

March 22, 2007

**LEGISLATIVE ALERT: PENDING INSURANCE BAD FAITH/
DIRECT ACTION BILL FAILS (FOR NOW) IN SENATE COMMITTEE**

The Minnesota Legislature is considering statutory Bad Faith and Direct Action Bills in the House (H.F. 1251) and the Senate (S.F. 1152) this Session. These Bills seek to establish a “good faith” obligation for insurers in connection with any matter involving a claim under an insurance policy; impose direct liability on an insurer for its insured’s negligence; and create a direct action against the insurer to enforce this statutory liability.

Our March 16, 2007 Update (attached) details the legislation and provides a brief critique of the concerns raised by these consumer protection Bills.

SENATE COMMITTEE REJECTS BILL: On March 20, 2007, the Senate Commerce and Consumer Protection Committee heard testimony on the legislation. The plaintiff bar provided an overview of the “good faith” nature of the Bill, and questioned how anyone could vote against “good faith” or the consumer protection nature of the proposal. Testimony was heard from a variety of consumers who had complaints regarding their first-party carriers in various PIP and property damage matters.

Johnson & Condon Partner Dale Thornsjo was the first of several witnesses who testified against the Legislation. Highlights of the testimony included observations that the Bill fails to consider the present state of well-established bad faith law, fails to restrict its application to first-party “consumer” matters, does not limit who may sue a carrier for bad faith, does not provide a heightened level of proof required to find bad faith, and does not recite or limit specific types or amount of damages which may be recovered from an insurer. Testimony was also presented on how the Bill will create an instant cottage industry of plaintiff lawyers who will assert bad faith claims in every case with the expectation the bad faith threat will enhance a settlement or verdict. The Committee also heard comments on the Department of Commerce’s effective enforcement of the Fair Claims Practices Act, codified in Minn. Stat. § 72A.20 and .201. Fines and penalties recovered by the Commerce Department would no longer be available to the State, as these monies would instead end up in the private sector.

The Direct Action provisions were also examined to show that the Committee’s constituents will likely face a greater exposure to excess verdicts if Juries are informed of the availability of insurance.

The Committee listened intently to all the testimony, and asked thoughtful and probing questions. When the testimony was completed, the Committee rejected passage of the Bill on a close and apparently disputed vote.

LOOK FOR FUTURE UPDATES: Johnson & Condon will continue to monitor further developments on these efforts, and will keep you informed as the Session moves forward. 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.