

Bad Faith Coverage Update

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Florida Coverage Update

The e-POST

Bad Faith – Florida

Harvey v. Geico Gen. Ins. Co.

--- S.o. 3d ---, SC17-85, 2018 WL 4496566 (Fla. Sept. 20, 2018)

A divided Florida Supreme Court found Geico General Insurance Company (Geico) liable for bad faith in its handling of a claim stemming from a wrongful death in an auto accident, reinstating a \$9.2 million verdict imposed by the trial court and reversing the decision of the Florida Fourth District Court of Appeals. James Harvey (Harvey) held a \$100,000 automobile liability policy through Geico. Harvey was involved in an auto accident in which the other motorist died. The parties attempted settlement, but Geico informed Harvey that he might face liability in excess of the policy limits. The wrongful death action resulted in a jury trial that awarded a verdict of almost \$8.5 million. Harvey then sued Geico for bad faith and was awarded the \$9.2 million verdict. The appellate court reversed, citing insufficient evidence of bad faith.

In a 4-3 decision, the Supreme Court of Florida disagreed. The majority cited long-standing precedent in Florida that the insurer “has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business.” The majority held that this standard means that Geico had a duty not only to warn the insured that there was a possible excess judgment and to advise that there was a settlement opportunity, but also to do everything it could to avoid an excess judgment and “comply with the estate’s reasonable demands.” The majority further opined that the standard of care and diligence means that whether an insurer was negligent was relevant to the inquiry; and that evidence of bad or negligent acts by the insured did not change the inquiry whether the insurer acted in bad faith. The dissenting opinions reasoned that the appellate court’s decision did not deviate from the long-standing Supreme Court precedent, and that instituting what one of the judges said amounted to a negligence standard would make it easier for claimants to plead bad faith and potentially access unlimited damages from insurers.

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