

JULY 24, 2007

**PRACTICE ALERT – CORPORATION DIVISION SETS GUIDELINES FOR ESTABLISHING PROFESSIONAL CORPORATIONS**

The Michigan Bureau of Commercial Services, Corporation Division, has adopted administrative procedures in light of the Michigan Court of Appeals' decision in *Miller v. Allstate Insurance Company*, \_\_ Mich App \_\_, Docket No. 259992, May 31, 2007. These procedures have been posted at the Bureau's website. They will relieve much, but not all, of the uncertainty resulting from *Miller*.

Briefly, the Bureau has comprehensively reviewed the State's licensing statutes and specifically laid out those occupations that provide a "professional service", as described in Sec. 2(c) of the Professional Service Corporation Act ("PSCA"), MCL 450.222(c). Each of these occupations, if it wants to operate within a corporation, must now form a professional corporation.

At least by implication, the Bureau has determined that limited liability companies and professional limited liability companies are not affected by the *Miller* case and will be allowed to organize under the same procedures as were in force before *Miller*.

In *Miller*, the Court held that an entity providing professional services could not incorporate under the Business Corporation Act but must incorporate under the PSCA. We discussed this case in a Special Edition of *Litigation News for Business Lawyers* dated June 29, 2007.

The Bureau has reviewed Sec. 2(c) of the PSCA and will require the professions specifically listed there to be organized as professional corporations. This means that all shareholders of those corporations must be licensed professionals. These Sec. 2(c) professions include public accountants, doctors, dentists, optometrists, veterinarians, architects, professional engineers, land surveyors, and attorneys. This is not a great change from prior practice.

The Bureau has reviewed many other licensed occupations and determined that some are considered "professions" under state law. In particular, corporations organizing to perform occupations regulated under Article 15 of the Public Health Code must be formed under the PSCA. These include chiropractors, marriage counselors, nurses, nursing home administrators, pharmacists, physical therapists, psychologists, social workers, and various other categories of health workers.

The Bureau has also determined that corporations performing services provided by funeral directors, morticians, real estate appraisers, and real estate brokers and salespersons must be formed as professional corporations.

The Bureau has also listed over 50 examples of occupations that are not covered by the PSCA because (i) they are not practicing a "professional service", (ii) they do not need a license, or (iii) it is the entity or facility, not the individual performing the service, that is regulated. These exempted occupations include auto mechanics, builders, cosmetologists, insurance agents, investment advisers, mortgage brokers, and occupational therapists.

The release at the Bureau's website has specific statutory references to support its classifications. All attorneys looking to organize corporations need to review this release, which is available at [http://www.michigan.gov/cis/0,1607,7-154-35299\\_35413---,00.html](http://www.michigan.gov/cis/0,1607,7-154-35299_35413---,00.html).

The Bureau's action should relieve some of the pressure that resulted from the *Miller* decision. It is not a complete fix, however, and actually represents a step backward from prior practice in some ways. Our Section and the Bureau are working closely to develop legislation that will more completely address the issues. There is no way of telling how long it will take to complete the legislative process, or even whether it will be successful.

In the meantime, professions included within the PSCA might review whether it would be appropriate to organize as a limited liability company. Only those professions listed as learned professions need to be formed as professional limited liability companies. Any other occupation is eligible to be organized as an ordinary limited liability company.

We commend the Bureau for its prompt and thorough review of *Miller* and its implications. An overly conservative reading of this important decision could have paralyzed new entity formation in this state and thrown the legitimacy of thousands of existing companies into doubt. This week's actions have gone a long way toward resolving these issues.

Submitted by  
Mark R. High, Section Chairman and  
Diane L. Akers, Section Secretary