March 16, 2007

LEGISLATIVE ALERT: PROPOSED INSURANCE BAD FAITH/ DIRECT ACTION BILLS INTRODUCED IN MINNESOTA LEGISLATURE

The Minnesota Legislature is currently considering several Bills which will impact a variety of insurance-related matters. The most significant are the Insurance Bad Faith/Direct Action Bills in the House (H.F. 1251) and the Senate (S.F. 1152). These Bills seek to establish a "good faith" obligation on insurers in connection with any matter involving a claim under an insurance policy; and to impose direct liability on an insurer for its insured's negligence as well as create a direct action against the insurer to enforce this statutory liability. The following details the proposed statute and what standards it may impose on insurance carriers.

1) GOOD FAITH: The Bills would create a new statute entitled "Good Faith Insurance Practices" (Minn. Stat. § 604.18) which would mandate that "[a]n insurer shall act in good faith in connection with any matter involving a claim under an insurance policy." An insurer would violate this requirement when, in connection with any matter involving a claim under an insurance policy, it: A) "delays or denies benefits offered or paid without an objectively reasonable basis for its offer, delay or denial"; or B) "engages in any fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice that others rely on . . . ." An insurer's failure to act in good faith makes it liable for costs, damages and reasonable attorney fees. The Commissioner of Commerce must be informed of every disposition, settlement or award against any insurer, and annually report this information to the Legislature.

2) DIRECT ACTION: The Bills employ a two-fold approach to impose direct liability on an insurer in negligence actions. First, they make an insurer directly liable for its insured's negligence (Minn. Stat. § 72A.329). Second, the claimant may enforce this statutory liability in an action directly against the insurer (Minn. Stat. § 540.19). The insured may be made a party to the action if there is a cross-issue between the insurer and the insured, or between any other person and the insurer, involving questions of the insurer's liability in the event of a judgment against the insured.

CRITIQUE: This "consumer protection" legislation is poorly worded, and would impact insurance claims handling and insurance claims far beyond the alleged ills highlighted by its proponents. The provisions imply that a vague negligence-type standard guides bad faith determinations, as opposed to the more egregious standards seen in most bad faith law around the country. The Bills also do not restrict their application to first-party "consumer" matters, do not limit who may sue a carrier for bad faith, do not define if the cause of action is tort-based or contract-based, and do not recite or limit specific categories of damages which may be recovered from an insurer. The Bills as well completely disregard the present state of bad faith law which is well established in Minnesota.

The direct action provisions are equally flawed, as they needlessly increase insureds' exposures to excess verdicts by informing Juries that insurance is available. Finally, the Bills impose these various mandates **on cases which are pending as of August 1, 2007**, and to policies which are in effect as of or issued after that date.

Dale Thornsjo (952.806.0498 or DOT@Johnson-Condon.com) is coordinating our input to the House and Senate. Please contact any of our attorneys with your questions on this important legislation.