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Berges v. Infinity Insurance Company

2004 WL 2609255 (Fla. Nov. 18, 2004)

In Berges v. Infinity Ins. Co., 2004 WL 2609255 (Fla. Nov. 18, 2004), the Florida Supreme Court reversed a Second District decision holding that a surviving spouse/father who had not yet been appointed personal representative of his wife's estate or received court approval for a minor's settlement had no authority to make a settlement offer for the deceased wife or the child and thus the insurance company could not have acted in bad faith by not performing as the offer requested. The Supreme Court held that the steps necessary to complete the settlement could have been taken after the offer was accepted, and thus the failure to accept the offer could give rise to a bad faith claim. The court also rejected the insurer's argument that its mere offer to pay the policy limits precluded any finding of bad faith, where the offer had specifically demanded payment by a date certain. Finally, the court noted that it was relevant to the bad faith issue that the insurer had not informed its insured of the settlement offer.

The overall effect of the Berges decision is to remove another legal defense to bad faith from the insurer's arsenal, and create a greater likelihood that bad faith will be determined by a jury – a region where insurance companies seldom fare well. As Justice Wells noted in his dissenting opinion, this decision could have the effect of creating limitless insurance. By presenting bad faith cases to juries in virtually all cases, he noted that the cards are stacked heavily against the insurer because the jury would know that the victim's damages will be paid simply by finding against the insurer. In sum, this case confirms the growing trend to shift the determination of bad faith to the jury.

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