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**COLORADO LEGISLATURE PASSES
"INSURANCE ACCOUNTABILITY ACT"**

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Earlier this month, the Colorado Senate passed House Bill 1047, also known as the "Insurance Accountability Act" (the "Act"), which "prohibits an insurer from unreasonably delaying or denying a claim for payment of benefits," and increases penalties for insurance carriers that fail to pay valid claims. The Governor is expected to sign the Act into law by the end of the month, and the Act will become effective August 6, 2008, unless a peoples' referendum petition is filed.

The Act allows the Colorado insurance commissioner to assess increased penalties against a first-party insurer for failure to comply with the commissioner's reports of examination, investigations and orders. Additionally, the act also allows insureds to recover increased damages from first-party insurers that unreasonably delay or deny payment of a claim.

First, the Act amends Colorado Revised Statutes § 10-1-205, "Financial examination reports," such that the commissioner may assess a penalty of not more than \$3,000 for "for every act in violation of any law, rule, or prior lawful order of the commissioner described in the report of examination," but not to exceed an aggregate penalty of \$30,000, unless the carrier "knew or reasonably should have known that its conduct was in violation of any law, rule, or prior lawful order of the commissioner," in which case the penalty shall not be more than \$30,000 for each act and not to exceed \$750,000 in the aggregate annually. Previously, the statute imposed fines of \$1,000; \$10,000; \$10,000; and \$100,000 in a sixth-month period, respectively. The Act similarly amends §§ 10-2-804 and 10-3-1108, "Investigation by commissioner" and "Orders," respectively.

While the Act does not abrogate any common law contract or tort cause of action, it does prohibit an insurer from unreasonably delaying or denying payment of a first-party claim



for benefits. An insurer's delay or denial is unreasonable if there was no reasonable basis for its action. Notably, the unreasonable delay or denial provisions do not apply to workers' compensation insurance, title insurance, or life insurance.

With respect to remedies, the Act allows an insured, whose claim for benefits has been unreasonably delayed or denied, to file a coverage action and recover attorneys' fees, court costs, and two times the covered benefit. The Act also, however, provides that damages recovered pursuant to the Act shall not be recoverable in any other action or claim. Further, if a claimant's action brought pursuant to the Act is frivolous, the court shall award costs and attorneys' fees to the carrier.

Finally, a carrier that fails to pay, deny or settle a claim within 90 days after receiving the claim shall pay a penalty in the amount of 20% of the total amount ultimately allowed on the claim. Previously, the penalty was 10% of the total amount ultimately allowed on the claim.

For a balanced analysis of Colorado's Insurance Accountability Act, as well as its impact on insurers, please contact Joe Bermudez, Chris Clemenson, Jason Melichar or Suzanne Meintzer of Cozen O'Connor's Denver, Colorado office. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas.

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