/16/2011
C-1890 Bankers Life and Casualty Company Illinois	Violated <u>Neb.Rev.Stat.</u> §§44-1539, 44-1540(2), (4), (7), & (8), 44-5905, and NAC Chapter 61 §§ 008.01, 008.02, 008.03, 008.04, & 008.08. Unfair Insurance Claims Settlement Practices Act; Insurers Examination Act; and Unfair Life, Sickness and Accident Claims Settlement Practices rule.	Consent Order \$5,000 admin. fine 6/16/2011
C-1894 USAA Casualty Insurance Company Texas	Violated <u>Neb.Rev.Stat.</u> §§44-1539, 44-1540, and NAC Chapter 60 §§008.01 & 008.02. Unfair Insurance Claims Settlement Practices Act; and Unfair Property and Casualty Settlement Practices rule.	Consent Order \$3,000 admin. fine 6/9/2011
C-1896 Penn Treaty Network American Insurance Company (In Rehabilitation) Pennsylvania	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(3), and NAC Chapter 36 016.02A. Unfair Insurance Trade Practices Act; and Regulation to Implement the Medicare Supplement Insurance Minimum Standard Act.	Consent Order \$100 admin. fine 6/13/2011

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1907 Carl R. Taylor Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a). Provided incorrect information on an application for a producer license.	Order Producer license revoked 4/13/2011
NPN - 9154482		
A-1910 Brown County Abstract Company and Cheryl Ann Mizner Long Pine, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$500 admin. fine 4/28/2011
NPN -3188164		

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1911 Steven Paul Stebbing Cairo, NE NPN - 3194108	Violated <u>Neb.Rev.Stat.</u> §§44-1104(1)(j), 44-1525 (11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$250 admin. fine 5/4/2011
A-1912 Wesley Drew Lawrence Birmingham, AL NPN - 5837751	Violated <u>Neb.Rev.Stat.</u> §44-1104(1)(j), §§44-1525 (11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$250 admin. fine 5/25/2011
A-1913 Bryan L. Reil Lincoln, NE NPN - 3229827	Violated <u>Neb.Rev.Stat.</u> §44-1104(1)(j), §§44-1525 (11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$250 admin. fine 5/4/2011
A-1914 William Reed Omaha, NE NPN - 30302	Hearing requested for reconsideration of denial of application for nonresident producer license.	Order Producer license granted 5/25/2011
A-1915 Seth Aaron Hobart Overland Park, KS NPN - 8275794	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$500 admin. fine 6/28/2011

Case Summaries

In re Trust Created by Henry S. Hansen, deceased. Wells Fargo Bank, N.A., Trustee of the Henry S. Hansen Trust, et al. v. Estate of Ruth Elaine Mansfield, 281 Neb. 693, June 2011

This appeal tackles of the question of whether, “a trustee violated its fiduciary duty by declining to pay the amount of the beneficiary’s last illness expenses to the beneficiary’s estate following her death.” The facts show that in 1979 Henry S. Hansen executed an inter vivos trust to provide for his care, support, and maintenance. The trust was to be continued until the death of his last surviving daughter, either Mildred or Ruth. At the last daughter’s death, the trust was to pay out

\$5,000 to Hansen's surviving great-grandchildren and split the remainder between his two grandchildren. Ruth had no children and outlived Mildred, dying in 2005 after years of extensive medical care. The daughter of Ruth's partner, Falion, assisted her in her final days and began proceedings to become her guardian, however, Ruth died before Falion was appointed.

Falion requested, as Ruth's "step-daughter", that the trust pay Ruth's medical expenses. However, the trustee would not pay the claimed expenses, arguing that Ruth's interest in the trust terminated upon her death and Ruth's estate had sufficient assets to pay the expenses. Falion's attorney then indicated that his firm was representing Ruth's estate and requested that the trust pay medical expenses and for the cost of the dismissed guardianship proceeding.

On December 12, 2008, the county court directed the trustee to determine "whether to pay [Ruth's] expenses related to her illness, and, if payable, how much as it may deem proper" utilizing the legal standard adopted by previous Nebraska Supreme Court opinions. After this decision, there were several appeals based solely on proposed procedural errors, however, none were upheld and the county court's decision was upheld.

Sylvia Devese, Personal Representative of the Estate of Stephen O'Bryant, deceased v. Transguard Insurance Company of America, Inc., A Foreign Corporation, __ N.W.2d __ , June 2011

Stephen O'Bryant was killed in a motor vehicle accident during the course of his employment as a commercial truck driver. O'Bryant's representative sought to recover under his occupational accident policy with Transguard Insurance Company of America, Inc. (Transguard). The claim was denied because O'Bryant did not hold a valid commercial driver's license at the time of the accident. O'Bryant's representative, Devese, brought a claim against Transguard for breach of contract and bad faith, relying on specific contract language. Transguard moved for summary judgment based on the contract's definition of an "insured person" as someone holding a valid commercial license. Devese responded that Transguard was required to show causation between the absence of a valid commercial driver's license and the accident under Neb.Rev.Stat. §44-358. The trial court granted summary judgment in favor of Transguard and the Nebraska Court of Appeals affirmed. Because the Court of Appeals relied on a case with considerable negative treatment in affirming the summary judgment, Devese appealed and the Nebraska Supreme Court granted review.

The key question was whether the clause Transguard relied on was a "condition" to the policy, as contemplated by Neb.Rev.Stat. §44-358, or whether it was an "exclusion". The Court went on to clarify that, "[a]n exclusion is a limitation of liability, or a carving out of certain types of loss, to which the insurance coverage never applied. A *preloss condition subsequent*, in contrast, is a provision that allows insurers to suspend or avoid coverage for a loss that occurs while a failure of the condition exists after the risk has attached". The Court previously explained in D&S Realty that Neb.Rev.Stat. §44-358 limited an insurer's ability to avoid liability

for conditions “so broad that an insured’s violation of them is not causally relevant to the loss”. D & S Realty v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010). Essentially, this means an insurer cannot avoid liability by relying on a condition within the policy unless they show that the condition in the policy is at least causally related to claimed loss.

The Nebraska Supreme Court reversed and remanded the case for further proceedings after determining that the policy condition was excessively broad and Neb.Rev.Stat. §44-358 applied. Transguard will be required to show a connection between the accident and the risk the policy condition protected against; i.e., a driver not maintaining a valid commercial driver’s license. Transguard presented no evidence at the first trial regarding any possible connectedness.

EXAMINATION DIVISION

Financial Examinations Completed During Second Quarter, 2011

Columbia National Insurance Company
First National Life Insurance Company of the U.S.A.
Liberty National Life Insurance Company
Mutual Insurance Company of Saline and Seward Counties
Nebraska Community College Insurance Trust
Nebraska Intergovernmental Risk Management Association
Nebraska Intergovernmental Risk Management Association II
Olive Branch Assessment Insurance Society, Inc.
Platte River Insurance Company
Preferred Professional Insurance Company (Limited Scope Exam)
UnitedHealthcare of the Midlands, Inc.
West Coast Life Insurance Company
Western United Mutual Insurance Association

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

