Middle District of Florida Court Rejects Claim that Negligence is Sufficient to Support a Finding of Bad Faith

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In Florida, an insurer is required to "settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so[.]" *Harvey v. GEICO General Insurance Company*, 259 So.3d 1 (Fla. 2018). But what happens when an insurer tenders its policy limits, only to have its offer rejected on the basis that the insurer negligently handled the claim?

The United States District Court for the Middle District of Florida was recently faced with this question in *Ilias v. USAA General Indemnity Company*, No. 20-834, 2021 U.S. Dist. LEXIS 117879 (M.D. Fla. June 24, 2021). After a careful review of the Florida Supreme Court's decision in *Harvey v. GEICO General Insurance Company*, 259 So.3d 1 (Fla. 2018), the court concluded that although negligence is one of the relevant factors to be considered under Florida's "totality of the circumstances" test, **negligence alone cannot support a finding of bad faith**.

Ilias arose out of a multi-vehicle crash which caused Ilias, a third-party claimant, to sustain catastrophic injuries. The driver at fault for the accident was insured by USAA under a policy which contained limits of $10,000 per person and $20,000 per accident. Shortly after the accident, Ilias's attorney, Maryanne Furman, determined that Ilias's injuries were "pretty significant" and would likely exceed the USAA policy's limit. Shortly thereafter, Furman sent correspondence to USAA, requesting a coverage disclosure in accordance with Fla. Stat. §627.413.

USAA provided most of the requested information over the next few days. Within 48 days of the accident, USAA tendered the $10,000 policy limits to settle Ilias's injury claim.[1] After tendering the offer, USAA sent a check for $10,000 and a general release from liability. USAA contended, but could not confirm, that the coverage disclosure was sent with the check and release. Furman denied ever receiving the disclosure.

Furman did not respond to USAA's tender, instead filing a personal injury suit against USAA's insured in Florida state court. At trial, a jury awarded Ilias $5,230,559.44. Ilias then filed a third-party bad faith action against USAA, alleging that USAA's negligent failure to provide the coverage disclosure constituted bad faith. Specifically, Ilias pointed to USAA's failure to confirm or deny whether its insured had an umbrella policy or other insurance coverage.

The Middle District found that no reasonable jury could conclude that USAA had acted in bad faith. The court noted that USAA worked diligently to try to settle the claim and had provided almost all the requested information. "The only possible misstep in this process was [USAA's] failure to mail the form." This court stated that this "misstep," which resulted in little prejudice, at best demonstrated a need for USAA to "augment its claims practices."

The Middle District acknowledged that under *Harvey*, negligence is a relevant consideration in determining bad faith; however, "*Harvey* plainly states that 'negligence is not the standard' for liability in a bad-faith action[.]" For that reason, "USAA's actions, though potentially negligent to some degree, did not rise to the level of bad faith[.]"

The Middle District additionally found that no reasonable jury could find that USAA had caused the excess verdict against its insured. The court found that although Furman testified that she would have settled Ilias's injury claim had USAA provided the coverage disclosure, her actions belied that claim, instead suggesting a "bad faith setup[.]" In support of this finding, the court noted that Furman never made a demand for the policy limits, never informed USAA that she intended to settle, failed to follow up with USAA regarding the missing information, and failed to settle after learning that the insured had no umbrella or other coverage.

The court noted that Florida's third-party bad faith law appears to encourage a "bad faith setup" where policy limits are small and damages are large, resulting in costly lawsuits. The court did not fault Furman, whose client was badly injured by an underinsured driver, but ultimately concluded that it was implausible for "any realistic Florida personal injury lawyer" to contend that a $10,000 tender issue caused a jury verdict exceeding $5 million.

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[1] The court noted that the "timeframe should be reduced by about 10 days to account for the time Ilias spent in the ICU and was either in a medically induced coma or heavily medicated[.]"

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