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Statutory Changes Promise Procedural Relief from Bad Faith Set-ups in Missouri

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Effective Aug. 28, 2017, Missouri House Bills 339 and 714, which are expected to be signed by Gov. Eric Greitens soon, will provide insurers with a measure of procedural relief from some of the most concerning practices used to set up insurers for bad faith claims.

A synergy of statutes, judicial rulings and other factors has propelled Missouri to the top of the list of dangerous jurisdictions for bad faith. It has become an all too common practice in Missouri for plaintiffs to make a time-limited policy limit demand on an insurer very early in the process. Lack of information, or the inability to react fast enough to the demand, leads to a failure to settle within the policy limits. Next, a "sweetheart deal" is made with the insured under Section 537.065. The insured agrees to cooperate with the plaintiff in exchange for an agreement to execute only against his insurance. An uncontested trial results in a huge judgment, and the insurer is faced with potential liability many times its policy limits.

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House Bills 339 and 714 repeal Section 537.065 and enact a new Section 537.058 as well as a revised Section 537.065. Section 537.058 provides relief in the following ways:

The time-limited demand must be in writing, sent by certified mail to the insurer, and allow at least 90 days for acceptance. It also must offer an unconditional release of the insurer's insureds and contain the information set forth in Section 537.058.2.
The time-limited demand must be accompanied by health care provider information, medical releases and employer information.
The failure to comply with this section means that in a suit by or for the benefit of the tortfeasor, the demand is not considered a "reasonable opportunity to settle" and is inadmissible in any lawsuit alleging extra-contractual damages against the tortfeasor's liability insurer. This does not apply to a claim of bad faith by the insured on his own behalf.

Section 537.058 does not apply to offers, demands or time-limited demands within 90 days of a trial by jury.

Section 537.065, as amended, adds the following procedural protections:

An insured may only enter into a Section 537.065 agreement limiting recovery to the insured's insurance if the carrier has had the opportunity to defend without reservation, but refused to do so.
Before a judgment can be entered against an insured who has entered into a Section 537.065 agreement with the plaintiff, the insurer must have 30 days notice of the agreement.
The insurer may intervene as a matter of right in the suit during the 30-day period.

These changes are a step in the right direction. They provide the insurer with more time and more information to make a reasoned decision. However, insurers are urged to proceed with caution. We do not yet know how plaintiffs' counsel will try to circumvent these changes, or how Missouri's judiciary will apply these new rules. Further, the extra time is only helpful if used wisely.