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ATTORNEYS AT LAW

INSURANCE LITIGATION AND REGULATION PRACTICE
CASES OF THE MONTH

Virginia Farm Bureau Mutual Insurance Company, v. Thomas Albert Dunford and Rachel Peery
29 Fla. L. Weekly D1260d

FOREIGN INSURER WHICH ISSUES NO FLORIDA POLICIES SUBJECT TO PERSONAL JURISDICTION IN BAD FAITH ACTION ARISING FROM EXCESS JUDGMENT IN FLORIDA ACCIDENT

Insurer, which did not issue policies in Florida, insured a Virginia vehicle which was involved in an accident in Florida. The estate of the person killed in the accident obtained an excess judgment against insureds, and insureds filed a bad faith action against the insurer. The insurer moved to dismiss for lack of personal jurisdiction. The trial court denied the motion, and the insurer appealed. The Fourth District Court of Appeal affirmed the underlying decision of the trial court.

The insurer argued that it was not subject to long-arm jurisdiction where it had not engaged in any acts in Florida arising out of "contracting to insure any person, property, or risk located within this state at the time of contracting." See section 48.193(1)(d), Florida Statutes. The appellate court agreed with the insurer's reasoning on this point, but determined that the insurer was subject to personal jurisdiction, nonetheless, based upon another provision of Florida's long-arm jurisdiction statute.

The appellate court held that Florida's long-arm jurisdiction statute supports the conclusion that an insurer is subject to personal jurisdiction in Florida section 48.193(1)(g), Florida Statutes, which provides:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative, to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
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> (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

The court reasoned that the action against the insurer for bad faith in failing to settle, resulting in an excess judgment against the insured, is essentially a contract action. The contractual duty of insurer to defend justifies an implication that insurer will exercise ordinary care and good faith in so proceeding. Accordingly, when an insurer under such a policy contract undertakes to defend an action against the insured and becomes involved in negotiations for settlement, the law imposes the duty that it act therein in good faith. The cause of action for an excess judgment, where one arises from bad faith, was determined to be central to the contract. The insurer's failure to exercise good faith was determined to be a breach of contract. Because the subject insurance policy covered accidents in all states, it embodied a contractual obligation to be performed in Florida in this case. The court held that the insurer was accordingly subject to personal jurisdiction under section 48.193(1)(g).

DANGER OF LIMITED COVERAGE CONCESSIONS IN FLORIDA BAD FAITH CLAIMS

Melissa A. Plante v. USF&G Specialty Insurance Company
17 Fla. L. Weekly Fed. D350a

In this case, the insured plead that the insurer sent her a letter denying responsibility "for any additional monies beyond that which has already been paid." According to the complaint, the insurer paid a fixed and final sum certain under all coverage applicable to the insured's loss. The insurer moved to dismiss count one of complaint, which alleged a violation of section 624.155, Florida Statutes – Florida's insurance bad faith statute. Plaintiff's claims in count one sounded in section 624.155(1)(b)1, Florida Statutes, which provides a civil remedy against an insurer for "[n]ot attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests." The insurer argued that count one of the complaint was not ripe because there has not been a sufficient determination of liability and extent of damages owed on the insurance contract. The insurer also argued that there must be a determination of both liability and extent of damages owed on a first-party insurance contract before a bad faith claim may be ripe.

The court denied the insurer's motion to dismiss and subsequent motion for reconsideration, reasoning that the insured sufficiently alleged in her complaint that the insurer had made payment on insured's claim, thus waiving any coverage defenses and conceding the company's liability under the subject insurance policy.