



Minnesota Workers' Compensation Insurers Association, Inc.

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J.P. Hildebrandt, President

MWCIA

July 23, 1996

ALL ASSOCIATION MEMBERS

Circular Letter No. 96-1258

RE: Western National Mutual Insurance Company v. Minnesota Workers' Compensation Insurers Association, Inc.

Hennepin County, Minnesota District Court

NOTICE OF SETTLEMENT

This letter is to update you as an Association member of the resolution of a lawsuit commenced against the MWCIA by Western National Mutual Insurance Company ("Western"), one of the Association's member companies, and of your rights related to that settlement.

I. Description of Litigation

In late 1990, the Association, at the direction of the Minnesota Commerce Department, notified member companies and Minnesota employers of an error in the calculation of experience rating modification factors caused by a computer programming error. The Commerce Department also issued an opinion concerning an insurer's right to correct that error for policies of insurance that had been renewed based upon an incorrect experience modification factor.

Western was one of a few insurers who sought to challenge the Commerce Department's interpretation of the law. As a result of that action, Western and a number of other insurers were sued by classes of their policyholders for damages arising from the insurers' attempts to collect premiums using a corrected experience modification factor. All of these insurers, except Western, settled these lawsuits. Western ultimately lost on the class action case against Western in Minnesota District Court, and that adverse ruling was later affirmed by the Minnesota Court of Appeals. *See D.J.'s Upholstery, Inc. v. Western National Mutual Life Insurance Company*, 505 N.W.2d 379 (Minn. App. 1993).

Western sued the Association to recover the additional premium it claims to have lost because of the experience rating modification error and for its attorneys fees in the defense of the class action lawsuit. The amount of total damages claimed is approximately \$500,000.

The MWCIA denied liability under this lawsuit. In addition, the MWCIA's Board of Directors directed that all insurer members be advised of the existence of this litigation because damages assessed against MWCIA are potentially assessable against member insurers. Notice of this litigation was sent to you as Circular Letter No. 94-1204. Finally, the MWCIA Board sought a nonjudicial resolution of this issue

which would ensure that all of its members are treated in a fair and equitable manner.

II. Settlement With Western

In order to avoid the costs and uncertainty of litigation and to provide a fair and equitable solution to this and other similar claims, the Board of Directors of MWCIA has agreed to the following resolution of this matter without the admission of any liability:

A. Dismissal of the Western Lawsuit and Submission of a Claim for Reimbursement

Western has agreed to dismiss its lawsuit against the Association and submitted its claim for losses as a claim for reimbursement under the MWCIA's Articles and Bylaws. That claim as submitted is for \$416,000 representing the amount of the judgment entered against Western in the defense of the action entitled *D.J.'s Upholstery, Inc. v. Western National Mutual Insurance Company*, 505 N.W.2d 379 (1993) (the "D.J.'s Upholstery Litigation").

Western has proposed that any authorized reimbursement may at the Board's discretion be treated as a credit against future assessments of Western rather than cash payments by the Association.

B. Acceptance of the Claim by MWCIA's Board

The MWCIA's Board of Directors has agreed to accept Western's claim as a reimbursable amount under the MWCIA's Articles and Bylaws. In addition to accepting these claims and prior to establishing a mechanism for reimbursement, the Board directed that notice of this settlement be sent to all member companies and companies with potentially similar claims. The Board also decided that it will consider any claims by other member companies for reimbursement of similar claims, if any. If other claims are submitted to MWCIA:

- (1) The Board could determine that Western is the only insurer member who has advanced a valid and timely claim for reimbursement and agree to establish a mechanism to fund that claim; or
- (2) The Board could determine that members of the MWCIA, including Western, have a valid claim and establish a mechanism by which all those members, including Western, shall be compensated for their claims.

Any claim for reimbursement will be made under the criteria of the MWCIA's Articles and Bylaws and applicable Minnesota law. MWCIA's Articles state:

Indemnification 10.01. The corporation shall indemnify such persons, against such expenses and liabilities, in such manner and under such circumstances, to the full extent permitted by Minnesota Statutes, Section 317A.521, as now enacted or hereinafter amended.

Under Minnesota Statutes, section 317A.521, the Board may consider claims under the business judgment rule and may provide reimbursement for expenses, liabilities and judgments arising out of acts and omissions of a member if the member:

- (1) has not been indemnified by another organization or employee benefit plan for the same liability described in the preceding paragraph with respect to the same acts or omissions;
- (2) acted in good faith; and

(3) received no improper personal benefit and section 317A.255, if applicable, has been satisfied.

C. Your Company's Rights and Obligations

If your company believes that it has a claim similar to that of Western and wishes to submit that claim for consideration, it must do so promptly. MWCIA reserves the right to establish a final cutoff for such claims. In calculating its claim, Western determined the total amount of additional premium it would have been able to receive by simply applying a revised modification factor to correct the experience rating modification error. No other changes in the premium calculation for the policy were made. This notification was sent to employers and insurers on October 18, 1990.

Your company may use a similar methodology or a different methodology you feel is more appropriate only if a written description of that methodology is provided. Please submit the amount of your claim and factual support for why you assert a claim for reimbursement to:

Terri L. Steffen
Minnesota Workers' Compensation Insurers Association, Inc.
7760 France Avenue South
Suite 640
Minneapolis, MN 55435

Any questions regarding the settlement may also be directed to:

Thomas E. Harms
Hessian, McKasy & Soderberg, P.A.
4700 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Please also state if you would be willing to accept any claim award as a setoff against future assessments as has been the proposal by Western.

Very truly yours,

JOHN P. HILDEBRANDT

President