

AN OVERVIEW OF MINNESOTA'S RECENTLY ENACTED BAD FAITH LEGISLATION

Governor Tim Pawlenty signed a first-party bad faith bill into law April 18, 2008. The new legislation will impose liability upon an insurer if a court finds 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.” Third-party bad faith claims are excluded from the legislation. The law will be codified as Minn. Stat. § 60A.18, and will become effective August 1, 2008, for causes of action relating to conduct occurring on or after that date.

Who will be affected?

The new law will affect all entities licensed or authorized to transact insurance under Minn. Stat. § 60A.06, except for self-insured political subdivisions and pools of political subdivisions under Minn. Stat. § 471.981. Joint Underwriting Associations that operate under Chapter 62F or 62I are also specifically excluded.

The following types of policies issued by non-exempt insurers are also exempt from the new legislation:

- (1) Workers' compensation insurance policies;
- (2) Health insurance policies;
- (3) Contracts issued by nonprofit health service plan corporations that only provide dental coverage;
- (4) Written agreements relating to life or disability insurance, or medical, disability, or death benefits provided by fraternal benefit societies on an individual or non-group basis; and

(5) Combination policies issued by township mutual fire insurance companies pursuant to Minn. Stat. § 67A.191.

How will bad faith be pled and considered in Minnesota courts?

The new law provides that bad faith cannot be pled in the plaintiff's complaint. Instead, similar to a claim for punitive damages, the insured must seek leave to amend to include the claim for bad faith, and must demonstrate a *prima facie* case based upon affidavits that set forth the factual basis for the motion.

The new legislation allows only courts, not juries, to consider the issue of whether a policyholder has proven bad faith. Damages may only be added as taxable costs if the jury has returned a verdict in favor of the policyholder. An award under this law is not available for any claim that is resolved or confirmed by arbitration.

How will bad faith awards be limited?

Damage awards are limited to half of the proceeds awarded that are in excess of an amount offered by an insurer at least ten days prior to trial, and are capped at a maximum of \$250,000. Punitive damages are not available under the new law. The law also contains a \$100,000 cap for the award of attorney's fees.

What impact will the law have upon arson and fraud investigations?

The legislation specifically states that an insurer does not violate the law "by conducting or cooperating with a timely investigation into arson or fraud." Left unanswered is the question of what constitutes a "timely investigation" for purposes of this law.

Larson · King, LLP, will continue to monitor ongoing developments in the Minnesota Legislature pertaining to the insurance industry. For further information, please contact

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