

No Ambiguity, No Problem, No Statutory Bad Faith

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Summary: American Family insured William and Joyce Davis, Jennifer Hansen's parents, and named the Davises on the declarations sheet. Hansen was injured in an auto accident, settled her claim, and presented an underinsured motorist (UIM) claim to American Family. American Family denied coverage and Hansen filed claims for breach of contract, common law bad faith, and statutory bad faith. After the breach of contract claim was resolved, the common law and statutory bad faith claims were tried. A verdict for American Family was returned on the common law bad faith, but a verdict was returned for Hansen on the statutory bad faith claim finding American Family "had delayed or denied payment without a reasonable basis," and further finding the damages were \$0 for the delayed or denied payment. The trial court awarded Hansen her attorney fees, costs, and entered a \$150,000 penalty, two times the covered UIM benefit. The Court of Appeals affirmed, but the Supreme Court of Colorado reversed.

American Family Mutual Insurance Company v. Hansen

Colorado is a four corners state. The four corners of the insurance policy unambiguously showed the named insureds were William and Joyce Davis. American Family's agent had provided "lienholder statements" to Hansen as "proof of insurance," but her name did not appear on the declarations sheet, and she did not live with her parents at the time of the accident. Accordingly, the trial court should not look at the lienholder statements to find an ambiguity. The breach of contract claim had been resolved when American Family voluntarily reformed its contract and paid Hansen \$75,000, the amount to which Hansen would have been entitled if she had been an insured. Presumably, for that reason the jury returned a verdict in favor of American Family on the common law bad faith claim.

Section 10-3-1115 was the basis for the statutory bad faith claim. That statute imposes liability “if the insurer delayed or denied authorizing payment for a covered benefit without a reasonable basis for that action.” The Colorado Supreme Court concluded American Family had a reasonable basis for initially denying the claim and delaying payment. The declarations page unambiguously stated the identity of the named insureds. The lienholder statements, which were extrinsic evidence, could not be used to create an ambiguity in the otherwise unambiguous insurance policy as had both the trial court and court of appeals. Because the unambiguous language of the contract provided American Family with a reasonable basis for denying coverage, the Colorado Supreme Court did not address other issues, including whether its coverage position was “fairly debatable.” Nor did the Court need to determine the import of the jury’s finding that \$0 in payments had been “unreasonably delayed or denied.”

The Colorado Supreme Court’s strict reliance on the four corners approach required the reversal of the \$150,000 penalty plus attorney’s fees and costs. Surely the Court was also influenced by American Family’s actions once it recognized the problems created by its agent’s issuance of the lienholder statements. It had quickly and voluntarily reformed the insurance policy to show Hansen as an insured and paid her what she would have recovered if she had been shown on the policy as an insured. It appears those actions and the jury’s finding no damages resulted helped the Court decide American Family should not be penalized by an award of enhanced damages. Rather than relying on a technicality to avoid payment on the coverage its agent apparently intended to write, American Family’s payment of that amount as contract damages saved it from having to also pay as a penalty double the amount of the UIM coverage plus attorney’s fees and costs. Although such actions by carriers may not always preclude a bad faith award, the *Hansen* case demonstrates that taking such actions is a preferable approach which can help avoid the award of statutory and/or common law bad faith damages.

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