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Insurers Behaving Badly

Florida Law Provides Remedy for Insurance Bad Faith Actions

When a person who has sought to buffer themselves financially from life's uncertainties through insurance suffers an injury or loss, the person expects insurers to deliver all benefits he or she is rightfully entitled to receive.

"If an insurance company fails to settle a case within the limits of a policy, delays benefit payments, or won't provide coverage, the consumer most likely has suffered insurance bad faith," says Steven T. Wittmer, a board certified civil trial lawyer in Sarasota. "It's time to hire a lawyer to recover the settlement. We've seen some egregious cases in Florida."

Attorneys have settled insurance bad faith cases in Florida arising from homeowners' fire losses, commercial fire and business income losses, uninsured motorist and personal injury protection automobile claims, and sinkhole denials.

First a Fire, Then Treachery

For example, one case began when a fire forced a disabled woman from her Central Florida mobile home. The woman had been paying – weekly in cash – the premiums on an insurance policy with stated coverage of \$10,000 on the mobile home and \$5,000 on its contents. After the fire, neighbors found a donated mobile home – without electricity or running water – for her to live in.

The woman then filed a claim with her insurance company. The insurer hired an independent adjuster who estimated the loss of the mobile home and its contents at less than \$500. The insurance company paid \$500 to the woman. The woman hired an attorney to represent her. The insurance company eventually paid her \$15,000 – the policy limits.

Another attorney then filed a bad faith claim against the insurance company on the woman's behalf. In deposing several insurance company managers, the attorney discovered that the original independent adjuster was not licensed in Florida. The bad faith case was resolved with the woman receiving \$100,000, plus attorney's fees and court costs.

An Implied Promise of Good Faith

A tort is a wrongful act, injury or damage not involving a breach of contract for which a civil action can be brought. The origins of the tort of bad faith are found in contract law. It has been long established that every contract contains an implied promise of good faith and fair dealing. That means neither party should do anything to somehow infringe on the right of the other party to receive the benefit of their contract. This principle applies to insurance policies.

Courts have held that the promise of good faith implied in all contracts requires an insurance company to settle when appropriate although the terms of its policy do not specifically state a duty to settle. If an insurance company breaches its duty by failure to make a reasonable settlement, it could be liable for the entire amount of the judgment, including any portion in excess of the policy's limits.

Most courts now treat wrongful refusal to settle as a tort. Generally, duties of conduct established by the law of torts are based upon the social policy of deterring injury to others and compensating those injured and are imposed by law rather than being established by the agreement of the parties involved. This imposition of tort liability enabled courts to award dam-

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ages far in excess of those available under traditional contract law. Courts now could award damages for all proximately caused injuries caused by the insurer, including economic damages and emotional distress. Punitive damages would also be justified if the conduct of the insurer demonstrates a reckless indifference to the insured's rights.

First- and Third-Party Actions

Most insurance policies fall into two categories: first-party coverage or third-party coverage. Health, life, fire and uninsured motorist policies are examples of first-party coverage insurance policies. The insured buys the insurance with the expectation that he or she will be reimbursed for any personal loss. With a third-party coverage policy, the insured expects to be indemnified by his or her insurer if he or she injures someone. It is important to understand that in a third-party policy the insurance company totally controls the evaluation of the claim against its insured, the selection of defense counsel, and the ultimate decision of when to settle the claim and the amount thereof.

These bad faith actions can apply to two kinds of policies. In the first, the insured with a first-person coverage policy seeks to enforce payment due under the policy. If the insurer refuses to reimburse the insured or delays payment, then the insured can sue the insurance company for "bad faith refusal to settle."

In third-party cases, the insured is being sued by an individual and the insured wants his or her insurance company to pay any valid claims. If the insurance company unreasonably refuses to settle within the insurance policy's limits, or unreasonably delays settlement, the insured is exposed to an adverse judgment.

Florida Law Slightly Different

Florida law allows people who were insured under an insurance contract to sue for bad faith and the recovery of attorney fees and punitive damages. Much of the reasoning behind the law was to level the playing field by allowing economically disadvantaged insureds to retain an attorney and recover attorneys fees when battling with financially strong insurance companies.

The most debated issue in bad faith law today is

whether a third party should be able to directly sue an insurer for bad faith refusal to settle. Florida courts allows such direct third-party actions that many argue should be abolished because of undesirable social and economic consequences

Holding Insurers Accountable

To summarize, Florida law provides a civil remedy for policyholders when they have been damaged by the actions of an insurance company that violates Florida's insurance code.

If the policyholder successfully sues an insurance company through this remedy, he or she can recover the value of the damages suffered, court costs and attorney's fees. The consumer does not have to prove the "business practice" element of the unfair claim practices law in making the claim. Taken together, these Florida laws require insurance companies doing business in Florida to meet their responsibilities under the law while balancing the rights of the individual against those of the insurance company.

"These cases can arise from an array of causes, including, incompetence and sometimes just pure greed on the part of some callous insurers," Wittmer said. "Florida policyholders should understand that Florida law has leveled the playing field in court for bad faith insurance claims. You can hold insurance companies accountable for bad conduct."

It is important for consumers to understand that poor adjusting policies and/or practices by insurance companies only serve to increase future premiums to consumers. When insurance companies fail to settle claims quickly and reasonably they end up paying more than the limits of insurance. This extra-contractual payment reduces insurance companies' profits. Reduced profits are then used by insurance companies as the basis for rate increases in Florida. A fair question for all to ask their legislative representatives is should an insurance company that adjusts claims in violation of Florida law be able to use losses from their poor business decisions as a basis for rate increases to consumers? If you have a question about how an insurance company has adjusted a claim please call us for a free consultation.