

March 19, 2008

MINNESOTA SENATE PASSES COMPROMISE FIRST-PARTY “BAD FAITH” BILL

Today, the Minnesota Senate passed a compromise first-party insurance Bill which creates specific remedies for Minnesota policyholders when an insurance carrier commits bad faith. The legislation was offered by Sen. Linda Scheid (DFL - District 46) as an alternative to a Bill advocated by the trial lawyers as introduced by Sen. Tarryl Clark (DFL - District 15). Sen. Clark’s Bill was passed out of the Senate’s Commerce and Judiciary Committees, but the Senate as a whole voted 37-30 to delete Sen. Clark’s Bill and replace it with Sen. Scheid’s Bill. Then, the Senate passed the Bill today as amended on a 50-15 vote.

The legislation utilizes the test set forth in the Wisconsin Supreme Court decision of Anderson v. Continental Ins. Co., 85 Wis.2d 675, 271 N.W.2d 368 (1978) to determine if an insurer has committed bad faith in its handling of several types of first-party claims. Specifically, amounts may be awarded to an insured as taxable costs if the policyholder establishes:

- (1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
- (2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

The Bill contains several safeguards which are designed to prohibit the bad faith claim from becoming the focus of the underlying coverage action or the lawsuit seeking benefits. The insured is not entitled to a bad faith remedy if, for example, there is no coverage available under the policy, the insured’s recovery does not exceed the amount offered by the insurer, there is only a disagreement as to the value or amount of the proceeds owed to an insured, or the carrier undertakes an arson or fraud investigation. In addition, the insured may not bring the bad faith claim until the policyholder moves the court to amend the pleadings to include bad faith claims; this is a procedural requirement similar to the process involved when adding a punitive damages claim under Minn. Stat. § 549.191. As well, the bad faith claim will not be addressed by the court until a proceeding subsequent to any determination of the underlying action’s merits under procedures set forth in Minn. R. Gen. Pract. 119. Also, several categories of evidence may not be considered by the trial court judge in determining whether the insurer acted in bad faith.

The Bill imposes stiff penalties in consumer situations if the court determines the insurer committed bad faith. First, the legislation allows the trial judge to impose a penalty on the insurer in an amount of up to one-half of the proceeds awarded which are in excess of the amount offered, subject to a cap of \$100,000.00. Second, the trial judge may also award attorneys’ fees incurred to pursue the bad faith portion of the insured’s claim in an amount of up to one-half of the disputed policy proceeds sought from the insurer, subject to a cap of \$40,000.00.

Johnson & Condon shareholder Dale Thornsjo continues his two year active involvement with these bad faith issues. Despite the lack of an established need for this legislation in light of the high standards followed by carriers in Minnesota and the Commerce Department’s effective enforcement practices, the Senate Bill is preferred by many in the insurance industry over other approaches, as it provides a somewhat objective determination process without creating a vehicle which might unnecessarily increase premium costs for Minnesota consumers.

The Bill will face opposition in the House of Representatives as well as in a likely joint House-Senate Conference Committee. Please contact Dale (Office: 952.806.0498 or E-Mail: DOT@Johnson-Condon.com) or any of our other attorneys for further details on the legislation’s progress or its impact on Minnesota insurance claims.