

MARGOLIS EDELSTEIN

THE DUTY OF INSURERS AND SELF-INSURERS TO COLLECT OVERDUE CHILD SUPPORT

BY: JONATHAN D. HERBST

HARRISBURG OFFICE
3510 Trindle Road
Camp Hill, PA 17011
717-975-8114

PITTSBURGH OFFICE
525 William Penn Place
Suite 3300
Pittsburgh, PA 15219
412-281-4256

SCRANTON OFFICE
220 Penn Avenue
Suite 305
Scranton, PA 18503
570-342-4231

CENTRAL PA OFFICE
P.O. Box 628
Hollidaysburg, PA 16648
814-224-2119

MARGOLIS EDELSTEIN
Jonathan D. Herbst, Esquire
The Curtis Center, Suite 400E
170 S. Independence Mall W.
Philadelphia, PA 19106-3337
(215)931-5822
FAX (215)922-1772
jherbst@margolisedelstein.com

WESTERN PA OFFICE
983 Third Street
Beaver, PA 15009
724-774-6000

MT. LAUREL OFFICE
100 Century Parkway
Suite 200
Mount Laurel, NJ 08054
856-727-6000

BERKELEY HEIGHTS OFFICE
300 Connell Drive
Suite 6200
Berkeley Heights, NJ 07922
908-790-1401

WILMINGTON OFFICE
750 Shipyard Drive
Suite 102
Wilmington, DE 19801
302-888-1112

www.margolisedelstein.com

THE DUTY OF INSURERS AND SELF-INSURERS TO COLLECT OVERDUE CHILD SUPPORT

BY: JONATHAN D. HERBST

I. OVERVIEW OF STATUTORY LIEN ON MONETARY AWARDS

A provision of the Support Chapter of the Pennsylvania Domestic Relations Title, 23 Pa. C.S.A. § 4308.1 ("the Act"), provides that overdue child support is an automatic lien against the "net proceeds" of any "monetary award" in any civil or workers' compensation matter. Distribution of any payment is stayed pending compliance with the Act. The term "monetary award" applies to any payment made to a claimant, who is at least 12 years old, by settlement or judgment in civil actions and to awards under Pennsylvania's workers' compensation and occupational disease acts. The Act is gender neutral. That is, both "dead beat" dads and "dead beat" moms exist. Also note that fathers and mothers owing support can be very young. "Net proceeds" means any payment in excess of \$ 5,000. Additionally, "net proceeds" in worker's compensation and occupational disease cases does not include attorney's fees, witness fees, court costs or reasonable litigation fees.

The Act refers to the recipient of the monetary award as either the "prevailing party" or "beneficiary" but neither term is defined. Although the term claimant is not used in the Act, I use the term to include any payee or recipient of net proceeds. The purpose of the Act is to collect overdue support payments and "beneficiary" is a sufficiently broad term to include any recipient of the net proceeds.

Before a claimant can receive the proceeds of a monetary award, he or she must provide a statement to his or her attorney pursuant to 18 Pa. C.S.A. § 4904 (relating to unsworn falsification to authorities) confirming that either there is an arrearage in existence or not in existence from the Pennsylvania Child Support Enforcement System for unpaid child support. The statement must include the claimant's full name, mailing address, date of birth and Social Security number. The claimant must also supply his or her attorney with written documentation of arrears from the Pennsylvania child support enforcement system website or, if no arrears exist, written documentation from the website indicating no arrears . The claimant's attorney must obtain his or her client's statement and the client's lien report from the Pennsylvania Child Support Enforcement System website. Note that all claimants who are at least 12 years old and have never paid or owed child support, or even never had any children, are still subject to the Act's requirements. The required lien report must be dated within 20 days of the delivery of the release. The claimant's attorney must then make payment of any lien to the Pennsylvania State Disbursement Unit from the net proceeds of any monetary award.

Significantly, when the claimant is represented by counsel, the insurance company or self-insurer has no duty under the Act. Accordingly, in cases where the plaintiff is represented by counsel, there is never any reason to withhold payment of the net proceeds.

II. WHEN THE INSURANCE COMPANY HAS A DUTY UNDER THE ACT

The only time an insurance company or self-insured has a duty under the Act is when the claimant is not represented by counsel. Unrepresented claimants must provide the insurance company or self-insured with the same statements and information that represented claimants are required to give to their attorneys. If the claimant is not represented, the insurance company or self-insured company must make payment of any lien to the Disbursement Unit.

The Act allows for an insurance company or self-insured to use a private search company which is approved by the Department to provide a statement indicating if there are any arrears. Therefore, when an insurer or self-insured is unable to elicit the required documentation (i.e. claimant's statement and report of arrears or no arrears) from the claimant, the insurance company or self-insured may, at the expense of the claimant, utilize an approved private search company. When an insurer or self-insured receives either the documentation required by the Act from the claimant regarding a child support lien, or a report by an approved search company, the insurance company or self-insured is immune from suit for distributing the net proceeds of the monetary award.

In workers' compensation and occupational disease cases, the Act states that a workers' compensation judge may not enter an award for the claimant unless he or she is provided with:

- (1) a statement regarding any child support money that is in arrears ; and
- (2) documentation from the Pennsylvania Child Support Enforcement System website, or from a private judgment search company, regarding the presence or absence of any money in arrears. This requirement effectively relieves the insurance company or self-insured from any duty in workers' compensation and occupational disease cases.

If the claimant is unrepresented, the insurance company or self-insured must make payment of any lien to the Disbursement Unit. When the amount of the child support lien is in dispute, the disputed amount must be placed in escrow with the State Disbursement Unit until it is resolved.

III. CONCLUSION

From a defense perspective, the Act is not a substantial burden to insurers and self-insurers because its provisions only apply when the claimant is not represented by counsel. In such a case,

the insurer's obligation is to obtain the required lien information from the claimant or from an approved private search company. If there is a lien amount, the insurer must pay the lien amount before distributing any monies to the claimant. The following checklist is recommended:

1. Is the payee of the monetary award represented by counsel? If the answer is "yes", proceed no further. Insurers and self-insurers have no duty under the Act. Make payment in the normal course by sending the monies payable to the payee and his or her attorney.

2. When the payee of the monetary award is not represented by counsel, what is the amount of the payment? If the payment is \$ 5,000 or less, make payment in the normal course by sending the monies payable to the payee. The Act is not applicable.

3. When the payee of the monetary award is not represented by counsel, what is the age of any beneficiary of the payment? Individuals under 12 years of age are not subject to the Act. However, court approval of any settlement is required and counsel must be obtained for that purpose. Once counsel appears for the beneficiary, whatever his or her age, counsel has the burden of compliance with the Act, not the insurer or self-insurer.

4. When any payee of the monetary award is not represented by counsel, he or she must provide a statement pursuant to 18 Pa. C.S.A. § 4904 (relating to unsworn falsification to authorities) confirming that either there is an arrearage in existence or not in existence from the Pennsylvania Child Support Enforcement System for unpaid child support. The statement must include the claimant's full name, mailing address, date of birth and Social Security number. The claimant must also provide written documentation of arrears from the Pennsylvania child support enforcement system website or, if no arrears exist, written documentation from the website indicating no arrears. The required lien report must be dated within 20 days of the delivery of the release. The insurer or self-insurer may obtain the required information from an approved search company. Payment of any lien to the Pennsylvania State Disbursement Unit from the net proceeds of any monetary award must be made. If the payee disputes the lien report, the full disputed amount must be placed in escrow with the State Disbursement Unit. The insurer or self-insurer will be liable for the full amount of any arrearage if the full lien is not paid.

5. In death cases where the decedent's estate is not represented by counsel, the procedures in point 4 must be followed for every beneficiary of the estate of the decedent. However, if any beneficiaries are minors, court approval must be obtained and counsel should be retained. In addition, the settlement of a survival action under Pennsylvania law must be court approved and counsel should be retained for that purpose.