WEST VIRGINIA CODE: §33-6-31e

§33-6-31e. Notice of proposed settlement for policy limits to underinsured motorist coverage carrier; waiver of subrogation; time limits.

(a) When an automobile liability insurer indemnifying a tortfeasor offers to pay its full policy limits of coverage for bodily injury or death to a claimant in a claim involving a motor vehicle accident, conditioned upon an underinsured motorist coverage carrier waiving its rights of subrogation against the tortfeasor, then the claimant or the liability insurer indemnifying the tortfeasor may give to the underinsured motorist coverage carrier notice in writing that an offer to settle for policy limits has been made by the liability insurer indemnifying the tortfeasor.

(b) The notice shall be in writing and sent by certified mail, return receipt requested, to the underinsured motorist coverage carrier, and it shall state plainly the following information:

(1) The name and address of the underinsured motorist coverage claimant;

(2) The name and address of the person in whose name the underinsured motorist coverage is written;

(3) The policy number of the policy under which the underinsured motorist coverage is written;

(4) The name of the tortfeasor;

(5) The name of the insurance company and the policy number for the insurance policy indemnifying the tortfeasor under which an offer to settle for policy limits has been made;

(6) A statement that the company indemnifying the tortfeasor has offered to settle with the claimant for policy limits, conditioned upon the waiver by the underinsured motorist coverage carrier of its subrogation rights against the tortfeasor; and

(7) A statement that under the law the underinsured motorist coverage carrier has sixty days to preserve its subrogation rights against the tortfeasor by providing written notice of its intention to do so and by paying to the claimant an amount equal to the policy limits that have been offered to the claimant by the liability insurance company indemnifying the tortfeasor.

(c) The underinsured motorist coverage carrier is considered to have fully waived its rights of subrogation against the tortfeasor, unless within sixty days from receipt of the notice described in subsection (b) above, the underinsured motorist coverage carrier sends in writing by certified mail, return receipt requested, to the claimant and to the liability insurer indemnifying the tortfeasor written notice that it does not waive its rights of subrogation against the tortfeasor. This notice is not effective unless the notice to the claimant is

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accompanied by payment to the claimant of an amount equal to the policy limits which had been offered by the liability insurance company indemnifying the tortfeasor. If the underinsured motorist carrier fails to send the notice provided for in this subsection or fails to pay the sum required by this subsection within the time specified, then the underinsured motorist coverage carrier is considered to have waived its subrogation rights against the tortfeasor, and the claimant may proceed to consummate the settlement about which notice had been provided, as set forth in subsections (a) and (b) of this section.

(d) If the underinsured motorist carrier gives notice and tenders the payment, as required in subsection (c) of this section, then the underinsured motorist carrier is and remains subrogated to the rights of the claimant as to the tortfeasor to the extent of any and all sums paid by the underinsured motorist carrier to the claimant, as provided under current law. The payment by the underinsured motorist coverage carrier of the amount equal to the policy limits offered by the liability insurer indemnifying the tortfeasor, as provided for in this section, shall not serve in any way to waive, change or increase the amount of the applicable underinsured motorist coverage beyond the underlying underinsured motorist coverage policy limits.

(e) The provisions of this section shall apply only to written notices sent to underinsured motorist coverage carriers on or after the effective date of this section.

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