

# Bad Faith Failure to Settle, Statute of Limitations Coverage Update

May 15, 2017

**Georgia, North Carolina Coverage Cases**

*The e-POST*

## **Bad Faith Failure to Settle – Eleventh Circuit (Georgia Law)**

***Linthicum v. Mendakota Ins. Co.***

--- Fed. Appx. ---, No. 16-16593, 2017 WL 1735241 (11th Cir. May 3, 2017)

The U.S. Court of Appeals for the Eleventh Circuit ruled that an insurer did not act negligently or in bad faith by failing to settle a wrongful death lawsuit against its policyholder for an accident that killed the underlying plaintiffs' son because the offer did not resolve all potential claims. The underlying plaintiffs informed the insurer that they had a wrongful death claim and an estate claim, and rejected the insurer's offer to resolve the matter for policy limits. The appellate court found that the underlying plaintiffs made a demand to settle the wrongful death claim but left the estate claim unresolved. Under Georgia law, however, "[a]n insurer is not liable for failing to respond to a time-sensitive offer to settle for policy limits when the offer does not resolve fully the claim against its insured." The appellate court, therefore, ruled that the insurer "was not obligated to accept the [underlying plaintiffs'] offer to settle only the 'wrongful death claim' or to continue negotiations because the offer would have exceeded the policy limits."

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## **Statute of Limitations – Fourth Circuit (North Carolina Law)**

***Woodson v. Allstate Ins. Co.***

--- F.3d ---, No. 16-1935, 2017 WL 1660663 (4th Cir. May 3, 2017)

The Court of Appeals for the Fourth Circuit ruled that the one-year statute of limitations in national flood insurance policies barred the insureds' flood insurance claim. The insureds' house suffered substantial water damage as a result of Hurricane Irene. After the storm, the insureds made a claim under their flood insurance policy, which was issued pursuant to the National Flood Insurance Program. The insurer denied the insureds' claim on Feb. 28, 2012. The flood insurance policy contained a provision that provided that the insured "must start [a lawsuit] within one year after the date of the written denial of all or part of the claim, and you must file suit in the United States District Court of the district in which the covered property was located at the time of loss." Just under one year after the insurer's denial, on Feb. 27, 2013, the insureds filed their complaint in North Carolina state court, and the insurer removed the case to federal court on April 1, 2013. The appellate court determined that "because the

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[insureds] failed to file their complaint in U.S. District Court within one year of [the insurer's] denial-of-coverage letter dated Feb. 28, 2012, their claims – one for breach of the policy and one for the bad faith handling of their claim under the policy – [we]re barred by the statute of limitations.”

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