

# Motorcyclist Decedent Not Covered on Commercial Policy, So No Bad Faith

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**Summary:** The Netherlands Insurance Company provided insurance coverage to three corporate entities for which David Edens was the Chief Executive Officer. David and Rhonda Edens were the parents of Zachery who was a motorcyclist killed when an oncoming car turned into his path. The Oklahoma U.S. District Court found there was no UIM/UM coverage, found there could be no bad faith claim prosecuted in the absence of coverage, and entered summary judgment in favor of The Netherlands Insurance Company. The 10th Circuit affirmed on appeal.

## *Edens v. The Netherlands Insurance Company*

The Netherlands Insurance Company provided \$1,000,000 in coverage to the various Edens' entities for which David Edens was the CEO. His son, Zachery, operated a motorcycle which was owned by his parents at the time of the collision leading to Zachery's death. The motorcycle was insured under a separate policy with Progressive Insurance and the adverse driver had coverage with State Farm. Presumably, those claims were resolved before the claim was made for UIM/UM coverage under The Netherlands policy. The Netherlands investigated the matter and concluded there was no coverage for the claim under The Netherlands policy.

The Edens' primary claim was there was \$1,000,000 in UIM coverage because of an ambiguity created by their reading of The Netherlands Business Auto Coverage Form and the Oklahoma Uninsured Motorist Coverage Endorsement. The 10th Circuit reviewed that Business Auto Extension Endorsement and concluded the policy unambiguously failed to cover Zachery. The 10th Circuit further ruled plaintiffs' reasonable expectations doctrine argument was "too little, too late." Plaintiffs had never raised that argument before the District Court. Although plaintiffs had a 2005 unpublished 10th Circuit case which seemed to support their ambiguity position, the Court was not persuaded. In addition, the 10th Circuit concluded the endorsement upon which plaintiffs primarily relied was unambiguous and that unambiguous reading supported the position there was no coverage provided. The Court ruled that that endorsement "didn't cover Zachery Edens, because during the accident he was occupying an auto (motorcycle) owned by David and Rhonda Edens." The Court noted that the endorsement would provide "additional UM coverage to Edens LLC's executive officers and their family members if injured while occupying... any autos not owned by Edens LLC or themselves."

After concluding there was no coverage owed for the injuries to Zachery Edens under The Netherlands policy, the next question was whether the district court had properly dismissed the bad faith claim, an issue governed by Oklahoma law. The elements of an Oklahoma bad faith claim are stated in *Badillo v. Mid Century Ins. Co.*, 121 P.3d 1080, 1093 (Okla. 2005). Those *prima facie* elements are: (1) coverage under an insurance policy; (2) the insurer's actions were unreasonable under the circumstances; (3) the insurer failed to "deal fairly and act in good faith" toward its insured in the claims handling; and (4) the insurer's breach of its good faith duty directly caused the damages the insured sustained.

The 10th Circuit highlighted the first element in concluding there could be no bad faith finding where there was no coverage. However, plaintiffs cited a 1998 10th Circuit ruling which they claimed established plaintiffs could pursue a bad faith claim even if the policy didn't cover Zachery Edens' accident. In that earlier case, the 10th Circuit had stated no court "has held that an insured must actually prevail on a separate underlying breach of contract claim in order to maintain a successful bad faith claim." *Vining, ex rel. v. Enter. Fin. Grp., Inc.*, 148 F.3d 1206, 1214. Acknowledging its earlier statement in *Vining*, the 10th Circuit explained there is a distinction between having to establish coverage to prevail on a bad faith claim and prevailing on a bad faith claim. In *Vining* coverage wasn't an issue, but the jury had found coverage as part of its bad faith finding. Accordingly, *Vining* did not support plaintiffs' position. Because Oklahoma plaintiffs have to show coverage and they could not for Zachery Edens' accident, they could not pursue their bad faith claim.

The *Edens* case demonstrates that in Oklahoma, like most other U.S. jurisdictions, there has to be a showing of coverage before the insured can pursue a bad faith claim. Although that coverage issue seemed to be a close one, once it was determined there was no coverage, plaintiffs could not prevail on their bad faith claim.

By Anthony L. Martin

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