

IN BRIEF

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An Insurance Industry Newsletter of Recent Issues and Opinions in Virginia Law By

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ATTORNEYS AT LAW

BEWARE AND...BE AWARE!

Litigation reporting for injured parties who are entitled to Medicare is changing; any liability carrier that does not make the change will pay a stiff price for non-compliance - \$1,000 per day!! This newsletter is dedicated to helping our clients make the necessary adjustments in advance of the **JULY 1, 2009 DEADLINE**. On that date the new requirements of 42U.S.C. 139y(b)(8) will go into effect. Responsible parties “will submit their initial files containing information for all liability insurance (including self-insurance), no fault insurance, and workers’ compensation claims involving a Medicare beneficiary as the injured party where the settlement, judgment, award or other payment date is July 1, 2009, or subsequent, and claims on which ongoing responsibility for medical payments exists as of July 1, 2009, regardless of the date of an initial acceptance of payment responsibility”.

This newsletter is designed to make all of our clients aware of the basics of the new requirements. However, for detailed information, please visit the www.cms.hhs.gov/MandatoryInsRep website. Please do this as soon as possible. If after reading the information provided at the website you have questions about requirements, please be aware that the government is conducting **Town Hall Teleconferences** where experts answer caller’s questions. Several teleconferences have been held. The transcript from the October 29, 2008 teleconference can be accessed on the website by clicking on Liability Insurance, Self-Insurance, No-Fault Insurance and Workers Compensation in the box at the top of the page on the left-hand side. **Future teleconferences will be held on January 22, 2009, February 25, 2009, March 25, 2009 and April 22, 2009.** Instructions for participation are: call-in line number is 800-619-4610; the Pass Code: MMSEA111NGHP; please begin dialing in approximately 20-30 minutes before the call due

to the large number of participants; questions for the call: please submit questions as soon as possible to PL110-173SEC111comments@cms.hhs.gov.

The reporting process is multi-faceted and will be described completely in a User Guide which is in the process of being developed. The latest version, The MMSEA Section 111 MSP Mandatory Reporting Interim Record Layout, can be accessed at the www.cms.hhs.gov/MandatoryInsRep website, clicking on Liability Insurance, Self-Insurance, No-Fault Insurance and Workers Compensation in the box at the top of the page on the left-hand side and opening the first Download, [MMSEA 111 - Updated Interim Record Layout - December 5, 2008 \[PDF 538 KB\]](#). In this guide, the first step is to determine if you are a Responsible Reporting Entity (RRE). To do this, visit the aforementioned website and refer to Attachment A to the Supporting Statement. This document provides details on definitions and exactly which entities must report.

If you qualify as an RRE, you must register with the Centers for Medicare & Medicaid Services (CMS) Coordinator of Benefits Contractor (COBC) and fully test the data submission process before submitting production files. **RREs must register on the COB Secure Web site by June 30, 2009.** The earliest date for registration is May 1, 2009. All data is submitted electronically. The format for submitting information is precise and requirements are listed under General Requirements for File Submission.

Finally, an RRE must be aware of when it is necessary to file a report. The "Reporting Triggers" are enumerated and explained on pages 9-14 of the MMSEA Section 11 MSP Mandatory Reporting.

Implementing the new requirements under 42U.S.C. 139y(b)(8) will demand a revision of procedures. If you have started this process, may you have smooth sailing. If not, you may want to start revising your systems and educating your professionals regarding these changes, sooner rather than later, in order for your company to enjoy a happy new year.

*all information taken from cms.hhs.gov/MandatoryInsRep website.

**DECISIONS BY THE SUPREME COURT OF VIRGINIA
REGARDING INSURANCE INDUSTRY ISSUES
JANUARY 16, 2009 SESSION**

The case summaries that follow involve insurance litigation issues. We have downloaded these summaries directly from the Virginia Supreme Court website. We offer them to you without further legal analysis. However, if you would like a brief legal analysis or the full text of any of these cases, please make your request by return e-mail. If you would like to discuss the ramifications of any of the decisions, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

072365 Landmark HHH, LLC v. Park 01/16/2009

In a commercial lease dispute, the circuit court correctly determined that the landlord was liable in contract damages for losses sustained by the tenant when a recently replaced roof leaked during a rainstorm, inundating the leased premises and causing substantial damage to the tenant's inventory. The court also correctly found that lease provisions requiring the tenant to maintain hazard insurance and hold the landlord harmless for any insured losses did not bar the tenant from seeking damages from the landlord. The circuit court's judgment is affirmed.

072504 Portillo v. Nationwide Mutual Fire Ins. Co. 01/16/2009

In a declaratory judgment action, the trial court did not err in concluding that an applicant for a motor vehicle insurance policy had made material misrepresentations concerning the number of persons of driving age living in his household. Such misrepresentations were material because they would have caused the insurer to reject the risk or accept it only at a higher premium rate, and the policy was therefore void. The judgment is affirmed.

072571 Martin v. Duncan 01/16/2009

In a personal injury case, the trial court erred by imposing \$540 in jury costs upon a plaintiff who took a first nonsuit, as a matter of right, during the trial. Because the imposition of financial costs not authorized in Code § 8.01-380(C) places a limitation on the absolute right of a plaintiff to take a first nonsuit, the trial court could not assess jury costs upon a plaintiff taking such a nonsuit, and a local court rule could not serve as authority for imposing such costs. That portion of the judgment is reversed.

080008 Centra Health, Inc. v. Mullins 01/16/2009

In a medical malpractice action, the circuit court did not err in refusing to require the administrators of a decedent's estate to elect between alternative claims for wrongful death and a survival action for personal injuries to the decedent, both of which allegedly arose from the same acts of medical negligence. Election between these remedies was required only at a time when the record sufficiently established that the personal injuries and the death arose from the same cause. In this case there was no appropriate time prior to trial at which compelling an election would not have prejudiced plaintiffs and, consequently, unfairly benefited the defendant. Further, the circuit court did not err in denying the defense motion to strike the evidence on the survival claim in subsequently confirming the jury's verdict in favor of the administrators on that claim, or in rejecting claims that the damage award was improper. The judgment is affirmed.

080425 Hancock-Underwood v. Knight 01/16/2009

In litigation arising from a vehicular accident, the trial court did not err in refusing to instruct the jury on the "unavoidable accident" and "sudden emergency" doctrines. Because an "unavoidable accident" instruction merely restates the law of negligence, overemphasizes the defendant's case, and is apt to confuse and mislead a jury, it is error to grant an unavoidable accident instruction, and thus the trial court in this case did not err in refusing such an instruction. In addition, the evidence did not support the proposed "sudden emergency" instruction as tendered. The judgment is affirmed.

080502 Jackson v. Qureshi 01/16/2009

In a medical wrongful death action, because the evidence clearly demonstrated that a proffered medical expert witness met the statutory "knowledge" and "active clinical practice" requirements under Code § 8.01-581.20 to testify with regard to the medical procedure at issue, the circuit court's judgment dismissing the case with prejudice after finding that the expert could not testify is reversed and the case is remanded for further proceedings.

DISCLAIMER

This newsletter is intended to provide information of general interest to industry professionals. It is not intended to offer legal advice about specific situations or problems. Sinnott, Nuckols & Logan, P.C. does not intend to create an attorney-client relationship by offering this information, and anyone's review of the information shall not be deemed to create such a relationship. You should consult a Sinnott Nuckols & Logan, P.C. attorney if you have a legal matter requiring attention.

Nothing on or in this material creates an express or implied contract. If you have questions or comments regarding this newsletter, please contact: Mark C. Nanavati, (804) 378-7600 ext. 3316, mnanavati@snllaw.com.