Auto Accidents Drove Significant Bad Faith Decisions in 2020

Insurers have a duty to handle claims in good faith. Depending on the jurisdiction, an insurer's failure to settle, unreasonable denial of a claim, or improper claims handling can expose the insurer to damages above the policy limits. Automobile accidents were a driving force behind bad faith litigation last year, with four significant appellate-level decisions handed down nationwide.

Aldana v. Progressive American Ins. Co., No.19-12950, 2020 WL 5843711 (11th Cir., Oct. 1, 2020)

In 2013, a serious car accident resulted in injuries that exceeded the limits of insurance coverage maintained by the responsible driver. The insurer, Progressive, sought to tender the full policy limits in exchange for a release of all claims. Settlement efforts failed, and a jury awarded the claimants nearly $52 million in damages. The insured driver assigned his claims against Progressive to the injured parties, who sued Progressive for bad faith failure to settle. The Middle District of Florida granted summary judgment to Progressive, which had argued that there was no reasonable opportunity to settle the claims. On appeal, the Eleventh Circuit reversed, finding that there was sufficient evidence that Progressive could have settled the claims and avoided the excess judgment if it had acted in good faith to its insured. Notably, expert testimony indicated that Progressive failed to independently assess each injured person's claim, failed to advise the insured of those values, and failed to make recommendations to the insured as to how to minimize their liability. The case was remanded for a jury to decide whether Progressive acted in good faith and with due regard to the interests of its insured.

Berg v. Nationwide Mut. Ins. Co., Inc., 235 A.3d 1223 (Pa. 2020)

A 1996 auto accident with only $12,500 in property damage resulted in a $21 million insurance bad faith verdict against the insurer, Nationwide, as awarded by a trial court in 2014. In 2018, the Superior Court of Pennsylvania vacated the $21 million bad faith award, holding that an insurer does not have a duty to inspect an auto shop's repairs for quality and that zealous and aggressive "scorched earth" litigation strategy by the insurer, with fees and costs in excess of the original claim, was not evidence of bad faith. On August 25, 2020, twenty-four years after the accident, a divided Supreme Court of Pennsylvania dismissed the policyholder's appeal and confirmed the Superior Court's prior decision to vacate the award, unable to reach a majority decision due to one justice's recusal. Despite its lengthy history, this case left unanswered questions under Pennsylvania law, including issues involving post-litigation bad faith and the bad faith evidentiary standard.

Peterson v. Western National Mutual Insurance Co., 946 N.W. 2d 903 (Minn. 2020)

In Peterson v. Western National Mutual Insurance Co., for the first time, the Minnesota Supreme Court interpreted Minnesota's Insurance Standard of Conduct, Minn. Stat. § 604.18, subd. 2(a). The statute provides for an award of taxable costs against an insurer when the insured can demonstrate that: (1)

the insurer did not have a reasonable basis for denying the benefits; and (2) the insurer either knew it lacked a reasonable basis for denying the benefits or it recklessly disregarded the fact that it lacked a reasonable basis for denying the benefits. The Court concluded that the first prong of the analysis is determined utilizing an objective test, i.e., whether a reasonable insurer would not have denied the insured the benefits of the insurance policy under the same circumstances. In contrast, the second prong is determined utilizing a subjective standard, i.e., the insured must prove that the insurer knew, or recklessly disregarded or remained indifferent to information that would have allowed it to know, that it lacked an objectively reasonable basis for denying the insured's claim for benefits. Applying this standard to the claim at issue, the Court affirmed that the insurer unreasonably denied the claim for underinsured motorist benefits and upheld the award of taxable costs and attorney's fees in favor of the insured.

Whiteside v. GEICO Indemnity Co., 977 F.3d 1014 (11th Cir. 2020)

In an order released in September 2020, the Eleventh Circuit certified three questions to the Georgia Supreme Court, asking it to rule on novel issues of Georgia bad faith law. The appeal stemmed from a case in the Middle District of Georgia, which held that GEICO was required to pay 70% of the nearly $2.9 million in damages awarded against its insured, who was the driver at fault in an automobile accident. Faced with a demand for the $30,000 policy limit, GEICO refused to settle the case on behalf of its insured, insisting that it would not pay above $12,000. When the insured was sued, she threw away the complaint and did not forward it to GEICO, under the impression that GEICO was already handling her case. A $2.9 million default judgment was entered against the insured, and the injured party sought to collect the judgment from GEICO, which had not been aware of the litigation. In subsequent bad faith litigation, the primary issue became whether GEICO could be held liable for bad faith failure to settle when the insured ultimately lost her right to coverage under the policy due to her failure to notify GEICO about the lawsuit. While GEICO argued that it would be fundamentally unfair to hold it responsible for the judgment in a case that it was not made aware of, the injured party argued that the insurer has a duty to represent the insured's interest and should have paid the $30,000 settlement. This case will likely result in significant precedent for Georgia's bad faith law.

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