

June 11, 2013

Paying the plaintiff? Send the Notice Letter!

Virginia's Payee Notification Act Va. Code Ann. § 38.2–236 Effective July 1, 2013

Beginning July 1, 2013, Virginia's Payee Notification Act requires insurers to notify represented claimants directly when the insurer makes a payment of \$5,000 or more to the claimant's attorney in settlement of a claim or satisfaction of a judgment. The purpose of the law is to protect claimants from a dishonest or careless failure by their attorney to inform them of the payment. The new law is a change from routine practice and creates a limited exception to the long-standing rule prohibiting direct contact with represented claimants by insurers. An overview and sample "notification" letter is set forth below.

How It Works

The Act is triggered when a court enters judgment for a plaintiff, or when the claimant's attorney agrees to accept a settlement and the insurer issues a single check of \$5,000 or more to the claimant's attorney. Until that point, the established prohibitions against direct contact with the represented claimant remain in place.

Within five days of issuing the single check for \$5,000 or more to the claimant's attorney, the insurer must send the claimant a notification of payment. The law

requires the insurer to send the notice to the claimant's "physical address, or email or other electronic address, furnished by the claimant." If the claimant fails to provide contact information, the insurer must send the notice to the claimant's "last known physical address, or email or other electronic address." A copy of the notice must be sent to the claimant's attorney "simultaneously" with the notice to the claimant. The law provides that the claimant can notify the insurance company in writing that he waives notice of payment.

Required Notice Contents and Prohibited Contact

The Act requires that the notice contain **only** the following language:

Pursuant to § 38.2–236 of the Code of Virginia, you are hereby notified that a payment was sent on *(insert date on which payment was sent)* by *(insert name of insurer)* to your attorney or other representative *(insert name, address, and telephone number of attorney or other representative known to insurer)*, in satisfaction of your claim or judgment against *(insert name of insurer, or insured,*

whichever is appropriate).

If you have any questions, please contact your attorney or other representative.

Va. Code Ann. § 38.2–236(B) (2013). Failure to provide notice or providing improper notice does not create a cause of action against the insurer, establish a defense to any cause of action, or invalidate the judgment or settlement. The Act specifically states that contact with a representative claimant other than that provided for in sub-section (B), quoted above, remains prohibited.

An Example Notification Letter

See a sample notification letter template below. If you have questions regarding the Payee Notification Act or any other subject related to healthcare litigation defense in Virginia, please feel free to contact any of our litigation attorneys, including the authors of this advisory, Sean Byrne, (sbyrne@hdjn.com) or Samuel Bernier (sbernier@hdjn.com) at (804) 967-9604. Additional information about Hancock, Daniel, Johnson, & Nagle, P.C. is available on the firm's website at www.hdjn.com.

DATE
(Within five days of check issuance)

Via Regular or Certified Mail

CLAIMANT'S NAME
ADDRESS

Re: **(Plaintiff v. Defendant)**
Case No. _____
Claim No. _____

Dear Claimant:

Pursuant to § 38.2–236 of the Code of Virginia, you are hereby notified that a payment was sent on **(insert date on which payment was sent)** by **(insert name of insurer)** to your attorney or other representative **(insert name, address, and telephone number of attorney or other representative known to insurer)**, in satisfaction of your claim or judgment against **(insert name of insurer, or insured, whichever is appropriate)**.

If you have any questions, please contact your attorney or other representative.

Very Truly Yours,

Claims Representative

cc: CLAIMANT'S COUNSEL (by email and mail)
DEFENSE COUNSEL (by email and mail)

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