

BAD FAITH BLOG

Jury Must Resolve Credibility Issues Controlling Florida Bad Faith Claims

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Summary: In *Moore*, the Eleventh Circuit reversed the district court's grant of summary judgment in GEICO's favor. GEICO's failure to submit an affidavit and detailed release requested by claimant's counsel created an issue of material fact regarding its alleged bad faith conduct, precluding summary judgment.

Moore v. GEICO Gen. Ins. Co.

Moore, GEICO's insured, was involved in an on-road altercation of "offensive hand gestures with another motorist" that ultimately resulted in that driver slamming into Moore's vehicle. As a result, Moore's truck crossed into oncoming traffic, striking and ultimately killing another driver, Amy Krupp, and injuring her minor child. Moore's policy with GEICO had only a \$20,000 personal-injury limit. Immediately upon investigation of the incident, GEICO contacted counsel for Krupp's estate, Lance Holden, with a settlement offer tendering the policy limits. Holden stated the estate would only accept the policy limits if they obtained an affidavit from the insured stating "no other applicable insurance policies" existed, as well as a precisely-worded release aimed at avoiding the release of other potential claims. GEICO failed to comply, and its settlement documents were rejected by Holden as deficient. Treating GEICO's documents as a counteroffer, the estate rejected it and refused to accept the policy limits as settlement.

Ultimately, a jury verdict was returned for the estate in excess of \$4 million. A bad-faith claim soon followed, alleging GEICO's failure to comply with Holden's request or follow up thereafter amounted to bad faith under Florida's "totality of the circumstances" standard. The district court disagreed, holding that GEICO's operations were "sloppy," but Holden was at fault for "attempt[ing] to manufacture an artificial bad-faith claim." Moore then filed this appeal.

Under Florida's "totality of the circumstances" standard, an insurer is charged with the duty to both investigate and pursue settlement "where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so." For a bad faith claim to succeed the actions of the insurer must be more than mere negligence, but the court may have modified this a bit, stating "an insurer's negligence is a relevant consideration that affects the overall assessment of the insurer's conduct." Foreshadowing its decision, the court noted that "the inherently flexible nature of the 'totality of the circumstances' standard" will "generally reserve[] the question of bad faith for the jury."

True to its word, the Eleventh Circuit found this case to be the rule, rather than the exception: material facts were in dispute, and a jury was needed to resolve them. The court acknowledged GEICO's initial efforts to settle the claim as strong evidence against bad faith, but it found GEICO's "sloppy" handling of the claim, which the district court was willing to overlook, as troubling. Failure to provide satisfactory documents, and more importantly, to affirmatively pursue settlement, suggested GEICO failed to "handle Moore's case with the same degree of care and diligence that GEICO would have used to handle its own affairs." These facts "could support a conclusion that GEICO acted in bad faith," and, drawing all inferences in Moore's favor, that was enough for reversal.

The district court made two fatal flaws in its decision to grant summary judgment. First, it improperly weighed creditability of the witnesses. Holden explained that his reasoning behind requiring the affidavit and "precise language" release was based on negative experiences in past settlements. The district court improperly discredited the testimony against the non-moving party's favor, finding the demand was an attempt to create a bad faith claim by Holden despite the uncontroverted statement. Additionally, an expert testified that GEICO's actions "deviated from the industry standards in several key respects." The district court failed to address this expert opinion in arriving at its conclusion, but the Eleventh Circuit was unwilling to blindly agree the expert testimony was inadmissible or irrelevant. Perhaps worst of all, the other liable party's carrier had been given the same terms by Holden, and when it complied, a settlement was reached. The Eleventh Circuit found these facts showed an impermissible refusal to draw inferences in Moore's favor by the district court, which is the required standard when addressing a motion for summary judgment.

Additionally, the district court skewed the inquiry of bad faith towards Holden's actions, rather than GEICO's. The focus of the claim must "not [be] on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured." While Holden was certainly no golden-child, the Eleventh Circuit was unwillingly to "absolve[] GEICO of liability by faulting Holden's conduct and Holden's motives." Therefore, the court remanded the matter back so that a jury could resolve these material factual disputes.

By Robert Bruce and Katrina Smeltzer

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