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## **Montana Supreme Court decision limits insured employers' access to WC claims information**

In the recent Montana Supreme Court case *American Zurich Insurance Company v. Montana Thirteenth Judicial District Court*, 364 Mont. 299, 2012 WL 826196 (Mont.) (March 13, 2012), the court clarified strict limitations on insured employers' access to information related to workers' compensation claims. Sedgwick strives to be in full compliance with the law and has detailed below the limitations imposed on carriers, third party administrators, and employers as a result of this decision.

In this decision, the Montana court clarified that attorney-client privilege is not extended to communications disclosed by the insurer to the employer. According to the court, because only the insurer is exclusively liable, the insurer and the insured employer do not share common legal interests in the adjustment of an employee's claim for compensation.

The findings in this case are consistent with two previous decisions of the Workers' Compensation Court of the State of Montana: *Lucy Hernandez v. National Union Fire Insurance Company of Pittsburgh*, WCC No. 9708-7811 (October 28, 1997) and *Robert Hernandez v. ACE USA*, WCC No. 2002-0685 (April 23, 2003). Those and other cases established some basic handling rules regarding insured Montana workers' compensation claim management:

- Workers' compensation insurers are directly liable to claimants and have a direct duty to claimants when adjusting claims, according to Mont. Code Ann. § 39-71-2203(3).
- Insurers cannot delegate their duties to insured employers.
- Under Mont. Code Ann. § 39-71-107(2), all workers' compensation claims must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the examiner must be able to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office.
- Giving the insured employer veto power of a claim examiner's decision is a violation of Mont. Code Ann. § 39-71-107(2).

What are the risks? Under Mont. Code Ann. § 39-71-2907, a workers' compensation judge can increase by 20 percent the full amount of benefits due an injured employee if delays or refusal to pay benefits are found to be

unreasonable. There is also exposure to bad faith allegations if the claimant can prove that the insurer allowed the employer to participate in claim handling decisions.

In order to remain in full compliance with Montana law on behalf of our employer and carrier partners, for claims in Montana Sedgwick will follow these regulations consistently across insured programs by:

- Limiting insured employers' access to the notes on Montana claims in our claim systems;
- Blocking insured employers' access to documents on Montana claims on our paperless platform, SIR;
- Ensuring that all Montana workers' compensation claims are handled in our in-state Sedgwick office;
- Advising our claims examiners that:
  - If requested, insured employers may be notified of reserves, average weekly wage (AWW), payments, or settlements;
  - They may also share with the insured employer information related to return to work, including full duty and light duty release dates and work restrictions;
  - They are to ask the insured questions as part of normal claim investigations.

If you have any questions about these jurisdictional requirements, please contact the Sedgwick client services team for your program.

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