



SARASOTA

# LITIGATOR

## Journal

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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  
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CASE REVIEW



### Settlement of \$1.65 Million for Emergency Room Nurse

On September 4, 2003, Kathy Dearmin was driving home from the gym. Roberto Ramos was at the wheel of a large roll on/ roll off dumpster delivery truck. Driving south on Lockwood Ridge Road, Ramos was heading for a dumpsite at the end of the day. As Kathy was turning left from Lockwood Ridge Road onto Tallevast Road, Ramos ran a red light and hit Kathy's vehicle broadside on the passenger door, pushing her car over 150 feet.

Kathy sustained a serious traumatic brain injury from this accident. She was taken via Bayflight to Bayfront Medical Center, where she remained in a coma for over 6 weeks. Upon discharge from Bayfront Medical, Kathy went to a rehabilitation center, and then to an assisted living

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# Insurers Behaving Badly

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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 damages 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

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## \$1.65 Million Settlement

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facility. Years of occupational, speech and behavioral therapy have followed. As a result of her serious injuries a Guardian was appointed to assist Kathy in her day-to-day life.

Before this accident, Kathy was an emergency room nurse. She now has the mentality of a teenager and will need constant care and supervision for the remainder of her life. Due to the severity of her brain injury, Kathy now requires a caretaker who can assist her in her daily activities.

Truck driver Ramos was employed by Curlie Joe's, Inc, a locally owned and operated construction debris and trash hauling business. Curlie Joe's was insured with Progressive Insurance Company. Our office immediately prepared offers requesting that the policy limits of \$100,000 be paid in a timely manner in exchange for a full settlement of Kathy's claim. Progressive failed to comply with the terms of our



Steve Wittmer, Kathy Dearmin, Herb Schimmel (guardian) and Greg Linehan.

offer, forcing Kathy to file a lawsuit to recover her medical care and lost wage damages

After over two years of litigation, and just weeks before a trial was scheduled to begin against Roberto Ramos, Bradley Latham and Curlie Joe's, all parties to the lawsuit met at mediation in an attempt to settle the case. At that time, the Wittmer law firm and our team of expert doctors and accident reconstruction specialists produced overwhelming evidence that Kathy Dearmin's damages, including medical bills, past wage loss,

future wage loss and future medical care, totaled close to \$7 million. For several years Progressive refused to settle the case and protect their insured. Ultimately Progressive agreed that it had failed to properly evaluate this case, thus exposing their insured to a huge judgment in excess of the \$100,000 policy. The parties finally agreed to settle the case in the amount of \$1.65 million. All settlement monies were paid by Progressive.

Insurance companies like Progressive have a duty to settle claims quickly and with due regard for the interest of their policyholders. Failure by an insurance company to promptly adjust, evaluate and settle a claim only increases the risk to the policyholder.

While you can imagine why the insurance company would want to hold on to their money, they may not do so if it exposes their insured to a huge judgment.

Other claims were also pursued for uninsured benefits as well as claims against other parties partially responsible for this accident. The total recovery for Kathy was \$1.86 million. The majority of the settlement funds were put into an annuity to earn interest and provide Kathy with a structured monthly payout that will allow her to receive the daily care and treatment that she will need for the remainder of her lifetime. Kathy Dearmin will never have the quality of life she enjoyed prior to this tragic accident, but our Firm is proud to have represented Kathy and her Guardian in this complex case.

Our Firm deals with the complicated issues surrounding insurance company bad faith on a daily basis. If you have a family member, friend or acquaintance who may benefit from our expertise, we would be pleased to assist them.

**Insurance companies like Progressive have a duty to settle claims quickly and with due regard for the interest of their policyholder.**

## Lawsuit Advances Help Plaintiffs Keep Their Cases and Finances on Track

Lawsuits can help victims receive compensation for pain and suffering caused by negligent acts. But cases can drag on for years, making it difficult for plaintiffs to survive financially until they receive their settlement. That's where lawsuit advances can help.

Lawsuit advances are a unique brand of financing that can be a lifesaver to cash-strapped plaintiffs. They provide a cash advance on expected future court settlements, which can help them meet their

immediate financial needs. Most lawsuit advances are used to pay for medical expenses, but the funds can be spent on anything, including mortgage payments, car notes and daily living expenses.

Repayment on lawsuit advances isn't due until after your case has been settled. In fact, many attorneys add the cost of this funding into the basic reimbursable costs of the suit when determining damages.

If you don't win your case, you don't have

to repay the advanced funds. Neither does your attorney. Companies providing lawsuit advances assume all the risk.

### Qualifying for Lawsuit Advances

Many kinds of cases qualify for this type of financing, including medical and legal malpractice, wrongful death, wrongful termination, breach of contract, sexual harassment, employment discrimination and product liability. Most companies funding lawsuit advances will pay up to \$500,000.

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## Insurers Behaving Badly

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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.

### Now Accepting Case Referrals

The law firm of Steven T. Wittmer is accepting referrals of cases in the areas of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

## Lawsuit Advances

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Mike McNelis of lawsuit lender Sigma Funding, LLC points out something that we at Sarasota Litigator Journal have mentioned before – "People pursuing personal injury and other cases are often at a disadvantage in the legal system. Big companies with deep pockets can afford to extend cases in an effort to 'wait out' plaintiffs who are in dire financial need. As a result, plaintiffs often give in to financial pressure and settle early for much less than they deserve." Lawsuit advances provide the financial wherewithal for plaintiffs to survive as they wait to receive their settlements.

Lawsuit lenders like Sigma Funding don't attempt to offer any legal advice, so your attorneys retain complete control over your case and any relevant legal matters.

Lawsuit advances can be a lifeline for litigants struggling to keep their finances afloat while their case settles. Could a lawsuit advance benefit you? Call Sigma Funding toll-free at 877-324-1568 or visit [www.sigmafundingllc.com](http://www.sigmafundingllc.com) to find out more.



The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

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