CARLTON FIELDS

Sloppy Claims Handling Exposes Insurer to Bad Faith Claims

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A Geico insured, with a $10,000/$20,000 liability policy, was involved in a three-car collision resulting in the death and serious injury of two occupants in one of the vehicles. The insured reported the accident to Geico the following day. Five days later, Geico notified the insured that the damages could exceed the policy limits and that the insured faced personal liability if the claims could not be settled. Seven days after the accident, Geico authorized payment of the policy limits and, for the next three days, Geico's claims handler attempted to reach the claimants' attorney, who did not return the calls. Accordingly, two weeks after the accident, Geico hand-delivered policy limit checks. The claimants' attorney was not in the office and no one would accept the checks. GEICO immediately sent the attorney a letter reflecting the failed delivery and again enclosed the checks. The claimants' attorney wrote Geico rejecting the offer and returning the checks. He objected to the fact that the hospital's name was included on one of the checks, alleging that the hospital did not have a statutory lien right. His letter advised that the $20,000 offer would be accepted if Geico (1) sent another $10,000 for the property damage; (2) the insureds provided an affidavit that there was no other coverage; (3) the release did not have a hold harmless or indemnity agreement regarding potential liens; and (4) the release only released Geico's insureds. The letter required strict compliance within 21 days. The claimants' attorney sent a similar letter to the insured of the other vehicle involved in the accident. That insurer complied and procured a release. Four days before the deadline, Geico sent the claimants' attorney a proposed release which released Geico's insured and "all officers, directors, agents or employees and their heirs, executors, administrators and assignees." The release also provided that Geico would forward the checks 20 days after the release was returned. The next day, Geico sent the checks and release forms by overnight mail with a letter advising the claimants' attorney that he should call if the release was not correct or if changes were requested. Geico also sent affidavits of the insureds containing handwritten interlineations regarding insurance coverage that made the affidavits "vague and confusing." For the next two days, Geico tried to call the claimants' attorney, but the calls were not returned. On the 21st day, the claimants' attorney returned the checks noting that the release did not conform to the demand and filed suit. The insured's counsel requested that Geico and the plaintiffs enter into a Cunningham

agreement and resolve the bad faith issue before the liability trial. Geico refused and the claimants obtained a $4 million judgment. The insureds then sued Geico for bad faith. After a thorough review of the foregoing facts, the U.S. District Court for the Middle District of Florida granted Geico's motion for summary judgment holding that, **although Geico's conduct could be described as "sloppy, bordering on negligent," it was not bad faith for Geico** to: (1) reject the request for a Cunningham agreement; (2) fail to send the claimants' settlement demand to the insureds; and, (3) even though the release did not faithfully adhere to the "hyper-technical" requirements of claimants' attorney, the attorney did not respond to Geico's request for comments on the release form and insurance affidavits until the 21-day deadline expired. The trial court concluded the evidence demonstrated that Geico was not favoring its interest over the insured's interest and that the claimants' attorney appeared to be motivated to create a bad faith claim rather than settle the case, i.e., "**there is no reason to believe that a realistic possibility of settlement actually existed**." In *Moore v. Geico General Ins. Co.*, the Eleventh Circuit Court of Appeals rejected the District Court's analysis and remanded for a jury trial. Geico petitioned for rehearing. The Eleventh Circuit issued a new opinion "to address Geico's concern" but reached the same result. The new opinion emphasized the following points:

1. Geico had a duty to manage the claim against the insured with "the same degree of care and diligence" it would have used in managing its own business.
2. Whether the insurer fulfilled that duty depends on "the totality of the circumstances."
3. The focus of a bad faith claim is on the actions of the insurer rather than the claimant.
4. Simple negligence by the insurer is not sufficient to establish bad faith but the insurer's "overall level of competence" is relevant to the question of good faith.
5. Where the record establishes factors contradicting and supporting the bad faith allegation, the totality of circumstances rule requires a trial. In this case, Geico's demand letter to the insured and its failure to make sure that the affidavits and releases met the claimants' demands required a jury to evaluate whether the insurer exercised the same degree of diligence and care that it would have used in managing its own business.

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