

INSURER BAD FAITH TOWARDS COMMERCIAL INSURED

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As with other policyholders, insurance companies sometimes deny covered claims of commercial insureds without a reasonable basis for doing so. Under the law of Pennsylvania and almost all other states, business and professional insureds have the right to sue to recover the amount covered by the policy, and to seek punitive damages, attorney's fees, and special interest. The latter damages are available under the Bad Faith statute, which has been in place in Pennsylvania since 1990.

But commercial policyholders are often reluctant to pursue "bad faith" damages against an insurer. There are several possible reasons for this reluctance: 1) business persons and professionals are, by nature, reasonable people and assume that insurers always act reasonably – even when they deny a claim; 2) business persons and professionals generally dislike litigation of any kind, let alone litigation that alleges that another business has acted in "bad faith;" and 3) business people and professionals, if they have sustained damages, generally only want to recover the amount they believe they are owed, and not "punitive damages" over and above the policy coverage.

The purpose of the Bad Faith statute is to act as an equalizer between a large insurance company and the usually-much-smaller policyholder. Because of their enormous assets and usually one-sided control of policy language, insurers have a significant edge in leverage in any dispute over policy coverage. Before the passage of the Bad Faith statute, an insurer could simply deny a claim and dare the insured to sue. Even if the insurance company lost, in all but the rarest circumstances, it would have to pay no more than the covered policy amount.

The Bad Faith statute shifts leverage to policyholders because, if the insurer denies a claim in "bad faith," in addition to the covered loss, it can be forced to pay the policyholder's attorney's fees and to pay punitive damages of up to about nine times the amount of the covered loss. Policyholders can even introduce evidence of the insurance company's large assets to support a punitive damage award.

The reported cases are filled with examples of an insurance company acting intentionally or recklessly in denying a commercial claim that was covered. Bad faith was found where an insurer failed to pay a restaurant owner for business income loss for 7 months; failed to resolve a property claim for more than 2 years; refused to pay a commercial fire loss claim for 17 months. A court awarded a mining company \$4.5 million in punitive damages where an insurer refused to assist the insured in completing

the proof of loss, yet denied the form as incomplete and delayed payment for 4 years. Failure to properly investigate a claim is a frequent reason for a finding of bad faith against an insurance company. A court awarded a bowling alley over \$750,000 in damages for a minor roof collapse because the insurer wrongly accused the owner of concealing a prior history of roof problems, failed to follow the law regarding timely payment of claims, and “made numerous exaggerations and misstatements....”

These are just a few examples of insurer bad faith. Many others exist. How can you tell if your insurance company is acting in bad faith in handling your commercial claim? A good rule of thumb is the “jerked around” test. If you feel like you have been jerked around by your insurance company, it’s probably time to talk to your lawyer.

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