

## Are Joint Insurance Funds in New Jersey Flying Under the Radar Screen?

### Risk Management and Insurance Claims For Municipal Corporations and Public Entities

Is your Municipality's insurance claim being denied, delayed or underpaid? Is your Municipality a member of a Joint Insurance Fund? In these trying economic times, municipalities are facing lawsuits more frequently. It is critical that the Municipality vigorously pursue a full defense and indemnification from its insurance carriers. The Municipality should not be paying for defense costs that its insurance carriers may be refusing to pay or underpaying without a good faith basis. The Municipality should not settle for less than it is entitled to under its insurance policies.

Joint Insurance Funds are regulated by the New Jersey Department of Banking and Insurance. See N.J. Stat. § 40A:10-36 (2011) *et seq.* and the regulations promulgated thereunder, N.J.A.C. 11:15-2.1 *et seq.* While N.J.S.A. 40A:10-48 states that a joint insurance fund is not technically an insurance company or insurer under State law, the fund's activities are subject to like regulation by the Commissioner of Insurance. *Shapiro v. Middlesex County Joint Insurance Fund, et al*, 307 N.J. Super. 453, 458 (App. Div. 1998). Thus, joint insurance funds, like commercial insurers authorized to do business in the State of New Jersey, are highly regulated and have the same or similar common law and statutory obligations to their insureds.

N.J.S.A. 17:29B-4 ("The Trade Practices Act") and the regulations of the Department of Insurance promulgated thereunder regulate insurance trade practices in New Jersey. N.J.S.A. 17:29B-4 lists categories of conduct defined to be unfair claims practices:

- a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
- f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.
- g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

- h. Failing to promptly provide a reasonable explanation of the bases in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Violations of N.J.S.A. 17:29B-4 can expose an insurer to a bad faith claim by an insured. Moreover, it is established in common law that all contracts impliedly include a covenant of good faith and fair dealing. Where a Joint Insurance Fund does not follow procedures designed to deal fairly with claims it may also be exposed to common law bad faith claims. N.J.A.C. 11:15-2.6 (b) (7) requires joint insurance funds to establish claims handling procedures that provide for the prompt, fair and equitable settlement of claims. Where a fund shall provide for the retention on a self-insured basis for various enumerated risks, e.g. liability, the fund's indemnity and trust agreement shall provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability. N.J.A.C. 11:15-2.6 (b) 10 ii.

Municipal Corporations and public entities face a myriad of risks and exposures. Risks include fire, product liability, fidelity, boiler and machinery, surety, burglary and theft, environmental impairment, commercial multiple peril liability, toxic exposure, financial guaranty, credit, worker's compensation, group accident and health, inland marine, allied lines, acts of terrorism, cyber risk, law enforcement liability, public official liability, and other potentially insurable risks.

Walder, Hayden & Brogan has extensive experience with complex coverage issues in virtually every area of insurance. The firm is involved on a regular basis in advising and resolving more complex insurance coverage disputes on behalf of our corporate, commercial, municipal, public authority and individual policyholder clients. Our firm has successfully represented clients in significant environmental coverage disputes against national insurance carriers and brokers. We have a breadth of experience in counseling clients and litigating cases involving alleged violations of civil rights, sexual harassment, age, sex and racial discrimination, CEPA claims, Section 1983 claims, employee dishonesty, and other claims involving potential employment practices liability.

To arrange a meeting, please contact Michael J. Faul, Jr. at 973-992-5300 Ext. 322 or [mjfaul@whbesqs.com](mailto:mjfaul@whbesqs.com). Please feel free to visit our website at [www.whbesqs.com](http://www.whbesqs.com).