

BAD FAITH BLOG

Providing a Defense and Filing a DJ Approved

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Summary: In this bad faith action the issue on appeal was whether the insurer lacked “a reasonable basis in law or fact for denying the claim” which is one of the three elements that a plaintiff must allege to maintain a bad faith claim under Kentucky law.

Youth Alive was a charity providing mentoring and other services; it transported youths to an event using three vans owned by Youth Alive. When there was not enough room in the vans for the return trip a Youth Alive employee asked a youth participant to transport four youths in his car. This youth driver did not have a valid drivers' license, and the car he was driving had been stolen. When a police officer ran a check on the license plate and discovered that the car was stolen, the police officer gave chase and the youth fled, but lost control of his car and hit a tree. All four of the passengers were killed. The estates of the four children sued Youth Alive and it tendered the case to its insurer, Philadelphia Indemnity.

Philadelphia provided defense, but under a Reservation of Rights that disputed coverage. Philadelphia also filed a DJ action in Federal Court claiming that it had no coverage under either its CGL policy or its excess policy. The CGL policy allegedly did not provide coverage because it excluded any bodily injury arising from the use of any automobile “owned or operated by or rented or loaned to any insured.” Under the excess policy, there was no coverage for any liability arising from the use of an automobile. The trial Court ruled that there was coverage under the CGL policy, but not under the excess policy. The underlying case against Youth Alive was then settled by Philadelphia for payment of the full amount of the CGL policy, plus \$800,000.00 of the \$2,000,000.00 excess policy.

Youth Alive had claimed bad faith in its counterclaim in the District Court action, and the District Court granted Philadelphia's motion to dismiss the bad faith claim on the basis that Philadelphia had a reasonable basis in law or fact for denying the claim. The Appellate Court essentially held that Philadelphia had a reasonable basis for arguing that the volunteer driver was in fact a volunteer, and under the exclusion coverage was excluded if the use of an automobile was by a volunteer. The youth driver had agreed to the Youth Alive employee's request to deliver the passenger youths, and, therefore, it was reasonable to argue that he was a volunteer worker. The Court approved Philadelphia's course of conduct in both defending the insured and filing a DJ action to determine coverage.

The Court held that it was reasonable for Philadelphia to avoid settling before coverage was determined. Even though Philadelphia had done the opposite and had settled the case before coverage was determined, the Court agreed that its coverage position was reasonable. For that reason the Sixth Circuit affirmed the dismissal of Youth Alive's bad faith counterclaim.

By John S. Sandberg

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