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Bulletin 06-04

To: Property Casualty Industry

From: Merle Schieber, Director

RE: Countersignature Bulletin

Date: March 21, 2006

A number of questions have arisen in connection with the recent decision by the United States District Court that the South Dakota laws on countersignature are unconstitutional. Those statutes were SDCL 58-6-62, 58-6-63 and 58-6-64. That decision specifically ordered the Division of Insurance not to enforce the countersignature laws. Therefore, no violation relating to the failure to countersign a policy or any other aspect of the countersignature requirement will be enforced by the Division of Insurance.

Nothing currently requires an insurer to have a policy countersigned. While the South Dakota countersignature laws have been found to be unconstitutional, it does not make the countersigning of a policy illegal. An insurer may, but is not required to, have its policies countersigned. An agent is free to countersign a policy on behalf of a company, however, the Division is now prohibited from enforcing the statutory requirement for reimbursement found in SDCL 58-6-63. On that basis insurer would not violate the law for failing to have a policy countersigned. Any countersignature agreements between an agent and an insurer will be considered to be contractual matters outside the scope of the regulatory authority of the Division of Insurance.

There were some questions regarding policies written prior to the court's decision as to whether in those instances the countersignature fee must be paid. The Division will not enforce payment of a countersignature fee regardless of when the policy was written. Any contractual obligations that may exist for any countersignature fee are matters between the agent and the insurer and will not be enforced by the Division.

The decision of the Court is posted on the Division's website at:
http://www.state.sd.us/drr2/reg/insurance/Legal/count_sig_decision.pdf