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

December 16, 2025
Strafford Webinars

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.

Speaker:

- Lee Epstein, Shareholder, Flaster Greenberg PC

Date & Time:

Tuesday, December 16, 2025 | 1:00 p.m. EST

Register:

ATTORNEYS MENTIONED

Lee Epstein