QUICK OVERVIEW OF SOME KEY UEF LAW

SOME BASICS

"Notwithstanding the provisions of any other law, the Division of Workers' Compensation shall use every available administrative means to ensure that benefit payments from the "uninsured employer's fund" are paid only to individuals who meet the eligibility requirements of the workers' compensation law, R.S. 34:15-1 et seq., and that persons who are required to make payments pursuant to the workers' compensation law have provided lawful compensation and paid any penalty, fine, or assessment imposed pursuant to that law."

N.J.S.A. 34: 15-120.11

- The "**UEF Informational Packet**" (available on the Division's website) provides attorneys with essential information about what needs to be done before, during and after proof hearings in which judgments are entered that the UEF may pay benefits on. A copy of the UEF regulations and sample motion forms is also provided in the packet.

- In typical cases, the UEF may pay only temporary disability benefits and certain medical benefits related to the temporary disability period. The UEF does not pay permanent disability awards or post-permanent medical bills. The UEF also does not pay dependency benefits.(Note: Only in asbestos exposure claims filed under N.J.S.A. 34:15-33.3 may the UEF pay permanency benefits)

- Because the UEF statutorily can pay only limited benefits and should be regarded as payer of last resort next to the petitioner him/herself, a proper and diligent investigation is important to ensure that all necessary party respondents are joined as early as possible to the case and any existing insurance coverage be found.

- As a result, all parties should consider whether:

    - All potentially liable individual respondents were joined on the basis of their active engagement in operating a business entity employing the petitioner e.g., corporate officers, LLC members, and partners (as well as sole proprietors) (see N.J.S.A. 34:15-79 and Macsyn);

- All joint employers were joined based on their possessing rights to control over and deriving benefits from petitioner's work (see N.J.S.A. 34:15-36 and its caselaw on joint enterprise employers, general and special employers, franchisor and franchisee employers, employee leasing companies, etc.);

- All general contractors (up until at least that rung of the ladder where the contractor has undisputed insurance) were joined on the basis of their having subcontracted at least a part of their work to the entity that directly employed the petitioner (see N.J.S.A. 34:15-79 and its caselaw on general contractor liability); and

- All workers' compensation insurance carriers who covered any of these respondents on the date of the petitioner's accident (or even those carriers last on the risk just prior to that date whenever a possibly ineffective cancellation or non-renewal is suspected).

- It is also important to ensure that the court has personal jurisdiction over all respondents by getting proper personal service on (or an answer from) all such respondents joined in the case. Otherwise any default judgment the court enters against those respondents can be vacated for lack of due process.

- The UEF is entitled to take a respondent's lien on any recovery the petitioner obtains from a related third-party action (as provided N.J.S.A. 34:15-40).

- Three key items are entered into evidence at the time judgments are entered against respondents(i.e., where the UEF may pay upon that judgment if the respondents default as required by statute): 1. proof from the CRIB the respondents are uninsured, 2. proofs of personal service on all respondents who haven't filed an Answer, and 3. a certification of petitioner's treating doctor stating that all medical treatment was necessary, that it was for injuries causally-related to the work accident alleged, that all medical bills were reasonable, and specifying the period of temporary total disability.

N.J.S.A. 34:15-120.1 states law concerning creation and operation of UEF.

N.J.S.A. 34: 15-120.2 sets forth the benefits generally payable by UEF. (NB: N.J.S.A. 34:15-33.3 explains how benefits may become payable by the UEF where the petitioner suffers from work-related asbestosis or asbestos-related cancer.)

N.J.S.A. 34:15-120.3 covers judgments involving the UEF.

N.J.S.A. 34:15-120.4 discusses how payments can come from the UEF.

N.J.A.C. 12:235-7.1 et seq. set forth the Division's rules specific to the UEF and its operations.

N.J.A.C. 12:235-7.3 lists the specifics that must be covered in certifications in support of a Motion to Join the UEF.

N.J.A.C. 12:235-7.4 and other regulations found in Subchapter 7 of the Division's Rules (i.e., the UEF rules) cover such issues as the medical documentation required by the UEF, limitations on medical bills the UEF can pay, reimbursements to Medicare and NJ Medicaid, etc.

University of Massachusetts Memorial Medical Center v. Christodoulou, 180 N.J. 334, 352 (2004) in overruling part of Medical Diagnostic Associates v. Hawryluk, 317 N.J. Super. 338, 349 (App. Div. 1998). To assure judicial efficiency and fairness and due process to all parties with a material interest in a workers' compensation case, all parties necessary for a just determination of that case should be joined and given notice so the controversy and its disputes can be conclusively resolved in one proceeding whenever it is feasible to do so.

Macsyn v. Hensler, 329 N.J. Super. 476 (App. Div. 2000). Held that a corporate officer who was not actively engaged in the ongoing operations of the business corporation could not be held individually liable for workers' compensation benefits due petitioner under N.J.S.A. 34:15-79.

SOME ESSENTIALS OF WC CANCELLATION NOTICE LAW

"We acknowledge the strong public policy favoring uninterrupted workers' compensation coverage for all employers as well as the principle that insurance companies must comply strictly with all statutory and regulatory requirements relating to cancellation or nonrenewal of such policies. See Miller v. Reis, 189 N.J. Super. 437, 444, 460 A.2d 210 (App.Div.1983)."

Romanny v. Stanley Baldino Constr. Co., 142 N.J. 576, 584 (N.J. 1995); same passage also cited in Sroczynski v. Milek, 396 N.J. Super. 248, 256-257 (App. Div. 2007), rev. in part and aff. in pertinent part 197 N.J. 36 (2008).

"Continuation of coverage is favored in our law. Id. at 20, 570 A.2d 994. Thus, we insist that insurance companies strictly comply with all statutory requirements. Miller v. Reis, supra, 189 N.J. Super. at 444, 460 A.2d 210. "Avoidance by the insurance company of policy obligations is prevented where it is reasonably possible to do so." Ibid. (citing Kievit v. Loyal Protect. Life Ins. Co., 34 N.J. 475, 170 A.2d 22 (1961))"

Bright v. T & W Suffolk, Inc., 268 N.J. Super. 220, 225 (App. Div. 1993)

- Strict compliance with all statutory and regulatory requirements is the standard carriers must meet to effect a proper cancellation of a workers' compensation policy in NJ.
- N.J.S.A. 34:15-81 states with precision the essential notice requirements for a proper cancellation.
- The CRIB manual implements Section 81 by providing carriers with more specific detail regarding the statute and with Form 116-b to help standardize the cancellation process.
- If an insurance binder is issued, the policy must be cancelled by strict compliance with Section 81 (even if the insured has not yet paid a premium on that policy).
- One should note that Section 81(a) is timed based on the date of mailing of the cancellation notice to the insured, whereas Section 81(b) is marked by the date of filing of like notice with the CRIB.
- The CRIB manual states that at least 10 days advance notice is required to meet the mailing and filing requirements of Section 81 whenever the cancellation is triggered by non-payment by the insured of the policy premium. However, the manual calls for at least 30 days advance notice when the policy is being cancelled for reasons other than non-payment of premiums.

- While the text of the statute calls for" registered" mailing to the insured, caselaw holds that certified mailing is equivalent and meets the requirements of the statute.

N.J.S.A. 34:15-81 states:

> Cancellation of contract; notice
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> Any contract of insurance issued by a stock company or mutual association against liability arising under this chapter may be canceled by either the employer or the insurance carrier within the time limited by such contract for its expiration.
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> No such policy shall be deemed to be canceled until:
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> a. At least ten days' notice in writing of the election to terminate such contract is given by registered mail by the party seeking cancellation thereof to the other party thereto; and
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> b. Until like notice shall be filed in the office of the commissioner of banking and insurance, together with a certified statement that the notice provided for by paragraph "a" of this section has been given; and
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> c. Until ten days have elapsed after the filing required by paragraph "b" of this section has been made.
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> The provisions "b" and "c" of this section shall not apply where the employer has replaced the contract to be canceled by other insurance, and notice of such replacement has been filed with the Commissioner of Banking and Insurance. In such event the notice required by provision "a" may, if given by the insurance carrier, recite as the termination date the effective date of the other insurance, and the contract shall be terminated retroactively as of that date. No notice of cancellation of any such contract need be filed in the office of the Commissioner of Banking and Insurance where the employer is not required by any law of this State to effect such insurance.

Sroczynski v. Milek, 197 N.J. 36 (2008); Romanny v. Stanley Baldino Constr. Co., 142 N.J. 576, 584 (1995). Interpreting Section 81, the New Jersey Supreme Court held that insurance carriers must strictly comply with all statutory and regulatory requirements relating to cancellation of workers' compensation insurance policies.

Sroczynski v. Milek, 396 N.J. Super. 248 (App. Div. 2007) aff'd in part, rev' in part 197 N.J. 36 (2008); Bright v. T & W Suffolk, Inc., 268 N.J. Super. 220, 225 (App. Div. 1993). The New Jersey Appellate Division echoes the same principle of compensation cancellation law and interprets Section 81 as expressing a general policy in favor of preventing workers' compensation insurance carriers from avoiding policy obligations where it is reasonably possible for a court to do so. In other words, NJ courts should find that a workers' compensation insurance policy has been properly cancelled by a carrier only where that carrier has strictly complied with all of the pertinent provisions of Section 81 and related

cancellation regulations (see, e.g. ,New Jersey Workers' Compensation and Employers Liability Insurance Manual (Part 3, Section 2, Page 88 regarding "Notice of Cancellation" and Form 116-b).

Calderon v. Jimenez, 356 N.J. Super. 513 (App. Div. 2003). Judge of compensation upheld in deciding carrier still liable for workers' compensation benefits where it issued a binder of insurance that was not cancelled in compliance with N.J.S.A. 34:15-81 even if premium was not yet paid by the insured.

Cardinale v. Mecca, 175 N.J. Super. 8 (App. Div. 1980). Since certified mail is a form of registered mail, a policy can be cancelled in compliance with N.J.S.A. 34:15-81 if notice of cancellation is mailed to the insured by certified mail.

SOME ESSENTIALS OF WC NON-RENEWAL NOTICE LAW

"Our case law concerning renewal of liability and casualty insurance, as well as workers' compensation insurance, acknowledges the significant responsibility imposed on insurers to afford timely notice of a policy's expiration and of the prerequisites to renewal .... "

Romanny v. Stanley Baldino Constr. Co., 142 N.J. 576, 582 (N.J. 1995)

"We acknowledge the strong public policy favoring uninterrupted workers' compensation coverage for all employers as well as the principle that insurance companies must comply strictly with all statutory and regulatory requirements relating to cancellation or nonrenewal of such policies. See Miller v. Reis, 189 N.J. Super. 437, 444, 460 A.2d 210 (App.Div.1983)."

Romanny v. Stanley Baldino Constr. Co., 142 N.J. 576, 584 (N.J. 1995); same passage also cited in Sroczynski v. Milek, 396 N.J. Super. 248, 256-257 (App. Div. 2007), rev. in part and aff. in pertinent part 197 N.J. 36 (2008).

"Continuation of coverage is favored in our law. Id. at 20, 570 A.2d 994. Thus, we insist that insurance companies strictly comply with all statutory requirements. Miller v. Reis, supra, 189 N.J. Super. at 444, 460 A.2d 210. "Avoidance by the insurance company of policy obligations is prevented where it is reasonably possible to do so." Ibid. (citing Kievit v. Loyal Protect. Life Ins. Co., 34 N.J. 475, 170 A.2d 22 (1961))"

Bright v. T & W Suffolk, Inc., 268 N.J. Super. 220, 225 (App. Div. 1993)

"It is intended that the insured receive notice in sufficient time to extend or replace the coverage. 'Once the insured receives notice that the carrier has either an absolute or conditional intent not to renew, the insured is then on notice to obtain other coverage or satisfy the preconditions in order to obtain a replacement policy.' *Ibid.* In the absence of such notice, the policy will be deemed to have been automatically renewed. *Id. at 346, 484 A.2d 1292.*"

Meric Trucking and Leasing Co. v. Philip Lehman Co., Ltd., 247 N.J. Super. 261 (App. Div. 1991) (quoting and citing to Barbara Corp. v. Bob Maneely Ins. Agency, 197 N.J. Super. 339 (App. Div. 1984)).

- Two kinds of non-renewals are discussed in workers' compensation caselaw: absolute and conditional.
- Conditional non-renewal notices (or notices of intent to not renew conditioned upon failure of insured to pay renewal premium by the due date) are usually included as part of renewal quotes sent by carriers to insureds.

- Controlling statutes, caselaw and regulations regarding adequate and timely notice about imminent non-renewal are basically the same.
- There are three key requirements for a legally effective non-renewal of a workers' compensation insurance policy in New Jersey that often become a matter of dispute in UEF cases:
    - At least 30 days advance notice must be "given to the insured" (i.e., directly given to or received by the insured);
    - Best efforts to effect the insurance and prevent any lapse must be made by the carrier in "arranging for all of the particulars incident to effecting insurance"; and
    - Particulars of such efforts must be filed with the CRIB.

Meric Trucking and Leasing Co. v. Philip Lehman Co., Ltd., 247 N.J. Super. 261 (App. Div. 1991) (citing to Echevarias v. Lopez, 240 N.J. Super. 104 (App. Div. 1990); Insinga v. Hegedus, 231 N.J. Super. 562 (App. Div. 1989); and Barbara Corp. v. Bob Maneely Ins. Agency, 197 N.J. Super. 339 (App. Div. 1984)). New Jersey Appellate Division sets forth the key legal principle, based on its interpretation of N.J.S.A. 17: 29C-1, that workers' compensation carriers have a significant non-delegable duty to ensure that their insureds have been directly given or have actually received timely nonrenewal notice before any lapse can properly be viewed legally effective. Without proper and timely notice of an imminent nonrenewal to the insured, a workers' compensation policy will be deemed "automatically renewed".

Romanny v. Stanley Baldino Constr. Co., 142 N.J. 576 (1995) and Bright v. T & W Suffolk, Inc., 268 N.J. Super. 220 (App. Div.1993) the New Jersey Supreme Court and New Jersey Appellate Division state that workers' compensation insurance carriers have an obligation to "arrange for the particulars incident to renewal" as required by New Jersey Workers' Compensation Insurance Plan (Part 3, Section 14, Paragraph 11), which entails making "best efforts to effect insurance" in order to prevent inadvertent lapses, interruptions or cancellations in workers' compensation insurance coverage. Both opinions also reiterate another key regulatory requirement found in the same section of the Plan which requires carriers to specify in a timely notice to the CRIB all the particulars of their best efforts to effect coverage and prevent a lapse before that policy can be deemed properly lapsed.