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BAD FAITH BLOG

Insured's Bankruptcy Does Not Shield Insurer From Bad Faith Claim In Excess Of Limits Under Georgia Law

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The Court of Appeals of Georgia, relying on Georgia state law and federal bankruptcy statutes, held that the bad faith claim, and the potential for a verdict in excess of policy limits, survived an insured's bankruptcy.

Flanders, et al. v. Jackson

In the underlying tort case, the plaintiff's 16-year-old son was a passenger in the insured's vehicle when the insured lost control while traveling at excessive speed, careening off the road, flipping, and ejecting the 16-year-old from the backseat, causing his death.

Prior to filing a lawsuit, the decedent's mother, as administratrix of the decedent's estate, submitted a policy-limits demand, which the insurer ultimately rejected. The administratrix then filed a wrongful-death action, seeking damages in excess of policy limits.

During the tort litigation in state court, the insured filed a Chapter 7 bankruptcy petition in federal court, listing the wrongful death lawsuit as a dischargeable debt. Notably, the bankruptcy trustee's report of possible assets included a "Possible Bad Faith Claim," which the trustee acknowledged currently had an unknown value. The bankruptcy court discharged the insured's debts, but noted the discharge would not stop creditors from collection from anyone else who is liable on the debt "such as an insurance company."

The insured then filed a motion for partial summary judgment in the wrongful death case, arguing that his bankruptcy discharge limited his personal liability to the insurance policy's available coverage, which the trial court granted.

The Court of Appeals reversed. The court noted the relevant bankruptcy statute, 11 USC § 524 (e), specifically stated "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." Accordingly, the discharge of a debt in bankruptcy does not erase the debt itself, it merely releases the debtor for personal responsibility. Therefore, a creditor may establish the debtor's liability for a claim in order to collect the debt from a third party, such as an insurer.

Under the circumstances of the case, the court noted Plaintiff's ability to seek an excess judgment by prevailing in her tort claim and her ability to collect such a judgment from the insured were separate considerations. The ability to collect an excess judgment, or any judgment for that matter, from the insured personally did not preclude the plaintiff from seeking the judgment and attempting collection against the insurer, as a non-discharged party.

Finally, the court noted, relying on a similar case decided under Florida law, *Whritenour v. Thompson*, 145 So.3d 870, 874 (Fla. 2d DCA 2014), that public policy also supported its decision. If the insured's bankruptcy prevented a bad faith claim against the insurer for recovery in excess of policy limits, then every insurer would instruct its insureds to declare bankruptcy in order to limit recovery to policy limits.

Consequently, the protection provided by filing bankruptcy only applies to the discharged party and its obligation to pay debts. It does not protect an insurance carrier who may become liable for a judgment in excess of policy limits via a bad faith claim, even where the source of that liability would be a judgment against a bankrupt insured.