

BAD FAITH BLOG

Third Party Bad Faith Claims Not Foreclosed in Utah by Paying an Excess Judgment

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Summary: Campbell caused a serious automobile accident and was found liable for a judgment in excess of his insurance policy's limits. Despite the serious risk of an excessive judgment and multiple offers to settle within policy limits, State Farm, Campbell's insurer, refused to settle the claim. Campbell filed suit against State Farm for bad faith failure to settle, but the trial court granted State Farm's motion for summary judgment. The Utah Court of Appeals reversed and remanded the case for trial.

Campbell v. State Farm Mutual Auto Insurance Company

Curtis Campbell had an automobile insurance policy with State Farm with limits of \$25,000 per person and \$50,000 per accident. Campbell caused an accident that left one driver dead and another seriously injured. State Farm properly assumed the defense and assigned Ray Summers to investigate and evaluate the matter. Summers concluded that Campbell was, at a minimum, partially at fault for the accident and an excess judgment was likely. State Farm ordered Summers to destroy the report and assess no fault against Campbell. Thereafter, State Farm assumed a position of "no liability."

State Farm and counsel assured Campbell there was no evidence to support a finding of liability, and even if an adverse judgment was attained, it was likely to fall within policy limits. They did not, however, tell Campbell there were multiple eyewitnesses and physical evidence that Campbell caused the accident. He was also not warned that under then-existing Utah law, Campbell would be jointly and severally liable for the entire judgment if he was found at fault to even a small degree. The injured parties indicated on multiple occasions they were willing to settle within policy limits, and potentially even below policy limits. State Farm rejected each offer, and at trial the jury found Campbell 100 percent at fault. Judgment was entered against Campbell for \$253,957.

State Farm told Campbell it would pay out the policy's limit, and that Campbell should put a 'for sale' sign on his home to pay the remaining balance. State Farm refused to pay anything else on the judgment until six years later (when all appeals were completed), it agreed to pay the entire excess amount. Campbell nonetheless brought suit for bad faith failure to settle. The trial court granted State Farm's motion for summary judgment, but the Utah Court of Appeals reversed.

The Court first clarified that third party bad faith claims sound in tort. Unlike first party claims which arise under contract law, third party claims involve the insured turning over control of the litigation to the insurer which leaves the insured "wholly dependent" on the insurer. As a result, the insurer owes its insured fiduciary duties to protect the insured's interests as zealously as it would its own. As part of these duties, Utah law places upon the insurer a duty to accept a settlement offer that is within the policy limits if there is a substantial likelihood that any potential judgment against the insured will exceed those limits. Any breach of this duty gives rise to a bad faith tort, where the central question will be the reasonableness of the insurer's conduct.

State Farm's main argument on appeal was that its full payment of the excess judgment foreclosed any bad faith suit Campbell may have previously had. The court rejected this argument for three reasons. First, because a third party bad faith claim sounds in tort, the full measure of tort damages are available. Although State Farm's eventual payment of the excess judgment certainly mitigated some of Campbell's damages, Campbell still had the opportunity to produce evidence proving any other damages caused by State Farm, such as emotional distress. Second, the claim arises out of the insurer's failure to settle, not the insurer's refusal to pay the excess judgment. Arguing that eventual payment of the excess judgment eliminates bad faith liability frames the insurer's duty as one of mere reimbursement of the insured for liability incurred was too narrow a view for the court to accept. Third, allowing an insurer to satisfy its obligation through eventual payment would not encourage an insurer to act in accord with its fiduciary duty. The implied duty of good faith and fair dealing "gives meaning and substance to the insurer's obligations" and turns the insurer/insured relationship into something more than a mere contract for indemnity.

Deciding that Campbell's claim was not foreclosed by State Farm's payment of the excess judgment, the court had to determine the propriety of summary judgment. There were offers of settlement within Campbell's policy limits, and there appeared to be a substantial likelihood of an excess judgment. State Farm's own agent recommended settlement, it withheld information from Campbell, and it falsely assured Campbell that an excess judgment would not occur. There was, therefore, sufficient evidence to present a genuine issue of material fact for the jury to resolve.

Since Utah's bad faith failure to settle the cause of action sounds in tort, third party bad faith claims are not precluded by payment of an excess judgment by the insurer. While handling claims, insurers have fiduciary duties to their insureds and failing to reasonably settle claims within policy limits may expose them to liability for any amount that exceeds those limits.

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