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PRACTICE ALERT - NEW RULES FOR BUSINESSES THAT RENDER "PROFESSIONAL SERVICES"

In *Miller v. Allstate Insurance Company*, __ Mich App __, Docket No. 259992, May 31, 2007, the Michigan Court of Appeals ruled that, because physical therapy services are a type of personal service offered to the public, and because Michigan law requires anyone who provides physical therapy services to obtain a license, an entity providing physical therapy services may not be incorporated under the Business Corporation Act ("BCA"). Instead, it must incorporate under the Professional Service Corporation Act ("PSCA"). In *Miller*, the provider had been incorporated under the BCA, not the PSCA. The court held that the provider was "improperly incorporated".

The PSCA, however, requires that all shareholders be licensed professionals. The shareholders of the physical therapy provider in *Miller* were not licensed professionals, and thus the court also noted that they were ineligible to form a professional corporation.

Miller creates uncertainty for professional service providers being formed under the BCA rather than the PSCA. Although a close reading of the Limited Liability Company Act ("LLC Act") might suggest a different result, we understand the Michigan Bureau of Commercial Services, Corporation Division, is rejecting organizational filings for

either type of entity whose name or stated purpose implies that the company will be providing professional services. Foreign companies seeking to qualify to do business in Michigan are also affected.

In addition, many personal service businesses have been formed over the years under the BCA or the LLC Act which did not consider themselves to be performing "professional services" as traditionally understood. While we have no evidence that the State may move to revoke any company's charter, the authority for these companies to conduct their business as presently constituted may be in question. Practitioners may want to consider the effect of this decision when giving opinions regarding entities that provide professional services.

The Bureau of Commercial Services is reviewing the issues and considering possible statutory amendments. The Business Law Section is closely monitoring this situation. We will keep you updated as these issues develop.

The opinion is available at http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20070531_C259992_61_259992O.OPN.PDF

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