



The Role of Bad Faith in COVID-19 Litigation

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What is Insurance Bad Faith?

- An insurer is subject to liability to the insured for bad faith when it fails to perform under an insurance policy:
 - (a) without basis for its conduct; and
 - (b) with knowledge of its obligation to perform or in reckless disregard of whether it has an obligation to perform. (Restatement of the Law, Liability Insurance §49)
- Bad faith insurance claims are governed by state law.
 - Remedies for bad faith include compensatory damages, attorneys' fees, and, in some jurisdictions, punitive damages.

First Party Bad Faith Claims

- Bad Faith in COVID-19 litigation will generally involve first party claims.
- First party bad faith claims are generally premised upon:
 - The wrongful denial of benefits
 - Delays in claim processing

Snowden v. Twin City

- Case No. 2020-19538, Harris County, Texas
- Business was shut down due to County order
- Property insurer, Twin City, allegedly:
 - Mishandled claim
 - Made material representations regarding policy provisions and applicable law
 - Wrongfully denied claim
 - Did all of this knowingly

Snowden v. Twin City

- Breach of contract
- Common law bad faith
 - Wrongfully denied claim with no reasonable basis to do so
- Statutory bad faith
 - Texas Insurance Code Chapter 541: misrepresentation of policy, facts, and/or law
 - Texas Insurance Code Chapter 542: failure to timely pay claim
- Damages sought: three times actual damages, consequential damages, compensatory damages, court costs, attorney's fees, and interest

Big Onion v. Society

- Case No. 1:20-cv-02005, N.D. Illinois, Eastern Division
- Chicago restaurants and theaters shut down by government
- Property policies do not contain virus exclusions
- Property insurer, Society, allegedly:
 - Issued blanket denials
 - Issued denials within hours of receiving claims
 - Conducted no meaningful coverage investigation
 - Directed its agents “to make sham claim notifications” to avoid paying losses

Big Onion v. Society

- Declaratory judgment
- Breach of contract
- Statutory bad faith: 215 ILCS 5/154.6
 - Failure to conduct a meaningful investigation
 - Failure to provide reasonable and accurate explanations for denials
- Damages sought: damages above and beyond the amounts owed under the policy, attorney's fees, costs, and interest

Public Initiatives

- Massachusetts Bill SD.2888
 - Would require coverage for business interruption losses
 - Specifically states that it is subject to Chapter 176D of the General Laws (Unfair Methods of Competition and Unfair and Deceptive Acts and Practices)
- California Insurance Commissioner Notice
 - Certain insurers are allegedly taking advantage of court closures and high financial need
 - Directs compliance with California Unfair Practices Act (Cal. Ins. Code §790.03 et seq.)

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Retroactive Modification as Bad Faith

- At least one insurer has attempted to retroactively modify policies to exclude virus and bacteria losses.
- Would almost certainly constitute bad faith.

Policyholder's Checklist

- There are certain steps that policyholders should take to protect themselves when asserting a claim for COVID-19 losses:
 - Know Your Policy
 - Consult with Counsel
 - Communicate with Your Insurer
 - Require Written Communication
 - Keep a Claim Calendar

Thank you for Watching!



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