SANDBERG PHOENIX

BAD FAITH BLOG

No Bad Faith If Insurer Refuses To Allow Excess Judgment To Be Entered Against Its Insured

AUTHOR: SANDBERG PHOENIX

Franklin Kropilak was badly injured when Collins made a left hand turn in front of his motorcycle. The insured was cited by a police officer just after the accident. 21st Century had the police report within in one week and within in two weeks knew that the hospital lien was $33,888. The policy for Collins provided for a liability limit of $10,000 for the crash. Thirty-seven days after the accident the insurer mailed to the attorney for the plaintiff a check for the policy limits. The plaintiff never accepted the policy limits. He did not cash the check. More than a year later in March the plaintiff proposed a settlement whereby consent judgment would be entered against Collins for $150,000 but Kropilak would agree to pursue only the insurance company for the amount in excess of her coverage. 21st Century did not agree to this proposed settlement, which the parties referred to as a *Cunningham* agreement.

Kropilak v. 21st Century Insurance Co.

The underlying auto accident case resulted in a jury verdict in favor of Kropilak for $173,000. Then Kropilak as assignee sued 21st Century for bad faith on the basis of not settling the case initially and for not agreeing to the consent judgment. At trial the Court refused to allow evidence of the March 2010 consent judgment proposal. On the first claim of bad faith the jury ended up finding that 21st Century had acted in bad faith for failing to tender the policy until thirty-seven days after the accident, but the jury further found that 21st Century had no realistic possibility of settling Kropilak's claim within the $10,000 policy limits. Kropilak testified that when he found out the amount of the hospital bills he had no interest in accepting settlement for the $10,000 policy limits. Accordingly, the Court entered judgment in favor of 21st Century.

In the earlier *Cunningham* case (*Cunningham v. Standard Guarantee Insurance Co.*, 630 So.2d 179 (Fla. 1994)), the Supreme Court of Florida approved an arrangement where the injured plaintiff would try a bad faith case action against the at fault driver's insurance company before trying the underlying negligence claim. However, the Court found that what was proposed by Kropilak and Collins was different than a *Cunningham* agreement. Furthermore, there is no duty under Florida law to enter a *Cunningham* agreement. In addition, there is no obligation under Florida for an insurer to enter a consent judgment in excess of the policy limits.

By John S. Sandberg

Sandberg J

Image not found or type unknown