SANDBERG PHOENIX

BAD FAITH BLOG

No Fiduciary Relationship Between Insured and Insurer in Virginia

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Summary: The Virginia Supreme Court's seminal case regarding bad faith failure to settle claims is *State Farm Mut. Auto. Ins. Co. v. Floyd*. That opinion defines bad faith failure to settle, clarifies the relationship between the insured and insurer, and determines the standard of proof required in such cases.

Floyd arose out of a head-on automobile accident between Brian Floyd and Deborah Jones. Floyd had an insurance policy with State Farm with a $50,000 bodily injury limit. When Jones sued Floyd for injuries sustained in the accident, State Farm properly took over the defense of the claim. Counsel hired by State Farm, as well as personal counsel hired by Floyd to review the case, believed there was a good chance for a defense verdict if the case went to trial. Even if a plaintiff's verdict did occur, they believed it would fall within the policy's limits. State Farm, therefore, took a "no liability" position in the case and did not accept a $49,500 offer prior to trial or a $45,000 offer during trial. Floyd was never notified of these offers, but had been opposed to settlement from the beginning. The jury returned a verdict against Floyd for $100,000.

Floyd then brought suit against State Farm for bad faith failure to settle, asserting that counsel had made him overconfident and failed to communicate settlement offers to him. The trial court defined bad faith as "the failure to deal fairly and honestly with the insured in the handling and disposition of the claim against the insured covered by the policy of insurance, having both its own and the insured's interests in mind" and said it must be proven by a preponderance of the evidence. The jury ultimately returned a verdict in favor of Floyd, finding State Farm liable for bad faith failure to settle. State Farm appealed and the Virginia Supreme Court reversed.

First, the Court determined that insurers have a relationship of confidence and trust with the insured, but not a fiduciary relationship. The Court recognized that even though the insured and the insurer often have overlapping or parallel interests, their interests diverge when there is a chance that a verdict could exceed the policy limits. Each party, then, is presumed to be aware of when those interests are no longer in synch. The Court also noted that the "unswerving fidelity" associated with fiduciary relationships is inconsistent with the insurer's contractual right to protect its own interests.

Next, the Court defined bad faith. Although State Farm argued bad faith includes things like fraud, deceit, dishonesty, malice or ill-will, the Court held such subjective factors are not necessary for a *prima facie* case. Instead, an insured must show "the insurer acted in furtherance of its own interest, with intentional disregard of the financial interests of the insured" in order to prove bad faith failure to settle.

Finally, the Court held bad faith must be proven by clear and convincing evidence. A bad faith claim is inconsistent with the presumption that parties to a contract perform the contract in good faith. Typically, clear and convincing evidence is required to overcome this presumption. The Court saw no reason to apply a different standard in the insurance context and thus extended the rule to bad faith claims.

Here, the trial court had improperly instructed the jury on the definition of bad faith. However, the Court determined that even when the evidence was viewed in the light most favorable to Floyd, there was insufficient evidence to find bad faith. Failing to communicate settlement offers, alone, is not enough to constitute a bad faith failure to settle. Therefore, the judgment was reversed.

Because of the seminal *Floyd* case, Virginia is not known, like many other states featured on this blog, as a state with a proliferation of bad faith claims in recent years. Instead, Virginia has the reputation of being one of the more insurer friendly states in the country.

By Anthony Martin & Brett Simon

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