

BAD FAITH BLOG

# Arkansas Supreme Court: Third Party Excess Liability Claim Lies Only in Tort

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**Summary:** Ethel Nelson's car struck Mary Busby on June 10, 1964 after Busby stepped onto the street. Nelson had an automobile insurance policy from Tri-State Insurance Company with a policy limit of \$10,000. Busby made two settlement offers within the policy limits, but Tri-State refused both. At trial, the jury apportioned fault between Busby and Nelson and ultimately awarded Busby a total of \$16,250, \$13,000 to Busby herself and \$3,250 to her husband (the first judgment). Nelson's insurer, Tri-State, paid only the \$10,000 policy limit.

Tri-State Insurance Company v. Busby

Busby then sued Tri-State to recover the \$6,250 that exceeded the policy limit, interest on the full verdict amount from the date of the first judgment, a 12 percent penalty, and attorney's fees. Busby alleged Tri-State was negligent and that it failed in bad faith to settle within the policy limits. The trial court awarded only the \$6,250 (the second judgment) and interest from the date of the second judgment, which Busby appealed.

The Arkansas Supreme Court affirmed and found Tri-State acted in bad faith by refusing to accept a settlement offer for less than the policy limits. As a result, the \$6,250 excess judgment and interest were properly awarded to Busby. However, because an action to recover from an insurer any judgment amount in excess of the insured's policy sounds in tort rather than contract, the Arkansas Supreme Court held that Busby was only entitled to recover interest on the excess amount from the date of the second judgment. Busby was, therefore, not entitled to the 12 percent penalty, attorney's fees or interest from the date of the first judgment. Finally, the Arkansas Supreme Court declined to adopt a strict liability rule for an insurer that fails to settle, instead continuing to require bad faith, fraud or negligence in order to subject an insurer to liability for any judgment amount that is in excess of the policy limits.

By Anthony L. Martin & Brett Simon

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