CARLTON FIELDS

Suing for Bad Faith Gets a Little Easier in Florida

December 22, 2014

In a ruling that claims merely to clarify a 14-year-old case from the Florida Supreme Court, an appellate court recently held that an insurer may be liable to a statutory claim for bad faith failure to settle, based only on an unfavorable resolution of a property policy's appraisal process. The decision will likely make bad faith claims more common and negotiations with Florida insureds more contentious. The plaintiffs in *Cammarata v. State Farm Florida Ins. Co.* waited two years to file a claim after their home suffered damage from Hurricane Wilma in 2005. Their insurer estimated the amount of the damage to be below their deductible, but it agreed to submit to the policy's appraisal process. At the end of that process, a neutral umpire reached an estimate that fell between those of the two parties, but which was higher than the policy deductible. The insurer promptly paid the claim. Although there was no allegation that State Farm had obstructed the appraisal, the insureds filed a new action for statutory bad faith. The circuit court awarded summary judgment to the insurer, holding that the claim was not ripe, because there had not yet been any finding that State Farm was liable for breach of contract. Reversing that decision, the Fourth District Court of Appeal held that a bad faith suit may rest on determinations of nothing more than (i) the amount of damages and (ii) the fact that the insurer is liable to provide coverage. As one of the judges acknowledged in a concurrence, those conditions are satisfied "any time the insurer dares to dispute a claim, but then pays the insured just a penny more than the insurer's initial offer to settle." Thus, State Farm could be required to defend a bad faith suit on the merits, although "the record here provides no basis indicating that the insurer breached the contract, much less failed to act in good faith." The decision rests primarily on the Florida Supreme Court's somewhat paradoxical 2000 opinion in *Vest v. Travelers Ins. Co.* In *Vest*, the insured brought a bad faith claim, and the insurer responded by paying policy limits. The Supreme Court stated that the bad faith suit had been premature when filed, but that it "ripened" upon the insurer's "settlement." That is, the insurer's voluntary payment was enough of a "determination" of its liability to pay the claim to support an action for bad faith. What *Vest* did not consider, however, was the practical effect of a rule under which any insurer that submits to an appraisal and ends up paying more than it first offered must then defend a bad faith action on the

merits. The concurrence in *Cammarata* did address that problem, urging the Legislature to amend the relevant statute by imposing further requirements on bad faith claims.

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