

LAW WEEK COLORADO



Insurance lawyers seeing a lot of business in insurance bad faith space

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Lawyers at two firms ranked in the Best Law Firms' insurance category happen to practice on opposite sides in insurance bad faith litigation. Muliha Khan, owner and managing partner of Zupkus & Angell, defends insurance companies. Brad Levin and Jeremy Sitcoff of Levin Sitcoff represent insurance policy holders.

"We're very proud of the work we've done over the course of many years in the insurance space. We've been able to forge a place in this area which we believe is unique," Levin said. "We do every type of insurance ... and we think that puts us in a good position as far as really understanding whatever clients' insurance issues may come up."

Lawyers who work on insurance bad faith cases have had no shortage of work in the past few years. Colorado's insurance bad faith law addressing unreasonable delay or denial is barely a decade old, passed in 2008. It took 10 years until the Colorado Supreme Court released a set of decisions with sweeping interpretations of the law.

Among the rulings, the Supreme Court decided plaintiffs have two years to file insurance bad faith claims. The law protects insured people from improper delay or denial of claims by their insurance companies, and potentially puts insurance companies on the hook for double damages and plaintiffs' attorney fees. And in reality, the amount of damages can actually triple because the Supreme Court also decided a damages award shouldn't be reduced by the amount an insurance company unreasonably delayed but ultimately paid.

Khan said she believes the parts of the law allowing for attorney fees and multiplied damages have driven increased insurance bad faith litigation. "That kind of takes some of the risk out of it for [plaintiffs]," she said. Just this year she has had two insurance bad faith trials, when she typically has one every few

years given that most cases settle.

As a plaintiffs' attorney, Levin's perspective is framed a bit differently. He said the potential for higher awards and attorney fees makes it more feasible for attorneys to take on cases in which the amount of money in dispute would otherwise be too small to make it economically feasible for a lawyer.

"It really puts some teeth into the notion that if an insurance company acts unreasonably, that there are going to be consequences for doing that."

The law says insurance companies can't delay or deny claims without a reasonable basis, but Khan said what constitutes an "unreasonable" delay or denial is open for dispute.

"There are some attorneys who are going to say it's very black and white," she said. "And there are other attorneys who are going to say it's very much dependent on the circumstances the claim itself."

An area of law as complex as bad faith comes with the task of figuring out how to simplify information for a jury of non-lawyers. Khan said there's a difference between simplifying and dumbing things down, though, and she never wants to do the latter. She said dumbing down takes out critical information and makes assumptions about jurors.

"I think that's really unfair," she said. "But when you're simplifying it, you're streamlining it. What are the Lawyers at two firms ranked in the Best Law Firms' insurance category happen to practice on opposite sides in insurance bad faith litigation. Muliha Khan, owner and managing partner of Zupkus & Angell, defends insurance companies. Brad Levin and Jeremy Sitcoff of Levin Sitcoff represent insurance policy holders.

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"I think that's really unfair," she said. "But when you're simplifying it, you're streamlining it. What are the three things you really want the jury to focus on, that you think are important? Those are the hard decisions you have to make as a trial lawyer."

Khan said she believes she can bring a distinctive perspective to trial as a minority woman because juries are getting more diverse. "To me it's important to use my perspective when I'm trying to connect with a jury ... because I think it helps make [my] story more genuine. I think you always have to be genuine, and if you're not, the jury will pick up on that."

Sitcoff and Levin said expert witnesses can be a useful tool for simplifying complex insurance bad faith legal concepts for juries. When bad faith insurance cases go to trial, expert witnesses can be brought in to explain to juries what insurance companies' obligations are, and Sitcoff said insurance companies often bring in witnesses of their own to support the company's position on why it acted reasonably.

"You really try to have your expert carry the water on [those issues,]" Sitcoff said, "And explain to the jury in as simple English as possible how insurance works and what the duties and obligations of an insurance company are with respect that type of coverage." •

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