



A Subsidiary of Midland Claims Service, Inc.

Montana Workers' Compensation Claim Handling

In 2012, the Montana Supreme Court published their opinion in "*American Zurich vs. Montana 13th Judicial District Court*". The Montana Supreme Court addressed the unique relationship that exists in Montana between the "in-state examiner", the insurer and other parties of interest. Simply stated, employers, agents, brokers and others, who are routinely deeply involved in the WC claims process in many other states, are EXCLUDED from the process in Montana. "*American Zurich*" affirms "*Hernandez vs. ACE*", a decision regarding "in-state" handling requirements from 2003.

The Supreme Court ruling clarified application of the "in-state examiner" requirements found in Section 39-71-107(2) MCA:

All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required 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.

Under an Agreement appointing MCSi/IIC as the Montana "in-state examiner", we become fully authorized for process and financial matters for the client organization. Our insurance company, TPA, Managing General Agency ("MGA") and self-insured clients are prohibited from asserting any control, financial or otherwise, over any part of the claim process.

The Supreme Court ruled that the employer has "no legal interest" in a workers' compensation claim, inclusive of brokers or any other parties. While perhaps counter-intuitive, the decision designates that such parties have no legal right to participate in Montana workers' compensation claims. Employers, regardless of size of deductible or Self-Insured Retention ("SIR"), are not allowed access to detailed information nor influence over determining matters of compensability and benefit entitlement, reserves, payments including the hiring of external service providers such as medical case managers, surveillance personnel or vocational rehabilitation consultants. Failure of any party involved in Montana WC claims are subject to stiff penalties, attorney fees and bad faith claims.

The limitation of sharing claim specific information includes non-party access to computer systems. If carriers, TPA or MGA clients have agreements with insureds or self-insureds that gives them access to computer system notes, financial information or ad hoc report creation, that access must be blocked and secured for all MT claims. Access to system specific data may be evidence that the party or parties willfully disregarded "*American Zurich*" and all attorney – client privilege will be lost. The limitation includes electronic computer systems as well as all forms of communication including but not limited to physical documents, electronic documents and verbal communications. For underwriting purposes, program summary data can be shared amongst all those necessary for underwriting / pricing decisions.

The Montana Supreme Court has ruled, despite accepted practices and contracts in use in other states, that an insured employer has "no legal interest" in a Montana WC claim. Insurance company, TPA and MGA clients and Montana examiners who share claim specific information with employers or their brokers at any point in the claims process make all claim information discoverable if litigation ensues, and subject all parties to regulatory action and bad faith litigation.

The Montana Supreme Court has consistently ruled on the subject of subrogation as well. Payers in the WC process have no right to pursue subrogation against any party until there is a showing that the injured work has been "made whole" for claims made, known and unknown. Should a worker have an attorney, the court has laid out rules that make it virtually impossible for them to be made whole. Processes and procedures in place by our insurance, TPA and MGA clients that address subrogation are to be amended and eliminated for Montana WC claims.

If you have any questions or concerns, please feel free to contact us.