



News & Updates

"AVOIDING BAD FAITH, AND OTHER EMERGING ISSUES INVOLVING ERODING LIMITS POLICIES," IADC COMMITTEE NEWSLETTER

In a newsletter for the International Association of Defense Counsel, Goldberg Segalla's Michael A. Hamilton and Thomas J. Seery examine the increasingly popular "eroding limits" insurance policies and their statutory, public policy, and claims handling implications.

"An eroding limits, or defense-within-limits (DWL) policy," Mike and Tom explain, "is a policy where the amounts paid by an insurer to defend a claim against an insured are considered part of the loss, and therefore reduce the limits of liability available under the policy to pay a settlement or judgment for damages." Under such a policy, "every dollar spent in the defense of an action is one dollar less that will be available to settle or satisfy a judgment." These types of policies are available for commercial lines, professional liability, directors and officers, employment practices, and other types of insurance, though some states have regulated them, instituting disclosure requirements, limiting the policies by types of risks insurable, or, as is the case in Minnesota, prohibiting them with few exceptions.

Citing several illustrative cases, Mike and Tom note that "Policyholders are filing increasing numbers of bad-faith claims against insurers when policies fail to distinguish the costs of defense from the coverage limits." Policyholders have alleged that insurers have failed to control defense costs, and have objected to the use of defense costs to defend additional insured, leaving insufficient limits to indemnify the named insured against a settlement or judgment.

Such disputes, Mike and Tom predict, "are certain to continue, leading to more judicial opinions that will provide guidance on how to resolve these thorny issues."

Mike and Tom are members of Goldberg Segalla's Global Insurance Services Practice Group, and work out of the firm's Philadelphia office.

Read the article:

"Avoiding Bad Faith, and Other Emerging Issues Involving Eroding Limits Policies," *IADC Committee Newsletter*, October 2017

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