

BAD FAITH BLOG

Give the Gift of Communication to Your Insureds This Holiday Season

AUTHOR: AARON FRENCH

After almost 20 years of reading judicial opinions from around the country discussing insurance bad faith, a common thread seems to be mentioned--communication (or lack of) by the insurance company with its insureds. It seems nothing catches the ire of judges and juries more than the failure to communicate. While communication does not insulate insurers from bad faith claims it certainly strengthens the defense when an insurer can show a pattern of consistent and timely communications with its insured.

When should the insurer communicate? Early and often. In handling third-party claims, an insurance company may be communicating directly with the claimant's attorney. The claimant's attorney may request a copy of the policy or other insurance information. Also, settlement demands are commonly made directly to the insurance company. However, especially pre-suit, the insured may be kept in the dark as to what demands for information or policy dollars are being made and such lack of communication can cause big problems for the insurance company if it is unable to settle the case and protect its insured.

Whether communication is done over the phone or through writing the insurer should be keeping the insured apprised of the claim process every step of the way. Of course, the insurer should be tracking of all communications (or attempts to communicate) in its claim notes and should be following up oral communications in writing to its insureds or third-parties which memorialize discussions. Of course, in the hectic day-to-day of claims handling this is not always feasible but it should be the goal. At the very least, the claim notes should track every single incoming and outgoing communication and provide details of the any discussion.

Even if the insured is non-cooperative or frankly missing in action, communication should still be attempted or made. Use whatever resources are available to track down the insured. In this day and age almost anyone (or a least last known contact information) can be found via the internet. Brokers and agents can also be good resources. If it is a business check the Secretary of State filings. Whatever the means, make sure letters are being sent to the last known address(es) as this shows the insurer is doing its best to keep its insured informed on the claims handling process or settlement negotiations.

While consistent communication may seem simple and common sense, the lack of communication has sure spawned a lot of discussion in court opinions over the years.

Therefore, do your best to communicate so hopefully we see less discussion in future opinions.