



## TENTH CIRCUIT RULING EXTENDS APPLICATION OF COLORADO'S UNREASONABLE DELAY/DENIAL STATUTE TO UNDERWRITING

The Tenth Circuit's July 5, 2016 ruling in *The Home Loan Investment Company v. The St. Paul Mercury Insurance Company* significantly expands the application of Colorado's Unreasonable Delay or Denial Statute, holding that the statute is not limited to claims handling, but also applies to underwriting.

Colorado's statute, C.R.S. §§ 10-3-1115 and 10-3-1116, allows statutory damages of two times the covered benefit and recovery of fees and costs if a carrier unreasonably delays or denies "benefits owed." A carrier is deemed unreasonable if it "delayed or denied authorizing payment without a reasonable basis." Though the statute refers to "first-party claimants," previous rulings have interpreted the statute to apply to liability policies, as well as first-party policies. Courts have also ruled that this statutory claim is in addition to, and differs from, common law bad faith.

St. Paul provided property coverage to Home Loan for various foreclosed properties. Home Loan added a property named White Hall to the policy. White Hall's owner defaulted on the property, but rather than foreclose, Home Loan and the owner worked together to sell White Hall. Because the owner could not pay for property coverage, Home Loan added White Hall to the policy issued by St. Paul. In response to a St. Paul questionnaire, Home Loan identified itself as mortgagee in possession, as it was the category most closely matching the situation.

Home Loan later asserted a claim seeking coverage for a fire loss at White Hall. St. Paul first reserved its rights to deny coverage as White Hall was not a "Foreclosed Property" as defined by the policy. It later endorsed the policy to remove White Hall and returned the premiums to Home Loan. Home Loan subsequently sued for

breach of contract and asserted a claim for statutory damages for unreasonable denial.

The trial focused on St. Paul's underwriting, with minimal evidence relating to its claims handling. St. Paul was found liable for both breach of contract and unreasonable denial at trial. On appeal, it contended that the claim of unreasonable denial failed as a matter of law because Home Loan's claim was directed to underwriting and that Colorado's statute was limited to claims handling. The Tenth Circuit read the statutes much more broadly.

In doing so, the Court looked well beyond the language of sections 10-3-1115 and 10-3-1116 (which, by their terms, apply to unreasonable delay or denial of "benefits owed") to other articles within Title 10, Regulation of Insurance Companies, to hold that the Colorado legislature's intent is to "capture all aspects of the insurance relationship and to impose liability for both bad faith breach of the obligation to indemnify – underwriting – and bad faith breach of the obligation to pay a specified or ascertainable amount – claims handling." Essentially allowing the jury to comment on the sufficiency of information required by the insurer during the underwriting process in order to issue coverage in the first place, the Court expressly held "liability under sections 10-3-1115 and 10-3-1116 is not limited to claims-handling conduct."

This ruling expands the scope of the unreasonable delay/denial statute well beyond any prior ruling by Colorado courts and poses even greater risk for carriers engaged in the business of insurance in Colorado.

If you have questions about this update, please contact [Lisa Mickley](#) or [Stephanie Montague](#).