PLUNKETT COONEY

Bad Faith, Forum Selection Clause Coverage Update

November 1, 2019
The e-POST

Bad Faith – Eleventh Circuit (Florida Law)

Cawthorn v. Auto-Owners Ins. Co.
--- Fed. Appx. ---, 2019 WL 5491557 (11th Cir. Oct. 25, 2019)

The U.S. Court of Appeals for the Eleventh Circuit ruled that an insurer was not required to cover a $30 million consent judgment against its policyholder. The coverage dispute stems from a 2014 car crash in which the driver, Bradley Ledford, crashed his vehicle after falling asleep at the wheel. The crash left the passenger, David Cawthorn, paralyzed from the waist down. In 2016, Cawthorn entered into a $30 million consent judgment with Ledford in which Cawthorn agreed not to pursue collection from Ledford himself. As part of the agreement, Ledford assigned to Cawthorn his rights to pursue a bad faith action against his insurer, Auto-Owners Insurance Company (Auto-Owners). Thereafter, Cawthorn filed a bad faith action, claiming that Auto-Owners was liable for the full amount of the consent judgment because it failed to settle the underlying case within Ledford's $3 million policy limits.

The trial court granted summary judgment in favor of Auto-Owners and held that Cawthorn's bad faith claim failed to satisfy Florida's "excess judgment rule." Under this rule, a party can only proceed with a bad faith claim against an insurer if the injured plaintiff first obtains a judgment against the policyholder that exceeds the policy limits. The trial court held that a consent judgment did not qualify as an excess judgment for purposes of the rule. The appellate court affirmed the decision of the trial court and noted that "[i]f consent judgments were enough to show causation [in bad faith claims], th[e] protection [for insurers] would be eliminated. Insurers would not know whether an insured party and an injured party entered into a consent judgment as adversaries, at arm's length and in good faith, or as friends, making a strategic decision to undermine the insurance company's policy." Therefore, the court held that Auto-Owners was not required to cover the Ledford-Cawthorn consent judgment.

Bad Faith – Louisiana

Smith v. Citadel Ins. Co.
--- So. 3d ---, 2019 WL 5445086 (La. Oct. 22, 2019)

The Louisiana Supreme Court held that a first-party bad faith claim against an insurer is subject to a 10-year, rather than one-year, prescriptive period. The underlying claim in this case involved an auto accident caused by Darlene Shelmire (Shelmire) in which Beverly Smith (Smith) was injured. The trial judge found Shelmire liable and required GoAuto Insurance Company (GoAuto), Shelmire's auto insurance provider, to pay the full $15,000 policy limit. After the judgment, Shelmire assigned Smith the right to pursue a bad faith claim against GoAuto. At issue in the lower court case was whether Smith's action was subject to the one-year prescriptive period for tort actions or subject to the 10-year prescriptive period for personal actions.

Here, to determine if a bad faith claim arose from a tort or personal action, the Supreme Court examined the duty of good faith of an insurer under La. R.S. 22:1973. The Supreme Court found that an insurer's duty of good faith "does not exist separate and apart from an insurer's contractual obligations" to its insured. Since personal actions include actions on contracts, a bad faith claim arising from an insured's contractual relationship with an insurer is a personal action. The Supreme Court, therefore, held that the 10-year prescriptive period, as set forth in La. C.C. art. 3499, applies to first-party bad faith claims.

Forum Selection Clause – Third Circuit (Federal Law)

Liberty Surplus Ins. Corp. v. AXA Ins. Co.
--- Fed. Appx. ---, 2019 WL 5095753 (3d Cir. Oct. 11, 2019)

The U.S. Court of Appeals for the Third Circuit upheld the dismissal of an action by Liberty Surplus Insurance Corporation (Liberty) against AXA Corporate Solutions Assurance, S.A. and AXA Insurance Company (collectively AXA) because the forum selection clause in AXA's global insurance policy mandated that any disputes relating to the policy be brought in the Republic of Ireland.

Ardagh Group, S.A and its subsidiary, Ardagh Packaging USA, Inc. (collectively Ardagh) were issued excess insurance under a Global Master Policy issued by AXA that provided coverage for, inter alia, product recalls around the world. Ardagh also had underlying policies issued in the United States by AXA and Liberty. Pursuant to the terms of the Global Master Policy, the underlying policies were "incorporated in and form[ed] part of" the Global Master Policy. The Global Master Policy also contained the following clause: "In the event of a dispute concerning this Policy it is understood and agreed by both the Insured and the Insurer that the resolution of such dispute shall be governed by the laws of the Republic of Ireland whose courts shall have exclusive jurisdiction[.]"

Ardagh sought insurance coverage from both AXA and Liberty for costs incurred relating to a product recall of steel tuna fish cans that it manufactured. At first, both insurers denied coverage, but Liberty ultimately paid the claim and then brought a claim against AXA for contribution/indemnification. The district court dismissed the action, holding that, even though the relief sought was equitable in nature,

because the dispute related to the Global Master Policy, the forum selection clause mandated that the dispute be litigated in the courts of Ireland.

On appeal, Liberty argued that "it is not an intended third-party beneficiary or a closely-related party to the contract [and] enforcement of the forum selection clause against it was not foreseeable." The appellate court rejected this argument on the basis that it was not raised in the district court. The appellate court upheld the district court's dismissal of the case because, though equitable in nature, Liberty's claim against AXA still related to the Global Policy: "Indeed, the claim on its face relies on the terms of that policy. ... That the claim seeks equitable relief does not change that fact, nor alter the legal conclusion that flows from it."

Plunkett Cooney's insurance coverage update, The e-Post, is published bi-monthly via email. To receive your copy when it is issued, simply email - subscribe@plunkettcooney.com. Please indicate in the email that you would like to be added to the marketing list for the e-POST.