

Continuing Bad Faith: Theory of Liability or Rule of Evidence?

An insurer's duty of good faith is pervasive and its application to claim handling has matured into a formidable body of law, write Douglas L. Christian and Nathan D. Meyer for Jaburg Wilk.

But when a bad faith lawsuit converts the quasi-fiduciary relationship with the policyholder into an adversarial one, how does a policyholder lawsuit affect the insurer's duty of good faith? And, how does the insurer's duty of good faith affect the lawsuit?

"Policyholders argue that if a lawsuit obviates the insurer's duty it will encourage insurers to engage in conduct that will precipitate a lawsuit. Insurers respond by arguing that if the fiduciary duty continues unabated, it will encourage premature lawsuits by policyholders, deprive insurers of their ability to adjust losses, and eviscerate their rights as litigants," according to **the article**.

The authors discuss the development of the continuing duty of good faith, whether insurer litigation and post-filing conduct is admissible under current rules of evidence, and whether continuing bad faith is actionable as a separate theory of liability.

Read the article.