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BAD FAITH BLOG

Florida Jury's Verdict 130 Times the Policy Limits, But No Bad Faith

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Summary: Liberty Insurance insured Lisa Mottsey had loaned her car to her daughter who in turn let her boyfriend drive. While driving down a county road Mottsey's car was passed by Zisa driving at a "reasonable speed." Zisa struck three pedestrians walking side-by-side down a dark county road wearing dark clothes without any illumination resulting in two deaths and one serious injury. Mottsey had limits of $10,000 per person and $20,000 per occurrence. After a $1.3 million jury verdict was returned against Mottsey's driver and the passing driver assessing 38 percent of the responsibility to Mottsey's driver, Mottsey's bad faith claim was assigned to the estate of the plaintiff who pursued a *Powell* claim against Liberty. The federal court judge granted summary judgment in favor of Liberty.

Welford v Liberty Insurance Corporation

Florida allows a bad faith claim against an insurance company even though the plaintiff does not make a settlement demand or settlement offer (commonly known as a *Powell* claim) whenever "liability is clear, and injuries so serious that a judgment in excess of the policy limits is likely [which places on the] insurer… an affirmative duty to initiate settlement negotiations." In this case, the issue was whether Welford could successfully pursue such a *Powell* claim. Welford had to prove the "alleged bad faith *caused* the excess judgment." Furthermore, although bad faith cases almost always raise issues of fact, a judgment as a matter of law can be entered whenever "the undisputed facts would not support the conclusion that the insurer acted in bad faith." The federal court concluded the undisputed facts did not support the conclusion that Liberty had acted in bad faith.

Liberty raised multiple arguments, but the primary argument was that it was not required to initiate settlement talks because its insured driver was not "clearly liable for the crash." It also contended that the initial call Mottsey placed did not trigger a need to investigate; she completely denied any liability by her driver and told Liberty that her driver and daughter were only witnesses. Furthermore, Liberty offered the full policy limits within two days after being served with the wrongful death lawsuit. Finally, Liberty argued Mottsey caused the excess judgment by falsely telling the plaintiff's investigator she had no liability insurance.

Even though Welford argued strenuously that *Powell* applied because liability was clear, the court disagreed for multiple reasons. First, Welford's own bad faith expert agreed this was not a case of clear liability. In addition, liability was not clear by any objective measure because the police "officer investigating the crash, the investigator employed by Welford's original attorney, and his own expert witness all expressed serious doubt and misgivings about [the insured driver's] liability for the accident (not to mention that Mottsey [and her daughter and the driver] each denied fault outright). Consequently, I conclude as a matter of law that Liberty did not commit bad faith by failing to initiate settlement discussions after the [insured's] call [reporting the accident]."

The federal court also summarily disposed of the purported duty to investigate because the court was presented with a *Powell* case, not a "duty to investigate case." Further, there was no evidence Liberty had placed its interests ahead of those of Mottsey. To the contrary, Liberty had globally offered its full policy limits to all three potential claimants within two days after being served with the complaint. The federal court also concluded it did not have to reach the issue of whether the excess verdict was primarily caused by Mottsey's conduct.

The *Welford* case is important to Florida practitioners and insurance carriers writing coverage in Florida. *Welford* supports the proposition that carriers are not automatically liable for bad faith in extremely low limits and potentially high exposure cases where the facts demonstrate the carrier acted reasonably and responsibly in making a limits offer as soon as the insured's true exposure became apparent despite the insured's earlier protestations to the contrary.

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