

Vermont Requires Utmost Good Faith to Fend Off a Bad Faith Claim

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Summary: Vermont's bad faith failure to settle cause of action is governed by the Vermont Supreme Court's 1938 ruling in *Johnson v. Hardware Mut. Cas. Co.* The decision established Vermont's requirements for determining when an insurer acted in bad faith and was liable for failing to settle a dispute.

W. O. Johnson had an automotive liability policy with Hardware Mutual Casualty Company. The policy was limited to \$5,000 for injuries to one person and \$10,000 for injuries to more than one person. Johnson was involved in an accident that resulted in injuries to five people and property damage to another vehicle. An injured party, William Rule, filed suit against Johnson, which Hardware properly agreed to handle the defense. Hardware retained defense counsel and also assigned an adjuster. Both counsel and the adjuster immediately noted that an adverse ruling was likely, and counsel stated that the verdict could be a "whopper."

Johnson was made aware of these warnings, and urged Hardware to settle for \$5,500, an amount within the policy limits that Rule, the injured party, was willing to accept. The adjuster warned Hardware on several occasions that the case was dangerous, the atmosphere of the trial was unfavorable, and that \$5,500 was a reasonable settlement. The adjuster, however, did not inform Hardware that a verdict in excess of the policy limits was likely. Hardware's general practice was to settle a claim within a policy's limits before proceeding to trial whenever there was a remote chance of receiving a verdict in excess of the policy. But here, Hardware maintained that \$3,500 should be sufficient, potentially due to the lack of notice regarding the probability of an excess verdict. This offer was refused and the case proceeded to trial. The jury returned a \$14,000 verdict in favor of Rule. Johnson then brought suit against Hardware asserting that it acted in bad faith by refusing to settle the case within the policy limits. The trial court agreed and Hardware appealed to the Vermont Supreme Court.

When an insurance company controls and manages a suit against an insured, a mutual fiduciary relationship is created in which both parties have a duty of utmost good faith. This relationship requires the insurer to have due regard for the insured's interests and in return requires the insured to cooperate with the insurer.

Notwithstanding this relationship, the insurer always has a right to look after its own interests. But if it can be shown that the insurer placed its interests ahead of the insured's and consciously risked loss to the insured, a bad faith failure to settle claim is established. An insurer may not disregard the financial interests of the insured in the hope of escaping full responsibility imposed by its policy. The court specifically acknowledged that bad faith can be proven through circumstantial as well as direct evidence.

Here, the court determined there was ample evidence indicating Hardware did not act in good faith. Hardware had a standard procedure of settling claims to prevent excess judgments, but was not informed by its adjuster that such a judgment was probable. Of course, the knowledge of Hardware's agent was imputed to it. Knowing that a trial in this matter was likely to result in a verdict in excess of the insurance policy yet refusing to settle within the policy's limits, Hardware placed its interests ahead of Johnson's. Additionally, Hardware failed to exhibit good faith when it made the decision to proceed to trial without having all the facts bearing upon the matter. The trial court's determination that Hardware was liable for failing to settle in bad faith was affirmed.

By Anthony Martin & Brett Simon

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