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Fla. Appellate Court Expands Insurance Bad Faith Law

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On Sept. 3, 2014, Florida's Fourth District Court of Appeal held en banc in Cammarata v. State Farm Florida Insurance Company, No. 4D13-185, that a cause of action for insurer bad faith matures upon a finding of coverage and damages owed, and that a judicial determination that the insurer actually breached the insurance policy is not necessary. The court also confirmed that the liability and damages determinations may be established by settlement instead of litigation.

The Cammarata opinion is a departure from the Fourth District's decision in Lime Bay Condominium Inc. v. State Farm Florida Insurance Company, 94 So. 3d 698 (Fla. 4th DCA 2012), where a Florida intermediate appellate court held that breach of contract liability must exist before a bad faith action becomes ripe. And, according to State Farm, the decision also is a departure from the Third District's decision in North Pointe Ins. Co. v. Tomas, 999 So. 2d 728 (Fla. 3d DCA 2008), as well as the Florida Supreme Court's decision in QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n Inc., 94 So. 3d541 (Fla. 2012). The decision, therefore, is ripe for further review on reconsideration as well as on certification to the Florida Supreme Court to resolve any lingering conflicts among the districts.

Background

The policyholders in Cammarata sustained damage to their home as a result of Hurricane Wilma. Nearly two years later, they filed a claim for benefits under their homeowners' policy. The Cammarata's insurer inspected their home and estimated damages to be lower than their policy deductible. The Cammaratas disputed the damages estimate and, along with their insurer, invoked the policy's appraisal process. After competing damage estimates were submitted, the umpire issued a damage determination for an amount lower than the Cammaratas' appraiser's estimate but higher than the insurer's estimate. The insurer paid the umpire's damage estimate minus the policy deductible and the circuit court entered an agreed order dismissing the petitions. The Cammaratas then sued their insurer alleging, among other things, that the insurer acted in bad faith by failing to make a good faith effort to settle their claim. The insurer moved for summary judgment, which the trial court granted. The appellate court reversed.

Analysis and Holding

The insurer argued, among other things, the Cammaratas' bad faith action was not ripe because there had been no finding that the insurer breached the policy. The insurer relied on Lime Bay. The Cammaratas responded, arguing that under other binding precedent, the court need not decide whether there has been a breach of the policy before bad faith claims can become ripe. Rather, the appellate court analyzed Florida Supreme Court precedent and held that a cause of action for insurer bad faith requires only that the insurer owe coverage and some amount of unpaid damages, but that there need not be any threshold finding that the insurer breached the contract. Further, the court explained that both conditions may be established through settlement of the coverage claim; a determination reached through litigation is unnecessary.

Applying these principles in Cammarata, it was clear that the settlement reached via the appraisal process was sufficient to determine the existence of liability and the extent of the insured's damages. The trial court erred, therefore, in finding that the policyholders' bad faith action was not ripe simply because there had been no determination of insurer liability for breach of contract.

Furthermore, Judge Jonathan Gerber specially concurred to express his concern about the effect the majority's opinion might have: that without requiring a predicate showing of breach by the insurer, policyholders will be able to sue insurers for bad faith any time the insurer disputes a claim but ultimately pays just slightly more than the insurer's initial offer to settle.

Judge Gerber offered two proposals to resolve his anticipated problems for insurers going forward. On the one hand, Judge Gerber suggested that a breach of contract be established as a condition precedent to any bad faith claim. Alternatively, the judge suggested that any settlement be at least a certain percentage above the insurer's initial settlement offer. Neither suggestion is presently workable however, since each would require reversal of Florida Supreme Court precedent or implementation by the Florida Legislature.

Implications and the Future for Florida Bad Faith Law

Cammarata represents a significant broadening of insurer bad faith law in Florida. As the concurring opinion notes, the facts of this case illustrate the substantial protections that now exist for policyholders under Florida law. Specifically, where an insurer previously could avoid bad faith exposure simply by defeating the policyholder's breach of contract claim, even where that defeat occurred based on procedural grounds and not the merits of the claim, such a defeat no longer offers the insurer safe harbor. Rather, insurers can (and will) now be required to justify their conduct even where they manage to escape liability for what might be only a technical breach of the policy.

As a consequence of these practical and significant implications, State Farm has sought rehearing of the court's opinion, as well as certification of conflict with the Third District Court of Appeal's decision in North Pointe Ins. Co. v. Tomas, 999 So. 2d 728 (Fla. 3d DCA 2008), where the court held that breach of contract liability must exist before a bad faith action becomes ripe. State Farm argues that Cammarata creates a slippery slope that will hurt Florida residents by causing insurers to leave the Florida market. State Farm further argues that Supreme Court precedent ignored by the appellate court, such as QBE Ins. Corp. v. Chalfonte Condo.

Apartment Ass'n Inc., compels the conclusion that the "determination of liability" required for the accrual of a bad faith action is a "determination of liability for breach," not "liability for coverage."

State Farm further points out that the Cammaratas never sued for breach of contract, nor did State Farm ever "settle" any such claim. Rather, as State Farm explains, the appraisal process utilized in Cammarata was a method of adjusting the claim within the terms of the policy to determine the amount payable for the covered claim. It did nothing to adjudicate or otherwise determine whether a breach had occurred. Thus, State Farm maintains that "there was no claim on which [its] payment of the appraisal award (which was not the settlement of a claim of breach or anything else) could be deemed a 'confession of judgment'." Such a scenario stands in contrast, according to State Farm, with one where an insurer settles a lawsuit brought by a policyholder after the insurer wrongfully refuses to pay a claim. In that situation, the settlement precludes entry of a formal judgment but is nonetheless deemed tantamount to a judgment in order to allow an award of attorneys' fees under Fla. Stat. § 627.428. Rather, State Farm submits that the court's holding renders any payment by an insurer on a claim — whether in compliance with the contract or not — a "determination of liability" for purposes of accrual of a bad faith claim.

In addition to seeking rehearing, State Farm seeks review by the Florida Supreme Court because of the detrimental impact that State Farm believes Cammarata will have on insurers and policyholders in Florida. As State Farm explains it in its petition, "The ultimate effect of the court's opinion in this case will be to discourage property insurers from continuing to do business in Florida, leading to a further shortage of property insurance for Florida citizens and making those insurance choices that remain available more expensive. At best, the court's opinion will lead to substantial increases in the costs of property insurance for Florida citizens given it encourages payment of illegitimate claims and increased litigation."

Conclusion

However, whether the doom and gloom prognostications advanced by State Farm will actually come to fruition remains to be seen. Although it has only been a short while since the release of the court's decision in Cammarata, there have been no wholesale withdrawals of insurers from Florida's insurance markets. Nor are there likely to be, where even under Cammarata insurers hold their fates in their own good hands: Simply honor their contractual obligations to avoid extracontractual liability. Or, fail to do so and suffer the consequences in Florida, just as in any other jurisdiction.

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