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BAD FAITH BLOG

Florida Supreme Court Holds Insurance Carrier Liable for Bad Faith and Excess Judgment Claims Handling Conduct Occurring After Policy Limits were Tendered

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The Florida Supreme Court, in reversing an appellate court and disagreeing with federal precedent, held that a carrier could be liable for an excess judgment against the insured due to its bad faith conduct in handling a claim *after* it offered to tender its policy limits.

In *Harvey v. Geico*, the insured was involved in an auto accident in which he was later determined to be 100% at fault, and which caused the death of another person. The decedent's estate asserted a wrongful death claim. Before suit, realizing the high damages at issue, the insurance carrier offered to tender the $100,000 policy limit. Before accepting the offer, the claimant's attorney sent a request to the carrier for a recorded statement of the insured in order to assess his assets. The claims handler did not communicate this request to the insured and later denied the request. Thereafter, when the claimant's attorney renewed the request, the insured asked the carrier to inform him they were considering it, and working to timely respond to claimant's pre-suit demands. The claims handler's supervisor advised the handler to relay that message to the claimant, but she did not.

The wrongful death claimant ultimately refused the offer of tender and proceeded to trial, where it recovered approximately $8.5 million on its wrongful death claim against the insured. A bad faith trial followed, where the evidence adduced the insured's only other asset was a business account worth approximately $85,000. The wrongful death claimant's counsel testified he would have advised the estate to accept the $100,000 policy limits if had known about the insured's limited assets, and a representative of the estate testified she would have accepted.

During the wrongful death proceeding, evidence was adduced regarding the claims handler's conduct in ignoring the request for recorded statement and failing to communicate with the claimant. Her personnel file with the carrier was also introduced, which showed poor performance reviews, that she had history of struggling to manage her claims load and her productivity was below average. On that evidence and additional expert testimony that the carrier failed to act with a sense of urgency on the insured's behalf, the carrier was determined to have acted in bad faith and was liable for $9.2 million.

A court of appeals reversed, finding that even if the conduct was deficient, it did not cause the excess judgment. The Florida Supreme Court reversed that holding and reinstated the bad faith judgment, relying on the bad faith principles espoused in its prior seminal holdings in *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980) and *Berges v. Infinity Insurance Co.*, 896 So.2d 665 (Fla. 2004).

The high court reasoned that bad faith is a question of fact to be determined by the jury taking into account the totality of the circumstances. Ultimately, "the critical inquiry in a bad faith is whether the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment." The court refused to apply the United States Court of Appeals for the Eleventh Circuit precedent finding that an insurer does not have to act perfectly in handling the claim. Instead, the carrier must put itself in the shoes of the insured and act as if the financial exposure to the insured was a "ticking financial time bomb."

While acknowledging tendering policy limits was a reasonable action, the court noted that under Florida law an "insurer's obligations [do not] end by tendering the policy limits." Duty of good faith continues through duration of the claims handling process. That means the carrier must do everything possible to facilitate settlement negotiations, but the claims handler here had been a considerable impediment to both the insured and the wrongful death estate. While her negligence in handling the claim alone would be insufficient to show bad faith, the court held that "negligence is relevant" to question of bad faith.

Further, the fact that an insured's own actions or inactions contributed to cause the excess judgment does not provide a defense to bad faith on the part of the carrier. Under Florida law, "the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured." The Florida Supreme Court found to hold otherwise would create a contributory negligence defense to bad faith, so long as the insurer can put forth any evidence that the insured acted imperfectly during the claims process, the insurer could be absolved of bad faith. That result was not acceptable under Florida law.

Harvey is instructive on how to evaluate evidence and causation for bad faith claims under Florida law. It is also serves an important reminder that a carrier's obligations may extend beyond offering policy limits.