

# Client Alert

July 2017

## Eleventh Circuit Affirms \$8 Million Jury Award for Insurer's Negligent Failure to Settle

The Eleventh Circuit recently rejected an insurer's attempt to escape an \$8 million judgment arising from the insurer's negligent failure to settle claims brought against its policyholder. In *Camacho v. Nationwide Mutual Insurance Co.*, No. 16-14225, 2017 WL 2889470 (11th Cir. July 7, 2017), the Eleventh Circuit affirmed a Georgia district court's final order refusing to disturb a jury award for the policyholder arising from the insurer's failure to accept a time-limited settlement demand, holding that the lower court's order was "thorough and well-reasoned."

### Background

The high-profile coverage dispute arose from a July 2005 accident in which a commercial van operated by Nationwide's policyholder Seung Park ran a red light and crashed into a vehicle driven by Stacey Camacho, resulting in Camacho's death. After Park pled guilty to vehicular manslaughter, Camacho's husband and the administrator of Camacho's estate, LeJean Nichols, sent a time-limited settlement demand to Nationwide for Park's \$100,000 policy limits in exchange for a limited liability release of certain claims. Nationwide rejected the offer, stating that it would only accept a settlement containing a general release of all claims. When no agreement was reached, Camacho and Nichols filed a wrongful death suit against Park and were awarded a \$5.8 million jury verdict. Park then assigned his claims against Nationwide to Camacho and Nichols, who filed a bad faith lawsuit against Nationwide for failure to settle the underlying claim.

Following trial, the Georgia federal court issued jury instructions stating in part that Nationwide could be found liable for failing to settle claims against a policyholder based solely on a determination that the insurer's conduct was negligent. The jury found that Nationwide had acted negligently or in bad faith in failing to settle the claims against Park, holding Nationwide liable for the entire \$5.8 million award, as well as an additional \$2.4 million in interest.

### Nationwide's Appeal and the July 7 Opinion

Nationwide appealed to the Eleventh Circuit, arguing that the district court erred in instructing the jury that Nationwide could be held liable upon a finding of negligence in rejecting the settlement demand for policy limits. Numerous *amici* filers also urged the Eleventh Circuit to seek guidance from the Georgia Supreme Court or to redefine the parameters of Georgia bad faith law to clarify that acting negligently—as opposed to in bad faith—is insufficient to support an insurer's failure to settle an underlying claim.

Central to the dispute was the proper interpretation of Camacho and Nichols' pre-trial settlement demand for Park's \$100,000 policy limits. Nationwide argued that it properly rejected the offer and had no duty to request clarification or negotiate where the offer's limited release accompanying the monetary demand, if accepted, exposed Park to liability in excess of limits. Camacho and Nichols disagreed, arguing instead that the settlement demand was enforceable under Georgia law as a time-limited demand within limits to which Nationwide had a duty to respond in good faith.

In an unpublished, one-page decision issued less than two weeks after oral argument, the Eleventh Circuit summarily rejected Nationwide's attempt to invalidate the \$8 million award, stating that, having "carefully reviewed the record," it would not overturn the district court's "thorough and well-reasoned final order" upholding the verdict for Nationwide's failure to settle. In so holding, the appellate court refused to disturb the seminal Georgia Supreme Court opinion *Southern General Insurance Co. v. Holt*, 416 S.E.2d 274 (Ga. 1992), which Georgia policyholders have used to support "negligent failure to settle" claims where, as in *Camacho*, an insurer improperly rejects a time-limited settlement demand.

### **Implications**

The decision in *Camacho* is a reminder to policyholders that, under Georgia law, an insurer need only act negligently to be found liable for improperly refusing to settle a claim. While the Eleventh Circuit's decision supports the use of reasonable, time-limited settlement offers as an efficient means to resolve coverage issues, Nationwide's arguments on appeal highlight the importance of carefully structuring settlement demands to avoid any ambiguity as to the scope or intent of such demands. Consultation with experienced coverage counsel, both during negotiation of underlying claims and in subsequent coverage litigation, can help policyholders maximize their potential recovery where an insurer refuses to settle a claim.

### **Authors**

**Michael S. Levine**  
mlevine@hunton.com

**Geoffrey B. Fehling**  
gfehling@hunton.com

### **Contacts**

**Walter J. Andrews**  
wandrews@hunton.com

**Syed S. Ahmad**  
sahmad@hunton.com

**Lawrence J. Bracken II**  
lbracken@hunton.com

**John C. Eichman**  
jeichman@hunton.com

**Lorelie S. Masters**  
lmasters@hunton.com

**Sergio Oehninger**  
soehninger@hunton.com

---

© 2017 **Hunton & Williams LLP**. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials.