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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

One advantage to judicial determinations would be that parties could rely upon precedents in structuring their business relationships. However – now and then courts in differing jurisdictions reach conclusions although based upon the same set of facts. Following is a prime example of divergent findings. We had touched upon the following matter some seeks ago but it deserves some further thoughts.

We are all aware that MLMIC folded its tent as an entity a few years ago. As part of its conversion from a mutual company it agreed to a distribution of monies derived from collected premiums and it amounted to almost twice the cost of premiums paid by its assureds during a designated three-year period. The pertinent question devolved about the proper recipient of this windfall. Would it be the party who had paid the premium or the specific party who was the named assured under the terms of the policy?

The fist case decided arose in the First Department (Manhattan-Bronx) and the court held that the party paying the premium (in this case the employer of the individual physicians) was entitled to the distribution as to the rule otherwise would constitute an unjust enrichment for the named assureds who had not paid the initial premiums.

We move north to Buffalo and a similar set of facts. Employees-anesthesiologists of a practice claimed that as the named persons of the policies they should be the beneficiaries of the refunded distributions. Of course, the practice argued that since it had written the checks the monies should flow to those who paid the bill(s). In choosing not to follow its downstate brethren the Fourth Department court cited the NYS Insurance Law which directed that distributions of this kind were to be made to its policy holders.

Shortly thereafter the Third Department in Albany heard a similar case and followed the reasoning cited in the Fourth Department and declined to follow the downstate court.

We now move to litigation involving Wyckoff Heights Hospital in Brooklyn. The hospital brought suit against a former employed physician who had received her proceeds from MLMIC. The Court acknowledged that there was a clear divergence of opinions among the different Appellate Divisions within the state and ruled in favor of the employer but in a later case, on appeal, the Appellate Division followed its upstate counterparts and ruled that it was the policyholder entitled to the proceeds. The employer fulfilled its contractual duty by providing insurance but no unexpected windfall was expected and thus it should flow to the named assured, to wit, the employee. The court stated that while the payment of the policy premium was a benefit to the employee it was a benefit which was earned by the labor of the employee.

It should be mentioned that there have been instances where the employee signed a form designating the practice as the agent for the malpractice coverage leaving the practice free to name itself to receive dividends (and later the proceeds from the demutualization). It should also be noted that the employee can argue that absent a designation of the employer; what happened to the dividends received by employer over the years? Will there be suits filed for recovery of those monies? It appears that we have not yet even approached the end of this saga.

Respectfully submitted,

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