

MEMORANDUM OF LAW

DATE: May 4, 1992

TO: Eugene Ruzzini, Audit Division Manager

FROM: City Attorney

SUBJECT: Statute of Limitations for Replacement of Stale Checks

Your recent memo outlines the problem of the third party administrator of medical claims canceling medical benefit checks six (6) months after issue and at the end of its contract closing the bank account supporting the checks. Recipients of these checks thereupon requested replacements ranging over a one to four year period. Against this background, you ask for guidance as to the obligation of the administrator to replace the checks and the appropriate statute of limitations within which the payee may request a replacement.

Stale Checks

Section 4404 of the California Uniform Commercial Code states: "A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter."

The Historical Notes to that section state:

Purposes:

This section incorporates a type of statute adopted in twenty-six jurisdictions. The time limit is set at six months because banking and commercial practice regards a check outstanding for longer than that period as stale, and a bank will normally not pay such a check without consulting the depositor. It is therefore not required to do so, but is given the option to pay because it may be in a position to know, as in the case of dividend check, the drawer wants payment made.

Certified checks are excluded from the section because they are the primary obligation of the certifying bank . . . , which obligation runs direct to the holder of the check.

California Uniform Commercial Code section 4404.

Hence under authority of this section, both the bank and the administrator may treat a check older than six (6) months as stale.

Statute of Limitations

California Code of Civil Procedure section 337 sets the statute of

limitations at four years for "an action upon any contract, obligation, or liability founded upon an instrument in writing." Since there is a contract between the insured and the insurer, the four-year statute of limitations applies.

You reported that the checks in question do not have printed on their face a provision limiting the period for cashing them. Whether such a provision is present or not is irrelevant to the obligation of satisfying the medical claim.

Third Party Administrator

As discussed in our meeting with Ted Bromfield, we are concerned that the City not be providing legal advice as to the rights and responsibilities of a third party administrator as to the obligation to replace a check. Rather, we concluded that the City should not refund money to an insurance administrator without proof that outstanding checks were lost or were definitely not paid within the statute of limitations. We felt that it is not the City's responsibility either to protect an insurance administrator, or provide legal guidance to it.

Conclusion

A check becomes stale after six (6) months, and a bank has discretion whether or not to pay it. The statute of limitations for requested replacement of an uncashed insurance check is four (4) years in this instance since the cause of action is upon a contract, obligation, or liability founded upon an instrument in writing.

We trust this answers your inquiry. Please let us know if we can be of further assistance.

JOHN W. WITT, City Attorney

By

MKJ:mb:190(x043.2)

Mary Kay Jackson

ML-92-45

Deputy City Attorney

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