**Good-Faith Claims Handling**

Law of Bad Faith

Development of the Law of Bad Faith

-bad-faith claim:

Duty of Good Faith and Fair Dealing

Public Interest

Higher Standard of Conduct, see pages 9.4-9.5

Parties to a Bad-Faith Claim

-defendant

-plaintiff

1. Insured
2. First-party lawsuit
3. Third-party lawsuit
4. Claimants
5. Excess insurers

Bases of Bad-Faith Claims

1. Claim or coverage denial
2. Excess liability claims
3. Statutory bad faith
4. Unfair Claim Settlement Practices Acts

Provisions of the NAIC Model Act

Enforcement:

1. Fines
2. Interest on an overdue claim payment
3. Payment of other fees and costs
4. Injunctions or cease-and-desist orders
5. Suspension of a claim rep/insurer’s license
6. Revocation of a claim rep/insurer’s license

State Provisions

Bad-faith lawsuits under the model act

Other bases for bad faith

Damages for Bad Faith or Extracontractual Liability

1. Compensatory damages
2. Contractual damages
3. Consequential damages
4. Punitive damages
5. Lawyers’ fees and court costs
6. Pre-judgement interest

Defenses to a Bad-faith Claim

1. Statute of Limitations

-tort:

1. Lack of Right to Sue (Lack of Standing)

-tortfeasor:

1. Reliance on Lawyers’ Advice
2. An Insured’s Collusion with the Claimant
3. Debatable Reasonable Basis
4. Statutory Defenses
5. Fair Dealing and Good Documentation
6. Comparative Bad Faith
7. Contributory Negligence

Elements of Good-faith Claims Handling

1. Thorough, timely, and unbiased investigation

Compliance with Federal Statutes:

1. HIPAA
2. Gramm-Leach-Bliley Act
3. Sarbanes-Oxley Act
4. Fair Credit Reporting Act
5. Complete and accurate documentation
6. Fair evaluation
7. Good-faith negotiation
8. Regular and prompt communication
9. Competent legal advice
10. Effective claims management