CARLTON FIELDS

The Good Faith, Bad Faith, and Ugly Set-up of Insurance Claims Settlement

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Can an insurer be acting in bad faith for failing to settle a claim when the insured or claimant is deliberately attempting not to settle in order to create a bad faith "refusal to settle" claim against the insurer and thereby avoid low policy limits? Or must the insured/claimant be making a good faith effort to settle, such that minor, technical issues or delays cannot be seized on to avoid a settlement the insurer clearly sought to reach? Does the bad faith statute need to be amended to affirmatively impose a concomitant good faith obligation on the insured/claimant?

These issues are explored below, followed by a proposed amendment to Florida's bad faith statute that would level the uneven playing field that now exists. Although this statute has a worthy prophylactic purpose, it is sometimes exploited, resulting in the anomalous situation of insurers being unable to accomplish the very settlements the statute seeks to encourage. That can be avoided, while still assuring the statutory purpose of insurance settlements is fulfilled. Florida law requires an insurer to handle claims in good faith — fairly and honestly — and provides for damages if it fails to do so. Florida's bad faith statute permits "any person" to bring a bad faith action against an insurer for not attempting in good faith to settle a claim. [1] Although the duty of good faith and fair dealing is mutual in all insurance contracts, [2] the language of Florida's bad faith statute currently addresses only the insurer's duty to act in good faith during the settlement process. Reciprocal duty of good faith of the insured claimant, at a minimum, should be a part of the totality of the circumstances considered when a bad faith claim is asserted.

The bad faith statute undoubtedly provides social benefit by encouraging insurers to make fair settlements. [3] But its one-sided provisions as to the insurer's good faith obligations is being exploited in some cases in order to create bad faith claims through the settlement process, even when it is clear the insurer is perfectly willing and attempting to settle the claim. [4] Lawyers for insureds/claimants sometimes affirmatively seek to avoid — contrary to the public policy favoring settlements — in an effort to convert $10,000 policy limits into a multi-million dollar recovery under

the policy. That plainly was not the intent behind this statute, which instead is intended to encourage settlement of insurance claims. [5]

When an insurer is forced to expend time and resources attempting to reach a settlement of a claim that the insured/claimant is affirmatively attempting to avoid, it negatively affects not only the insurer, but also society in general through increased litigation and burdens on the judicial system that settlements prevent. In order for the bad faith statute to accomplish its intended purpose of encouraging quick and fair settlement of insurance claims, [6] the bad faith statute should be amended to explicitly reflect that all parties owe the duty of good faith and fair dealing when attempting to settle an insurance claim and that an insurer cannot be held liable for bad faith if the other party has not acted with a good faith effort to achieve a settlement.

Reaching a Settlement The bad faith statute creates a civil action against an insurer if the insurer fails to settle a claim it could and should have settled. [7] Missing from this statute, however, is an affirmative, reciprocal obligation on the part of the insured or third-party claimant to likewise act in good faith in attempting to settle the claim. Florida common law has long recognized that every contract imposes on each contracting party the duty of good faith and fair dealing. [8] Insurance policies, which are governed by contract law in this state, are no exception. [9] In fact, it has been stated that "'[t]he duty of good faith and fair dealing in an insurance policy is a "two-way street," running from the insured to his or her insurer as well as vice versa.'" [10] Although a third-party claimant is not a party to the insurance contract, as a party seeking the benefits of that contract, it should be required to exercise good faith and fair dealing in the settlement process, just as the insured is obligated to do. [11]

Thus, the claim settlement process cannot and should not be viewed as the responsibility of just the insurer, such that only one side should be charged with conducting itself in good faith during settlement. Rather, reaching a settlement requires each party's involvement and cooperation. [12] Therefore, it is essential in efforts to settle a claim fairly that the duty of good faith be mutually required of all parties involved. Imposing the duty of good faith during settlement on only the insurer, as some courts appear to have done in light of the narrow language of the bad faith statute, is inconsistent with Florida's strong public policy encouraging settlement of claims. [13]

The current imbalance in Florida's bad faith statute can be exploited to create bad faith claims where they otherwise would not exist. [14] This practice is commonly referred to as the "bad faith set-up," and the various tactics used to set up bad faith claims have been well-documented by courts and commentators alike. [15] Simply put, the "bad faith set-up" is "nothing more than an attempt to induce the insurer to commit a tort in order to explode the policy limits." [16] The end goal is to collect an award in excess of the actual policy limits paid by the insured, even in those instances when the insurer is seeking to settle while taking steps it believes are appropriate to protect the insured in any such settlement or has failed in some technical and immaterial way to comply in all

respects with a settlement demand.

Common Tactics Used to Set Up a Bad Faith Claim One tactic for setting up a bad faith claim is to make a settlement offer that likely cannot be complied with by the insurer. [17] Knowing the settlement demands may not be met, the insured/claimant waits for the insurer's misstep, then asserts a bad faith claim. Sometimes the insured/claimant will make an offer for settlement containing an arbitrary and unrealistic deadline for acceptance, before the insurer has had the opportunity to fully investigate the claim. When the insurer is unwilling to agree immediately to the insured's/claimant's demands, a bad faith claim is filed. [18]

For example, in *DeLaune v. Liberty Mut. Ins. Co.*, 314 So. 2d 601 (Fla. 4th DCA. 1975), plaintiffs made an offer to settle their claim stemming from an automobile accident for the $10,000 policy limit, attaching a 10-day deadline for the defense to accept the offer. Defense counsel, believing that settlement for the policy limits was possible, but not yet authorized to approve the settlement, contacted the plaintiffs' counsel on the last day of the deadline and asked for an extension of the offer until the following Monday after the Friday deadline. [19] The plaintiffs refused and initiated a common law bad faith action for the excess judgment.

In affirming the judgment in the insurer's favor on the bad faith claim, the Fourth District recognized the plaintiffs' attempt to set up a bad faith claim, and stated:

> [T]he evidence fails to prove any negligence, much less negligence rising to the level of bad faith. The accident happened December 27, 1971. In less than a month suit was filed. Defense counsel received the file to defend eleven days later. Eight days after that plaintiffs' counsel offered to settle for the policy limits but limited the time for acceptance to ten days. **It is the latter aspect of the offer which we find totally unreasonable under these circumstances**. In view of the short space of time between the accident and the institution of suit, the provision of the offer to settle limiting acceptance to ten days made it virtually impossible to make an intelligent acceptance. Nor does the enclosure of an affidavit from a doctor stating that the injured plaintiff would be totally disabled warrant a different conclusion. **Since when does one party to a lawsuit have to accept at face value the medical information furnished by the other party without even any inquiry?** The evidence here shows that appellee, its adjusters, and its counsel proceeded with all due haste to determine and evaluate their position, and they almost made plaintiffs' unreasonable deadline. It should be noted that the personal injury case went to trial ten months after the deadline, so the time limitation was not invoked because the trial was imminent. **Finally, to demonstrate that this whole charade might have been a "set up" for just such a suit as we are considering (as argued by appellee) when Monday came, after the Friday deadline, and the home office authorized settlement, plaintiffs' counsel refused it.** [20]

When there is no good faith reason why a settlement must be accomplished by a unilaterally set deadline, rather than mere days later, there should be, as the *DeLaune* court recognized, no claim for bad faith based on the insurer's acceptance shortly after the specified deadline. Instead, the insurer's efforts to settle should bar such a claim.

The case law to date has, however, at times allowed a bad faith claim to proceed when the insurer's tender by the deadline is not, or cannot be met, and the insured's/claimant's settlement offer is then withdrawn, regardless of how minimal the delay is and of the insurer's obvious interest in settling and efforts to reach that outcome. That was the case in the much contested *Berges v. Infinity Ins. Co.*, 896 So. 2d 665 (Fla. 2005). In *Berges*, the plaintiff's wife was killed and his daughter injured in an automobile accident with Infinity's insured, who was intoxicated at the time of the accident. [21] The plaintiff offered to settle his claim within policy limits, conditional on the insurer paying his wife's estate's claim within 25 days and his daughter's claim within 29 days. [22] The plaintiff explained the time limitations were based on his need to pay medical bills and to compensate for the numerous days of work he had missed. [23]

It was undisputed that Infinity orally agreed to pay the policy limits to settle plaintiff's claims. [24] Infinity informed the plaintiff that it would tender the money when the plaintiff obtained the legal authority to sign releases as the personal representative of his wife's estate and as the legal guardian of his minor child. [25] What was disputed at trial, however, was whether the plaintiff agreed to an extension of the time limits for payment. Infinity maintained that its offer to settle plaintiff's claims did not include paying the policy limits within the plaintiff's deadlines. [26] On the other hand, the plaintiff testified that Infinity had not requested the payment deadline be extended or suspended, and that there was no agreement to change it. [27]

After orally accepting the offer, Infinity obtained and paid for an attorney to handle the plaintiff's estate and guardianship formalities. [28] On May 24, that attorney sent the plaintiff a letter confirming that he had begun work on the guardianship matters and informing the plaintiff that Infinity would tender payment as soon as the legal formalities were settled. [29] A typo in the plaintiff's zip code delayed the plaintiff's receipt of the letter until June 20, after the settlement payment deadlines had expired. [30] On June 11, despite the previous oral agreement to settle, plaintiff withdrew his settlement offer due to Infinity's failure to pay by the designated time limitations. [31] Shortly thereafter, Infinity informed the insured of the failed settlement attempt, of the possibility of an excess judgment, and of his right to retain independent counsel. [32]

The case proceeded to trial, where the plaintiff received judgment far in excess of the policy limits. [33] The insured then brought a bad faith action against Infinity for failing to settle the claims and for failing to inform him of the plaintiff's settlement offer. [34] The jury found Infinity acted in bad faith for both reasons, and a judgment of $1,893,066.41 was entered in the insured's favor. [35]

The Second District reversed, holding that since the plaintiff had not yet been appointed as personal representative when he offered to settle, he was without the authority to make a valid settlement demand. [36] Thus, Infinity could not have acted in bad faith. [37] The Florida Supreme Court reversed, holding the plaintiff's settlement demand was valid despite his lack of court approval as personal representative, the bad faith issue was properly submitted to the jury, and there was sufficient evidence of bad faith on Infinity's part, both as a result of its failing to pay by the unilateral timeline set by the plaintiff, as a result of its failure to timely apprise the insured of the settlement and of the probable outcome of litigation. [38]

The majority's decision drew strong dissenting opinions from both Justice Cantero and Justice Wells. [39] Justice Wells concluded that this was a case of a manufactured bad faith claim. [40] Specifically, he stated that the deadlines set by the plaintiff for Infinity to pay the claims were part of a "strategy which consists of setting artificial deadlines for claims and the withdrawal of settlement offers when the artificial deadline is not met," the goal being to "convert a policy purchased by the insured which has low limits of insurance into unlimited coverage." [41] According to Justice Wells, the strategy worked exceedingly well in both the plaintiff's and the insured's favors, as "the $20,000 purchased by the insured has been converted into insurance which will pay $1,893,066 to cover the claims plus $616,200 for attorneys' fees plus interest. It also worked well for the insured, who paid for $20,000 of insurance and was given by the majority's opinion the benefit of more than $2.5 million of insurance." [42]

Justice Cantero also expressed concern for permitting a bad faith claim to lie under these facts, which he concluded did not show *any* bad faith on Infinity's part. He explained that bad faith does not lie where, as here, the plaintiff "unilaterally revoked the offer solely because Infinity did not *deliver payment* within [the plaintiff's] arbitrary deadlines." [43] Justice Cantero emphasized:

> Here, the undisputed evidence shows that Infinity accepted the offer to settle for the policy limits within Taylor's arbitrary deadline; it just could not forward actual payment until Taylor had the legal authority to execute releases on behalf of the estate and guardianship.... Even if evidence had been presented that Infinity could have accomplished all these tasks in such a short time, that alone does not prove that Infinity's failure to do so was even negligent, much less bad faith.... [44]

Notably, the majority opinion never suggests that the plaintiff was making a good faith effort to reach a settlement. To the contrary, given the potential of a bad faith claim if he could avoid the insurer's efforts to settle, the plaintiff had every incentive not to resolve his claim for policy limits. Had there been a statutory requirement of a good faith effort to settle on the plaintiff's part, however, this case almost certainly would not have resulted in a finding of bad faith based on failure to settle.

The dissenting justices' fears proved prophetic. Berges is now cited by courts that focus only on the

insurer's conduct and disregard the efforts of the insured/claimant to avoid the settlement the insurer is working to achieve. [45]

Long-term Consequences of False Bad Faith Claims An insured/claimant who retracts or rejects a settlement offer based on arbitrary deadlines or mere technicalities may have objectives other than settlement on his or her mind and may not be acting in good faith to try to reach a settlement. The insured's effort to create a bad faith claim may thwart the settlement of claims that otherwise could have been settled. When that occurs, the insured is forced into an adversarial relationship with the insurer. There also may be additional litigation that could have been avoided. Moreover, the dissent in *Berges* pointed out, "[p]erpetuating this kind of [manufactured] bad faith action…is greatly detrimental to Florida's liability insurance consumers because of the increases in their insurance costs."[46]

Bad faith cases that are manufactured through use of the techniques described above to avoid a settlement expand the concept of "bad faith" beyond what the statute requires for "good faith." Ultimately, bad faith claims have become so common [47] that the stringent standard actually needed for "bad faith" appears to have been ignored and bad faith claims allowed based on mere technical failures in reaching a settlement. As Justice Cantero noted in his dissent to *Berges*, mistakes, negligence, and miscues do not meet the standard required for a bad faith claim. [48] Rather, the insurer must have *wrongfully refused* to settle the claim when it should have done so if it had been acting fairly and honestly toward the insured. [49] Submitting settlement payment a few days after an arbitrary deadline and disagreeing over the specific release language contained in a settlement proposal may be negligent, but that does not satisfy the high standard of *deliberately wrongful conduct* that should be required to support a bad faith action. [50]

As a result of the absence of any clearly defined statutory guidelines for determining bad faith, the tactics used to set up bad faith claims are actually distorting the meaning of the bad faith statute and slowly whittling away at its purpose altogether. The bad faith legislation was enacted for the purpose of encouraging quick and fair settlement of insurance claims to further Florida's strong public policy favoring settlement. Fair settlement cannot be achieved when a potential bad faith claim provides greater benefits to the insured/claimant than a settlement for the actual policy limits.

Although there undoubtedly may be situations in which an insurer engages in bad faith in the handling of claims, the duty of good faith should be precisely and carefully defined, so that only legitimate bad faith conduct results in bad faith judgments. In his dissent in *Berges*, Justice Wells emphasized that a bad faith claim only should exist for egregious conduct, and called on the legislature to create and define exact guidelines and limitations to these actions:

> I do not believe that it is acceptable for the Court to merely say that bad faith is a jury question…. It is the Court's responsibility to have logical, objective standards for bad faith and not to avoid setting definitive standards by declaring bad faith to be a jury

> question. The Court should recognize that it has the responsibility to reserve bad faith damages, which is limitless, court-created insurance, to egregious circumstances of delay and bad faith acts. The Court likewise has a responsibility to not allow contrived bad faith claims that are the product of sophisticated legal strategies and not the product of actual bad faith. I conclude that what is needed are express guidelines which include set time periods in which all insurers must presumptively make decisions on claims and issue payments. The guidelines should set out the conditions for payments such as for the appointment of guardians. There is also a need for defined penalties for failure to meet these time requirements rather than limitless insurance. In view of this decision, I regret that there appears to be no alternative but that the guidelines will have to be mandated by statute. [51]

A Proposed Legislative Solution for Florida In order to properly define and limit bad faith claims, the legislature should first ensure that all parties to a claim settlement are on equal footing by amending the bad faith statute to impose the affirmative duty of good faith on all parties involved in the settlement process. Requiring the duty of good faith from insureds/claimants, as well as insurers, will discourage unreasonable and unrealistic demands, will help ensure that courts are faced with only legitimate bad faith claims, and will foster settlement in accordance with Florida's strong public policy.

As part of its duty of good faith and a condition to asserting a bad faith claim, the insured/claimant as a condition to asserting a bad faith claim should be required to make a timely and specific settlement demand, allowing a reasonable time for acceptance. With that specific settlement demand, the insured/claimant should identify the type of release it is prepared to provide, and identify its authority to execute such a release. Insureds/claimants also should be required to submit their medical bills, accident reports, and other supporting documentation so the insurer can efficiently investigate and evaluate the claims. Only if the insured/claimant has satisfied these requirements should it be able to assert it acted in good faith.

To further comport with the statute's purpose of encouraging fair and quick settlement, the statute should provide a safe harbor for the insurer when the insured/claimant proposes settling. Insurers must be given an adequate opportunity to cure deficiencies in their acceptance of a settlement demand before a bad faith claim can be asserted. If an insurer's proposed release is unacceptable, for example, an acceptable one must be submitted by the insured/claimant, with a reasonable time to respond. To combat the set-up tactic insisting on unrealistic and arbitrary deadline demands, a minimum 30-day window of time should be provided for the insurer to agree to a settlement in accordance with a specific settlement offer in return for an appropriate release.

Like Florida's punitive damages statute, the bad faith statute also could be amended to require the plaintiff to demonstrate an entitlement to go forward with a bad faith claim by making a showing with evidence that, if reasonably believed by a jury, would entitle her or him to damages. There would

be no substantive legal right to bring a bad faith claim until the plaintiff is able to make this showing to the satisfaction of a court.

A proposed amendment to the statute is as follows:

> (1) As a condition precedent to bringing a civil action under this subsection: (A) The insured/claimant must establish it acted in good faith in attempting to settle the claim by:
>
> > 1. Making a timely and specific settlement demand;
> >
> > 2. Allowing a reasonable time for acceptance;
> >
> > 3. Identifying the type of release of liability the insured/claimant is prepared to provide to the insurer and insured(s); and
> >
> > 4. Cooperating fully in the timely submission of medical bills, accident reports, and other information needed by the insurer to investigate the claim.
>
> (B) The insurer shall be given 30 days to cure any deficiencies in its acceptance of a good faith settlement demand; and
>
> (C) A minimum of 60 days shall be afforded for the parties to reach settlement in return for a reasonable release of the insured's liability. (2) No claim shall be permitted under this statute unless there is a reasonable showing by evidence in the record or proffered by the insured/claimant establishing it made a good faith effort to settle.

Conclusion The obligation to seek to settle insurance claims in good faith should be a two-way street. Parties should not be trying to evade an insurer's efforts to settle in order to expand policy limits. The claim for "bad faith" failure to settle should be exactly that — only for situations in which the insurer truly is refusing in bad faith to settle, not when it is in fact attempting to settle the claim. The statutory scheme has been abused in many instances and should be amended to balance the scales and ensure it carries out the intended purpose of achieving settlements of disputed insurance claims. *This article was originally published in* The Florida Bar Journal*, Volume 85, No. 2 (February 2011). It was updated on February 10, 2012. The authors acknowledge the assistance of Jonathan A. Cipriani on this article.*

1 See Fla. Stat. §624.155(1)(b)1.

2 N. Am. Van Lines, Inc. v. Lexington Ins. Co., 678 So. 2d 1325, 1331 (Fla. 4th D.C.A. 1996) (quoting Diamond Heights Homeowners Ass'n v. Nat'l Am. Ins. Co., 227 Cal. App. 3d 563 (1991)).

3 Shin Crest PTE, Ltd. v. AIU Ins. Co., 605 F. Supp.2d 1234, 1244 (M.D. Fla. 2009) (noting that the purpose of the bad faith statute is to deter improper handling of claims); Berges v. Infinity Ins. Co., 896 So. 2d 665, 682-83 (Fla. 2005) (noting that the purpose of bad faith is to "protect insureds . . . who have fulfilled their contractual obligations by cooperating fully with the insurer in the resolution of claims").

4 See, e.g., Contreras v. U.S. Sec. Ins. Co., 927 So. 2d 16 (Fla. 4th D.C.A. 2006) (concluding that insurer could be held liable for bad faith, despite efforts to obtain a global release from all claimants in favor of insureds, where insurer settled with one claimant but not another claimant who refused to sign a global release); Farinas v. Fla. Farm Bureau Gen. Ins. Co., 850 So. 2d 555 (Fla. 4th D.C.A. 2003) (concluding that insurer could be held liable for bad faith when it settled with some automobile injury claimants but not others).

5 Talat Enters., Inc. v. Aetna Cas. and Sur. Co., 753 So. 2d 1278, 1282 (Fla. 2000) (indicating that one purpose of Fla. Stat. §624.155 is to encourage payment of claims and avoid bad faith litigation); Lane v. Westfield Ins. Co., 862 So. 2d 774, 779 (Fla. 5th D.C.A. 2003) (stating that one purpose of Fla. Stat. §624.155 is "to give the insurer one last chance to settle a claim with its insured and avoid unnecessary bad faith litigation – not to give the insured a right of action to proceed against the insurer even after the insured's claim has been paid or resolved").

6 Id.

7 See Fla. Stat. §624.155(1)(b)1.

8 See, e.g., Speedway Superamerica, LLC v. Tropic Enter., Inc., 966 So. 2d 1, 3 (Fla. 2d D.C.A. 2007) (recognizing that an implied covenant of good faith exists in virtually all contractual relationships); White v. Syfrett, 955 So. 2d 1110, 1114 (Fla. 1st D.C.A. 2006) (noting that every contract requires the parties perform in good faith).

9 See, e.g., Barnier v. Rainey, 890 So. 2d 357, 359 (Fla. 1st D.C.A. 2004) (insurance policies are governed by contract law); see also Couch Insurance 3D, §198.16, p. 198-29 ("In the modern insurance context, the duty of good faith and fair dealing is considered to be a mutual duty of the insured and the insurer and generally applies to the conduct of the parties in the context of the insurance contract.").

10 N. Am. Van Lines, Inc., 678 So. 2d at 1331 (Fla. 4th D.C.A. 1996) (quoting Diamond Heights Homeowners Ass'n v. Nat'l Am. Ins. Co., 227 Cal. App. 3d 563 (1991)).

11 Berges, 896 So. 2d at 682-83 (Fla. 2005) (for proposition that insured should fulfill contractual obligations and cooperate with insurer in settling claims).

12 See, e.g., A-1 Duran Roofing, Inc. v. C.M.R. Properties, Inc., 903 So. 2d 299, (Fla. 3d D.C.A. 2005) (meeting of the minds is required to enforce a settlement agreement); Cheverie v. Geisser, 783 So. 2d 1115, 1118 (Fla. 4th D.C.A. 2001) (same).

13 See generally Crosby v. Jones, 705 So. 2d 1356, 1358 (Fla. 1998) ("the public policy of Florida is to encourage settlements"); Abbott v. Purdy Group Inc. v. Bell, 738 So. 2d 1024, 1027 (Fla. 4th D.C.A. 1999) (the public policy of Florida is to "promote settlements and early termination of litigation") (citation omitted).

14 See, e.g., Berges, 896 So. 2d at 685-86 (Wells, J., dissenting).

15 See, e.g., Janis Brustares Keyser, Settlement for the Policy Limits: It's Tougher Than It Used To Be, 23 No. 3 Trial Advoc. Q. 8 (2004); Stephen R. Schmidt, The Bad Faith Setup, 29 Tort & Ins. L.J. 705 (1994); Berges, 896 So. 2d at 683 (Fla. 2005) (Wells, J., and Cantero, J., dissenting); Peraza v. Robles, 983 So. 2d 1189, 1192 (Fla. 3d D.C.A. 2008) (Cope, J., dissenting) ("at the original oral argument, plaintiff's counsel was fairly direct in saying that this entire controversy stems from a desire to set the stage for a 'bad faith' action against the insurer"); Parich v. State Farm Mut. Auto. Ins. Co., 919 F.2d 906, 912 (5th Cir. 1990) (noting that courts have recognized an insurer's defense of set-up "where unrealistic offers are presented through 'carefully ambiguous demands coupled with sudden-death timetables'") (quoting Baton v. Transamerica Ins. Co., 584 F.2d 907, 914 (9th Cir. 1978)).

16 Schmidt, The Bad Faith Setup, 29 Tort & Ins. L.J. at 709 (1994).

17 For a more in-depth discussion, see Schmidt, The Bad Faith Setup, 29 Tort & Ins. L.J. 705 (1994), and Brustares Keyser, Settlement for the Policy Limits: It's Tougher Than It Used To Be, 23 No. 3 Trial Advoc. Q. 8 (2004).

18 See, e.g., Berges, 896 So. 2d at 685-693 (Wells, J., and Cantero, J., dissenting).

19 DeLaune, 314 So. 2d at 601.

20 Id. at 603 (emphasis added).

21 Berges, 896 So. 2d at 669.

22 Id.

23 Id. at 669-70.

24 Id. at 670.

25 Id. at 693 (Cantero, J., dissenting).

26 Id. at 670.

27 Id.

28 Id.

29 Id.

30 Id. at 670-71.

31 Id. at 671.

32 Id.

33 Id.

34 Id.

35 Id.

36 Id. at 671-72.

37 Id.

38 Id. at 682-83.

39 Id. at 683-94.

40 Id. at 685.

41 Id.

42 Id. at 685-686.

43 Id. at 690.

44 Id. at 693.

45 See GEICO Gen. Ins. Co. v. McDonald, 315 F. Appx. 181, 184 (11th Cir. 2008) (citing Berges for the proposition that bad faith claims focus on insurer's conduct and affirming jury verdict finding bad faith); Gutierrez v. Yochim, 23 So. 3d 1221 (Fla. 2d D.C.A. 2009) (citing Berges for the proposition that "the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligation to the insured," and reversing grant of summary judgment in favor of insurer); Lee v. Progressive Exp. Ins. Co., 909 So. 2d 475 (Fla. 4th D.C.A. 2005) (citing Berges for the same proposition and denying insurer discovery request for documents reflecting communications that could have shown evidence of bad faith set-up by plaintiff).

46 Berges, 896 So. 2d at 685 (Wells, J., dissenting).

47 Shin Crest PTE, Ltd., 605 F. Supp. 2d at 1244 (noting recent "surge" in bad faith claims).

48 Berges, 896 So. 2d at 687.

49 Id. (citing Dunn v. Nat'l Sec. Fire & Cas. Co., 631 So. 2d 1103, 1106 (Fla. 5th D.C.A. 1993)).

50 Id. at 693-94 (Cantero, J., dissenting).

51 Id. at 686-687 (citation omitted).

Authored By

Johanna W. Clark

Gwynne A. Young

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