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September 10, 2018

Via Email: pubcom@finra.org
and U.S. Mail

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 18-22

Dear Ms. Mitchell:

I write in support of the proposed amendment to the Discovery Guide to require routine disclosure of liability insurance coverage by broker/dealers who are thinly capitalized or not self-insured. I have represented investors in FINRA arbitration for nearly 40 years and have long worked in this haze of secrecy about insurance coverage.

The existence and scope of liability insurance policies is essential information for attorneys to consider if they are to properly advise their investor clients in cases. The unfortunate reality is that many member firms and associated persons are financially unable to satisfy arbitration awards. The ability to pay is an essential consideration when advising clients on whether to go to hearing or settle, and whether a settlement proposal from either side is fair and reasonable under the circumstances. Without that critical insurance information, we are operating in the dark. We are put in a position where we have to advise clients on what may be the most important financial decision in their lives without knowing one of the most critical facts. That untenable position is inconsistent with FINRA's "Investor Protection" mandate.

This notice will also help prevent B/Ds from threatening bankruptcy or from filing Form BDW in the face of customer complaints, in the event there is coverage. If insurance information is disclosed to the claimant's attorney in discovery, then appropriate actions can be taken to protect the rights of the claimant with coverage counsel. The least FINRA can do is to require its members to disclose the information about liability coverage, if it exists. Disclosure of liability insurance coverage has been part of the Federal Rules of Civil Procedure for decades, mandating that coverage be produced. See Federal Rule of Civil Procedure 26(a)(1)(A)(iv). **The information is required by statute to be produced in Florida before any lawsuit or arbitration is filed and our demands for such information are routinely ignored by FINRA member firms. See Fla. Stat. 627.4137 (enclosed).**

This debate has nothing to do with encouraging claims or using the existence of insurance coverage as evidence of some sort of wrongdoing.

Those arguments against this proposal are red-herrings. The policy would have no relevance to the legitimacy of the underlying claims. The new rule recognizes that presenting insurance information to the arbitration panel could be prejudicial and therefore sets very strict guidelines on the limited ability to make the arbitrators aware of an existing insurance policy.

If you have any questions about any of the matters contained herein, please do not hesitate contact me.

Very truly yours,

Robert W. Pearce

RWP/md
Enclosure

Fla. Stat. § 627.4137

The Florida code and constitution are current through the 2018 Second Regular Session of the 25th Legislature.

LexisNexis® Florida Annotated Statutes > Title XXXVII. Insurance. (Chs. 624 — 651) > Chapter 627. Insurance Rates and Contracts. (Pts. I — XXI) > Part II. The Insurance Contract. (§§ 627.401 — 627.442)

§ 627.4137. Disclosure of certain information required.

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d)A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

(e)A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

(3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

History

SS. 543, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 22, ch. 83-288; ss. 38, 114, *ch. 92-318*; s. 327, *ch. 97-102*; s. 10, *ch. 2011-174*, eff. July 1, 2011.

Annotations

LexisNexis® Notes

Notes