Coughlin Midlige & Garland LLP

Publication

Increasing Use of Bad Faith and Extracontractual Claims in Multi-National Disputes

By: Kevin T. Coughlin, Suzanne C. Midlige, William J. Metcalf, Aaron Van Nostrand
October 6, 2005

In disputes between policyholders and insurers, policyholders frequently include causes of action for bad faith and extracontractual claims.

The utilization of these types of claims by policyholders is on the rise in the United States in both litigated and non-litigated matters. Bad faith and extracontractual claims are claims outside of the contract with your policyholder and can expose the insurer/reinsurer to punitive, statutory or treble damages as well as the possibility of attorneys' fees and costs.

We provide an overview of how United States courts interpret the most common bad faith causes of action and extracontractual claims asserted by policyholders. In addition, we discuss the ever increasing use of bad faith claims between primary and excess insurers as well as between insurers and reinsurers. Bad faith and extracontractual claims raise many varied and difficult issues for insurers and reinsurers including potential damages well beyond the applicable policy limits, the possibility of joint and several liability, evaluating, defending and then settling covered and non-covered claims, as well as heightened reporting requirements. Further, several of the most commonly utilized extracontractual claims statutorily provide jurisdiction in the United States providing policyholders a necessary "hook" to bring their claims in a more favorable jurisdiction than would otherwise be the case.

Read More