

Health Care Alert: MIIX Insureds and Claimants To Receive Decision on Settlements or Liquidation By July 25, 2005

By Brian M. Foley, Esq.

MIIX Insurance Company was placed in Rehabilitation in September 2004. The State of New Jersey, Department of Banking and Insurance (“DOBI”) was appointed by the Superior Court to serve as the Rehabilitator. In February 2005, the Court issued a stay of all trials, settlement conferences, mediations and arbitrations in order to implement a proposed settlement plan. MIIX has approximately \$550 million in assets and approximately \$860 million in liabilities. The settlement plan proposes to use the assets to settle as many claims as possible.

Pursuant to the plan, notices were sent to all claimants in early May 2005. The notices informed the claimant of either an offer to settle or that no settlement offer would be made to that particular claimant. The settlement offers are non-negotiable. The maximum settlement amount offered under the plan would be \$1 million.

All claimants who receive offers to settle must accept or reject the settlement offer by May 25, 2005. Based on the number of accepted offers, MIIX and the DOBI will determine if the Rehabilitation Plan will proceed. MIIX and the DOBI will make the decision by July 25, 2005. If it is determined that enough offers were accepted to make the plan viable, then the settlements will be paid and the balance of the assets will be used to defend the remaining matters (i.e. those in which no settlement was offered and those in which the offers were rejected).

If MIIX and the DOBI determine that the Rehabilitation Plan is not viable due to the number of rejected offers, then the DOBI will likely seek an order placing MIIX in liquidation. Under these circumstances, all offers to settle will be withdrawn by MIIX and the DOBI. The stay will be lifted and claims will proceed to trial.

If it is determined that the Rehabilitation Plan is not viable and the company is placed in liquidation, then the New Jersey Property Liability Guaranty Association will step in and assume the New Jersey claims. Other states’ Guaranty Associations may assume any claims pending in those states. Under New Jersey Law, the Guaranty Association pays a maximum of \$300,000 per claim. Unfortunately, if a judgment were to exceed \$300,000, then the provider could be personally liable for the amount of the judgment above the \$300,000 paid by the Guaranty Association notwithstanding that the provider had previously paid MIIX in full for coverage well in excess of that amount. In a recent decision by the New Jersey Superior Court, Appellate Division in a context unrelated to the MIIX Rehabilitation, the Court said that the holder of an insurance policy with an insolvent insurance company is personally liable for any judgment in excess of the Guaranty Association’s \$300,000 maximum liability. Such a result could be a financial disaster to many providers who were insured by MIIX. It could also leave many claimants with judgments that are not collectable in excess of \$300,000.

As noted above, the decision as to whether the Rehabilitation Plan will proceed is expected by July 25, 2005. It is hoped that enough settlement offers will be accepted to make the plan viable.

For more information on the MIIX Rehabilitation or any other health care law issues, please contact Brian M. Foley, Esq. or any member of Schenck, Price, Smith & King's Health Care Practice Group.