
Attorney-Client Privilege in Bad Faith Litigation: Privilege Issues From Perspectives of Policyholders and Insurers

November 8, 2022
Strafford Webinars

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DATE & TIME

Tuesday, November 29, 2022 | 1:00 p.m. - 2:30 p.m. EDT

This CLE webinar will discuss whether the attorney-client privilege is being eroded in bad faith litigation. The panel will review the tripartite nature of attorney-client privilege among the insurer, the insured, and the attorney representing the insured. The program will discuss who controls the privilege if the policyholder later asserts bad faith against the insurer. The panel will offer strategies for policyholders seeking to break the privilege and insurance defense counsel seeking to preserve it.

Description:

Whether the insurer's claims file is privileged is increasingly at issue in bad faith cases. **Courts have articulated various tests** for determining when the privilege is waived or does not apply, but these rules often create uncertainty and satisfy no one.

Not every document drafted by counsel and not every communication by counsel is privileged in the claims-analysis context.

Insurers must be careful to avoid waiving the privilege by asserting an "advice of counsel" defense or **involving the attorney directly or indirectly as a claims adjuster.**

Listen as our authoritative panel of both policyholder and insurer counsel analyzes the attorney-client privilege in the context of the tripartite relationship, the issue of implied waiver of the privilege in subsequent bad faith claims, and best practices for both plaintiff's counsel and defense counsel to either pierce or protect the privilege in bad faith litigation.

Speakers:

- Meghan C. Moore, Shareholder, Flaster Greenberg PC
- Sean T. Carnathan, Partner & Founder, O'Connor Carnathan and Mack
- Evelyn M. Merchant, Attorney, Berk Merchant & Sims

Outline:

1. Overview of the attorney-client privilege in the tripartite relationship

Continued

2. Implied waiver of the privilege in bad faith litigation
3. Piercing the privilege: plaintiff perspective
4. Defending or maintaining the privilege: defense perspective

Benefits:

The panel will review these and other key issues:

- Has there been a trend toward the erosion of the attorney-client privilege in bad faith litigation?
- What tests do courts use to determine whether there has been an implied waiver of the privilege?
- How have courts applied the joint defense exception to the attorney-client privilege in bad faith claims?

ATTORNEYS MENTIONED

Meghan Moore