

December 22, 2008 Coverage Alert

Cancellation Notice Sent by Certified Mail Did Not Satisfy Statutory “Mail Requirement”

By Paul M. Rosner

In *Cornhusker Cas. Ins. Co. v. Kachman*, ___ Wn.2d ___ (December 18, 2008), the Washington Supreme Court answered the following certified questions from the Ninth Circuit Court of Appeals:

Does sending notice of cancellation by certified mail satisfy the "mailed" requirement of RCW § 48.18.290 (1997) and give sufficient notice of cancellation to comply with RCW § 48.18.290, even if there is no proof that the cancellation letter was received by the insured?

The Washington Supreme Court answered “negative: Sending notice of cancellation by certified mail does not satisfy the ‘mailed’ requirement of (the former version of) RCW 48.18.290.¹ The notice provision could also be satisfied if the notice was “actually delivered”; however, the certified letter was returned to carrier unsigned, so the carrier could not prove there had been actual delivery.

Based upon this decision, carriers should send cancellation notices by regular mail. It may also be prudent to send another copy of the cancellation notices by certified mail. Sending the notice by regular mail would satisfy the “mailed” requirement and, if the insured signs a certified receipt, this would provide proof of delivery.

If you have any questions concerning this article please contact any Shareholder at (206) 624-1800. Soha & Lang, P.S. is regional and national coverage counsel for a number of the nation’s major insurance companies. Advising and representing insurers in the resolution of coverage and bad faith disputes is the major focus of the firm’s practice.

¹ The legislature amended RCW 48.18.290 in June 2006 to change “actually delivered or mailed” to “deliver or mail.” The court offered no opinion on whether or not the subsequent change in the language would affect their analysis. However, based upon the court’s analysis, it does not appear that notice sent by certified mail would satisfy the “mailed” requirement under the current statute.