Clearing the Final Hurdle:

Electronic Transfer as a Way to Modernize the Delivery of Insurance Related Settlement Funds

By: Aaron Wiseman

As an insurance defense attorney, the process of delivering settlement funds timely is inherently risky because of the information, documents, parties, deadlines and potential penalties involved; regardless of whether it is related to insurance policy monies or another set of monies. This can make it a challenge to get the check past the finish line before time runs out.

Louisiana Revised Statute 22:1892(A)(2) mandates that all insurers issuing any type of contract, except for life, health and accident contracts, shall pay a settlement to a third party claimant within thirty days after written agreement of settlement of the claim. If payment is made after thirty days, the insurer is subject to significant penalties if the failure to timely make payment is found to be "arbitrary, capricious, or without probable cause."[1] The penalties include (1) fifty percent damages on the amount found to be due; (2) any proven economic damages sustained as a result of the breach, or one thousand dollars, whichever is greater; (3) in the event that a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due, plus any proven economic damages sustained as a result of the breach; and (4) reasonable attorney fees and costs.[2]

Recently, in *Bridges v. Chubb Indemnity Insurance Company*, 24-593 (La. App. 5th Cir. 7/2/25), 420 So.3d 71, the trial court found that the defendant insurer did not timely pay the settlement amount of $450,000.00 to the plaintiff in relation to a personal injury claim arising from a motor vehicle accident.[3] On motion of the plaintiff, the trial court awarded a penalty of $225,000.00 and $1,500.00 in attorneys fees.[4]

On appeal to the Louisiana Court of Appeals for the 5th Circuit, the defendants argued they should not be penalized for the delay because it resulted from a combination of an inadvertent internal error and miscommunication about how the settlement would be funded and the temporary absence of their claims adjuster, who was out on maternity leave, rather than bad faith or intentional neglect.[5]

The Louisiana 5th Circuit vacated the judgment of penalties and remanded the case to the trial court on the ground there was an inadequate factual basis for appellate review of the trial court's finding that the insurer's failure to timely pay settlement was arbitrary, capricious or without probable cause.[6] The Court explained there was no evidence in the record to prove when the settlement was paid or what efforts were made on the plaintiff's behalf to obtain updates about the status of the payment after the conditions of the Settlement Agreement were satisfied.[7] *Bridges* conveys the importance of both counsel documenting their efforts to either deliver or obtain the settlement check.

Regarding insurance policy funds, first, defense counsel obtains check instructions and a W-9 tax form from plaintiff's counsel. This information is sent to the insurance adjuster and a check is requested. The check is then usually mailed to defense counsel, who then mails the check to opposing counsel after an executed settlement release by the plaintiff is received. The check may also be mailed directly from the insurance carrier to plaintiff's counsel. With planning and attention to detail, you can ensure settlement funds are delivered on time.

The risk of late delivery with paper settlement checks.

At every step of this process, something can be delayed. Plaintiff's counsel may not be able to send defense counsel the check instructions and W-9 form for a few days. Defense counsel and the insurance adjuster may not be able to get in touch with each other for a few more days. The check may get delayed in the mail, lost or delivered to the wrong address. To account for these possibilities, I usually request that the check be mailed with tracking and expedited shipping. Even then, a check being transported across multiple states can be impacted by human error, traffic or weather.

The risk involved for both insurers and plaintiffs in depending upon delivery of a paper check can be mitigated by sending settlement funds through electronic transfer. The process is fairly simple. If the insurance carrier has a method in place for electronic transfer, defense counsel can ask plaintiff's counsel if they would be willing to accept an electronic transfer. Usually, the answer is, "yes," because it enables access to settlement funds quicker. A routing number is provided by plaintiff's counsel to defense counsel. Once the settlement is transmitted, the money is received almost instantaneously.

Electronic transfer was recently adopted by the federal government, signaling a broader move towards its widespread use.

The transition from paper checks to electronic transfer has recently made its way to the federal government. On March 25, 2025, President Donald Trump signed Executive Order 14247, entitled "Modernizing Payments To and From America's Bank Account."[8] In sum, Executive Order 14247 directs federal agencies to replace paper checks with electric funds transfer by Sept. 30, 2025. It applies to many types of disbursements including "intragovernmental payments, benefits payments, vendor payments, and tax refunds."[9] There are certain exceptions, namely individuals who do not have access to banking services or electronic payment systems, certain emergency payments and national security or law enforcement-related activities where non-EFT transactions are necessary and desirable.[10]

Electronic transfer is a quicker option for delivery of settlement funds, but cybersecurity is a concern.

Electronic transfer offers many benefits, including rapid settlement delivery, the mitigation of errors and fraud through secure digital channels and encryption technologies, the reduction of manual intervention on payment activities and elimination of printing, mailing and processing costs.[11] However, electronic transfer is not a flawless solution. Attorneys and their clients should be aware of certain cyber risks involved with electronic transfer including phishing scams and fraud. In 2023, the FBI's Internet Crime Complaint Center received 21,489 business email compromise complaints, with adjusted losses of over $2.9 billion.[12]

These risks can be ameliorated through multi-factor authentication systems. Multi-factor authentication systems add another layer of security to the transaction. For example, a text message or email with a code to the requesting person or entity can add a secondary form of verification. Additionally, applications such as Microsoft Authenticator or Google Authenticator can be used.

Further, clear communication between defense counsel and plaintiff's counsel regarding wiring instructions and the procedure of the receiving financial institution is imperative to ensure a smooth transfer of funds. Representatives of the financial institution may reach out to defense counsel or the insurance carrier to confirm details about the transaction, including the amount to be transferred and the intended recipient.

Another concern about electronic transfer is the issue of reversibility. With paper checks, a stop payment can be issued to account for fraud or mistake. With electronic transfer, recovery of funds sent in error or intercepted with fraud or phishing is many times difficult or nearly impossible to retrieve. This risk further highlights the importance of having and following cyber security measures within law firms, insurance carriers and financial institutions.

As we move quickly towards a digital world, it's important for attorneys and their clients to be aware of the benefits and risks of electronic transfer. Overall, the transition to electronic transfer of settlement funds may be a part of a larger trend in litigation and beyond; to modernize how things are done and to make things smoother for everyone.

Practice Tools and Tips

For the traditional *mailing* process, on the day the case is settled, communicate the 30-day bad faith penalty deadline to your client. Be sure to calendar the deadline right after a written settlement agreement is reached. For paper checks, obtain check instructions and a W-9 form from opposing counsel to obtain the necessary information for the check request. When requesting the check, specifically request it be mailed with tracking and expedited shipping.

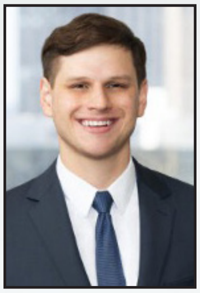
If there are unpredictable delays with the mail, a wrong address or a delay in the receipt of the plaintiff's settlement release, request an extension in writing from opposing counsel. If it is determined that a check is lost, request your client to issue a stop payment. If the bad faith penalty deadline is approaching, follow up with your client continuously on the status of the check. If you are on a time crunch for the delivery deadline, you may even consider driving to the office of opposing counsel to hand deliver the check. Prepare the settlement release and send to the opposing counsel to iron out any disagreements on proposed language well before the deadline approaches. This is important because many insurance carriers require that a signed release be received before the settlement check can be mailed.

For *electronic transfer*, first determine whether this method is used by your client. If it is, ask opposing counsel for wiring instructions and the routing number for their firm's account at the financial institution. Speak with your client, opposing counsel and the financial institution to organize for the transfer. Implement multi-factor authorization to account for cyber risks.

If your client is *not using electronic transfer*, consider speaking with the relationship partner at your firm to discuss the benefits and risks of electronic transfer and explore if it could be something your firm may recommend to your client in the future. The important things to remember for electronic transfer are security and communication. Given the many steps involved in delivery of settlement funds, it's important to remember—it's all the small stuff. Put another way, it's not the alligators you have to worry about, it's the mosquitos.

FOOTNOTES

1. *Louisiana Revised Statute 22:1892* (A)(2).
2. *Id.* at (B)(1)(A).
3. *Bridges,* 420 So.3d at 74-75.
4. *Id.* at 79.
5. *Id.* at 77.
6. *Id.* at 86-87.
7. *Id.* at 82.
8. Exec. Order No. 14247, "Modernizing Payments To and From America's Bank Account," 90 Fed. Reg. 14001
9. *Id.* at Sec. 3.
10. *Id.* at Sec. 4.
11. "Digital Payments: A strategic guide to electronic funds transfers." J.P. Morgan. February 28, 2025.
12. "Lawyer Liability for Wire Transfer Fraud." American Bar Association. The Brief. June 10, 2025. Douglas Richmond and Andrew Ricke.



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