

BAD FAITH BLOG

Against Public Policy But Not Vexatious and Unreasonable

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Summary: The Hadarys were involved in an automobile accident with Carlos Velez, a rental car driver. Both the Hadarys and Velez had automobile insurance at the time of the accident. Velez declined to purchase the supplemental liability insurance offered by Hertz at the time of the rental, and his insurance policy limit was too low to cover the injuries incurred by the Hadarys. The Hadarys had underinsured motorist coverage through Safeway, but Safeway pointed to an “exhaustion clause” in its policy providing that Hertz had to first exhaust its financial responsibility liability before Safeway would have to pay. The trial court agreed with Safeway, but the appellate court reversed holding that the lower court’s result was against public policy. Furthermore, the trial court found that Safeway did not engage in unreasonable and vexatious conduct. The appellate court affirmed the trial court ruling reasoning that Safeway’s interpretation of its policy was reasonable but wrong because its interpretation contravened public policy.

Safeway Ins. Co. v Hadary

The Hadarys were involved in an automobile accident with Carlos Velez (“Velez”) on April 7, 2010. At the time of the accident, Velez was driving a Hertz rental car. Both the Hadarys and Velez had insurance. The Hadarys had an automobile insurance policy through Safeway with underinsured motorist (UIM) coverage limits of \$100,000 per person and \$300,000 per occurrence. Velez had an automobile insurance policy through American Access Casualty Company with limits of \$20,000 per person or \$40,000 per occurrence. At the time Velez rented the car from Hertz, he declined Hertz’s supplemental liability insurance and chose to rely on his own policy.

As a result of the accident, the Hadarys recovered the \$40,000 policy limits from Velez’s insurer, but their injuries and damages exceeded \$40,000. Accordingly, they claimed UIM coverage through Safeway and demanded arbitration pursuant to their policy. But, the Hadarys’ UIM coverage contained an “exhaustion clause,” which provided that Safeway was not obligated to pay under the UIM coverage until all other applicable policies had been exhausted.

Safeway filed a declaratory judgment against both the Hadarys and Hertz. The Hadarys filed a counterclaim asserting breach of insurance contract based on Safeway's failure to arbitrate their UIM claims and for unreasonable and vexatious conduct based on Safeway's handling of the Hadarys' claims. Additionally, Hertz requested the court to declare it did not provide liability insurance for the accident. In support of this, the Hadarys pointed to the rental agreement between Velez and Hertz, which provided:

[A]ny insurance that provides coverage to You or to an Authorized Operator shall be primary. In the event of any claims arising from the operation of the Car, such insurance shall be responsible for the payment of all personal injury and/or property damage claims up to the limits of such insurance.

The Hadarys argued that based on the provisions of the Hertz agreement, they exhausted all applicable coverage as required under the Safeway UIM provision and, therefore, Safeway had an obligation to arbitrate their claims. The Hadarys also argued that Safeway's failure to resolve their UIM claim was unreasonable and vexatious conduct in violation of 215 ILCS 5/155 and requested attorney fees.

The trial court concluded that Safeway was not obligated to pay pursuant to the UIM coverage until the limits of Hertz's financial responsibility liability had been exhausted, but the appellate court reversed. The appellate court reasoned that Safeway's position would result in a policyholder receiving more benefits in the fortuitous event of being injured by a car owned by a rental car company. This, the court said, was not the legislature's intent.

Furthermore, the trial court determined that Safeway had a *bona fide* reason to deny the UIM claim, and therefore was not engaging in unreasonable and vexatious conduct. The appellate court would reverse only if the trial court abused its discretion. Here the trial court was affirmed because Safeway's interpretation of its policy was reasonable and the lack of authority providing Safeway with clear guidance even though, in this case, Safeway's interpretation contravened public policy.

By Caroline N. Leritz and Anthony L. Martin

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