Case Alert

April 2019

Insurer's Negligence Can Lead to a Finding of Bad Faith

The Florida Supreme Court's decision in *GEICO General Insurance Co. v. Harvey*[1] held an insurer accountable for bad faith as a result of actions which were not malicious in nature, but rather consisted of self-serving inaction. The court's decision ushers in an era of closer scrutiny on the actions of insurers and may pave the way for a lower standard for proving bad faith.

On August 8, 2006, James Harvey, the insured, caused an automobile collision that killed John Potts. Harvey's vehicle was insured by Geico under a $100,000 automobile liability policy. The attorney representing Potts' estate contacted the Geico claims adjuster handling the matter and requested a statement from Harvey to determine if he had any additional insurance and the extent of his assets. The Geico adjuster allegedly refused to provide any of the requested information and never informed Harvey of the request. About 10 days after the collision, Geico provided the Potts' attorney a check for the full $100,000 policy limits. The Potts' attorney responded with a letter confirming that he received the check but was still in need of the statement from Harvey.

On August 31, the Geico adjuster contacted the Potts' attorney to discuss the requested statement. The adjuster then forwarded the request to Harvey for the first time. On September 1, Harvey informed the adjuster that he planned to meet with his own attorney to discuss providing a statement, however, his attorney was not available until September 5. The adjuster failed to inform the Potts' attorney of Harvey's intent to provide a statement, despite her supervisor's specific instructions to do so. On September 13, one month after the initial request for Harvey's statement, the Potts estate returned Geico's check and filed a wrongful death suit against Harvey. A jury found Harvey completely at fault and the estate was awarded $8.47 million in damages.

Harvey then filed a bad faith claim against Geico. At trial, the Potts' attorney testified that had he known Harvey's only significant asset was a business account worth approximately $85,000, he would not have filed the wrongful death suit against Harvey and would instead have advised the estate to accept Geico's $100,000 checks. Tracey Potts, the wife of the deceased, testified that she would have followed her attorney's advice and settled for the $100,000. The trial court entered judgment in favor of Harvey and he was awarded $9.2 million for Geico's bad faith handling of his claim. Geico appealed the decision and the case was taken to the Florida Fourth District Court of Appeal.

The Florida Fourth District Court of Appeal relied on *State Farm Mut. Auto. Ins. Co. v. Laforet*[2] to describe what constitutes bad faith. In that case, the Eleventh Circuit Court of Appeals stated that "[t]o fulfill the duty of good faith, an insurer does not have to act perfectly, prudently or even reasonably. Rather, insurers must 'refrain from acting solely on the basis of their own interests in settlement." Under these guidelines, the court found that "the evidence was insufficient as a matter of law to show [Geico] acted in bad faith," finding in favor of Geico and reversing the decision.

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[1] 259 So. 3d 1 (Fla.2018).

[2] 658 So. 2d 55 58 (Fla. 1995).

The Supreme Court of Florida heard the case in September 2018 and found that the appellate court erred in finding that Geico did not act in bad faith. Not only did the appellate court misapply *Laforet*, it failed to follow the precedent set forth in *Boston Old Colony Insurance Co. v. Gutierrez*[3], a Florida Supreme Court case wherein the court held that "in handling the defense of claims against its insured," the insurer "has a duty to use the same degree and diligence as a person of ordinary care and prudence should exercise in the management of his own business." The Florida Supreme Court also relied on precedent set forth in *Berges v. Infinity Insurance Co.*,[4] where the court held insurers must "act in good faith in the investigation, handling, and settling of claims brought against the insured."

Under the precedent set forth by *Boston and Berges*, the Supreme Court ordered the jury verdict and final judgement to be reinstated. This decision helps reiterate the rule that insurers must act in good faith when handling claims and avoid self-serving actions or inaction, or else they may face a costly bad faith judgment.

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[3] 386 So. 2d 783 (Fla. 2004).
[4] 896 So. 2d 665 (Fla. 2004).