A good faith effort toward a bad faith law?

Minnesota's new insurance law makes its debut

Each year, Minnesota businesses shell out hundreds of millions of dollars for insurance, expecting that if misfortune strikes, they'll be covered. But when the worst happens, and an insurance company flagrantly refuses to pay, the insured can't collect anything more than breach of contract damages. In most states, the insurer would have to pay additional damages for bad faith breach, but not in Minnesota.

Since 1979, Minnesota courts have seen it this way: "The failure to pay an insurance claim in itself, no matter how malicious, does not constitute a tort; it constitutes a breach of an insurance contract." *Haagenson v. National Farmers Union Property & Casualty Co.*[1]

But, change is on the horizon — sort of. Minnesota has just enacted the state's first bad faith statute (prosaically called the "First Party Good Faith" law). The law, Minnesota Statutes § 604.18, went into effect on August 1, 2008, and has all the hallmarks of a "compromise plan" between plaintiffs' lawyers and insurance company lobbyists who believed that such a law was long overdue. It avoids making dramatic changes — it doesn't cover liability policies, for instance — but it is still a hard-won first step toward a comprehensive bad faith law. Most notably, the law applies only to "first party" or property type insurance policies, *i.e.* homeowners and auto insurance, and excludes such key types of coverage as liability insurance, and workers' compensation, health and dental insurance. The statute allows a policyholder to recover damages from an insurer that knowingly or recklessly denied benefits without a reasonable basis. The law caps the damages that an insured can recover at $250,000, in addition to the value of its claim under the policy, and caps attorneys' fees at $100,000.

So, in the end, the question remains — is Minnesota now a "bad faith" state? Homeowners and motorists may say "yes," but Minnesota businesses, with complex, high-dollar insurance disputes, will undoubtedly say "no." The caps are unrealistic for most commercial losses, and a significant area of exposure for any business — liability to third parties — is left to common law, which generally shields insurers from extra-contractual liability. Minnesota policyholder lawyers hope this law will move the state closer to legislation that will directly protect corporate policyholders. Until we get there, Minnesota cannot be called a "bad faith" state.

A Small Island of Protection

Although the new First Party Good Faith law does not cover liability policies, bad faith recovery is available in the context of third-party claims in one narrow situation: where the insurer has agreed to defend its insured and turns down a settlement offer within the policy limits before trial, thus exposing the insured to a verdict in excess of the limits. In that case, the insurer is liable for the excess verdict, as well as the insured's attorneys' fees in prosecuting the bad faith action.

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[1] 277 N.W.2d 648, 652 (Minn. 1979).