

A Rhode Island Insurer's Duties Extend to Their Insureds' Assignees

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Summary: Michelle Asermely rear-ended a vehicle driven by Mark Rendine but owned by Julieanne Bernier. Bernier had car insurance issued by Allstate Insurance Company with a policy limit of \$50,000. Asermely's lawsuit against both Rendine and Bernier went to arbitration where the arbitrator awarded Asermely \$47,557.37, but also found her 25 percent at fault. Her attorney wrote a letter to the arbitrator saying that "plaintiff will accept the award of the arbitrator," but the defendants rejected it and proceeded to trial. A jury entered a total judgment of \$86,333.57, which included interest, and found Asermely 60 percent at fault. After trial, Allstate allegedly made a check out to Asermely for the policy limit of \$50,000 as "final settlement of any and all claims arising from bodily injury and property damage caused by accident on 7/9/84." Asermely refused to cash the check and instead sued to collect on the judgment. At that point, Rendine and Bernier assigned their rights to Asermely. Allstate later issued a second check for \$50,000 to Asermely, but this time did not include the release language. Asermely cashed the second check, but later sued Allstate.

Asermely v. Allstate Insurance Company

Of the five counts in her complaint, the trial court granted summary judgment in favor of Allstate on three, which the Rhode Island Supreme Court addressed on appeal: whether Asermely had a statutory right to interest on the judgment in excess of the policy limits, whether she was entitled to damages due to Allstate's failure to pay the policy limit until a year and a half after the judgment was entered, and whether Allstate acted in bad faith.

The Rhode Island Supreme Court reversed the grant of summary judgment on Asermely's claim for interest on the excess amount. Rhode Island law provides that if an insurer rejects a plaintiff's written offer to settle within the policy limits and instead proceeds to trial, the insurer is liable to pay any amount of interest on the judgment that exceeds the policy limits. The Court held that summary judgment was improper because there was a genuine dispute whether Asermely's letter to the arbitrator saying she would accept the arbitrator's award (which was less than the policy limit) constituted a written offer to settle within the meaning of the statute.

The Court then addressed Asermely's claim that she was entitled to damages due to Allstate's allegedly fraudulent misrepresentations made with the intent of inducing her to sign the first settlement check. The Court rejected this contention and affirmed the grant of summary judgment, holding that she could not prove detrimental reliance—an essential element to any misrepresentation claim—because she did not actually endorse and cash the first settlement check.

The Court also addressed on appeal whether Allstate breached its duty to its insured. This bad faith claim was prosecuted by an assignee of the insured. The Court acknowledged that there can be no tort liability for bad faith if the insurer can demonstrate a reasonable basis for denying benefits to the insured, such as when the insured's liability is fairly debatable. Here, the Court found the insured's liability to be "clearly debatable," thereby precluding a bad faith tort against the insurer. The Court reasoned that the insured's liability was far from certain due to different awards and liability assessments made by different tribunals (the arbitrator and the jury); the former found Asermely only 25 percent at fault, while the latter found her 60 percent at fault.

Despite its bad faith ruling in favor of the insurer, the Court took the opportunity to explain that an insurer has a fiduciary obligation to "act in the best interests of its insured in order to protect the insured from excess liability." That obligation extends to any party to whom the insured's rights have been assigned. As part of this fiduciary obligation, an insurer must "seriously consider" any settlement offers that fall within the policy limits, or else risk exposure to liability in excess of those limits at trial. Since Allstate had a reasonable basis for refusing to settle within the policy limits, the Court affirmed the grant of summary judgment in favor of Allstate.

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