

**INSURANCE BAD FAITH LITIGATION GETS BOOST FROM ILLINOIS**  
**APPELLATE COURT**  
**By: James J. Morici, Jr.**

Insurance companies often have an opportunity to settle injury cases within the limits of an insurance policy. When cases are settled, the injured party is compensated, the policy holder receives the protection that he or she paid for, and the company lives up to its obligations. However, such is not always the case. Various insurance companies have been found to have placed their interests above those of their policy holders by refusing to settle claims within the policy limits to the detriment of the insured. In those circumstances, an insured may be exposed to a verdict in excess of their coverage claims against insurance companies for the ensuing damages are brought in “Bad Faith” suits.

The Appellate Court of Illinois, Fifth District, recently provided substantial support for claims against insurance companies when they act in bad faith in the case of O’Neill v. Gallant Insurance Company, 2002 Ill.App. Lexis 311, 769 N.E.2d 100 (5<sup>th</sup> Dist. 2002). The Plaintiff, an 80 year old woman, was severely injured when the Defendant left her motor vehicle running in a supermarket parking lot while her two year-old grandchild remained unrestrained in the vehicle. The child was able to put the car in gear causing it to head slowly toward the Plaintiff. Mrs. O’Neill was unable to evade the car as it approached her and, after being struck, was pinned against another car. She was eventually extracted and air lifted to a trauma center where she spent a month in the intensive care unit. She suffered a crushed hip, broken arm, four cracked ribs, and two fractured fingers. Her internal injuries resulted in a loss of 40% of her blood supply. This sent her into respiratory shock requiring her to have a tracheotomy which left her respirator dependant for nearly a month. As a result of her injuries, Mrs. O’Neill required permanent placement into a nursing home.

Despite the urgings of claim representatives and attorneys, the insurance company refused to settle even though their liability was clear and their policy limits were only \$20,000. The case proceeded to trial and a jury rendered a verdict in excess of \$700,000. The resulting bad faith suit against the insurance company resulted in a verdict in the amount of \$710,000; plus punitive damages in the amount of \$2.3 million.

In affirming the judgment of the lower court, the Appellate Court noted that an insurance company’s “bad faith” lies in its failure to give equal consideration to the interests of its insured when it arrives at a decision on whether to settle a claim, Mid-America Bank & Trust Company v. Commercial Union Insurance Company, 224 Ill.App.3d 1083, 1087, 587 N.E.2d 81 (1992). The court noted the factors which other courts have considered in weighing an issue of bad faith. These include: Consideration of the advice of the Defendant’s own adjusters, Phalen v. State Farm Mutual v. State Farm, 114 Ill.App.3d 96, 448 N.E.2d 579 (1983); a refusal to negotiate, Cernocky v. Indemnity Insurance Company of North America, 69 Ill.App.2d 196, 208, 216 N.E.2d 198 (1966); the advice of defense counsel, Olympia Fields v. Bankers Indemnity Insurance Company, 325 Ill.App.649, 674, 60 N.E.2d 896 (1945); whether the insured was made aware of the claimant’s willingness to settle within the policy limits, Bailey v. Prudence Mutual Casualty Company, 429 Fed.2d 1388, 1390 (7<sup>th</sup> Circuit 1970); whether there was adequate investigation and the existence of defenses, Ballard v. Citizens Casualty Company of New York, 196F 2d 96, 102 (7<sup>th</sup> Circuit 1952); the prospect of an adverse verdict, Phalen v. State Farm, id.; and the potential for damages to exceed the policy limits, Mid-America Bank & Trust Company, id.

Once the court found that bad faith had occurred, it addressed the question of whether punitive damages could be awarded. The court answered the question in the affirmative noting that while punitive damages are not favored in the law, that Illinois courts are not hesitant to award punitive damages where there has been a flagrant breach of a fiduciary responsibility. Central Bank-Granite City v. Ziaee, 188 Ill.App.3d 936, 947 544 N.E.2d 1121 (1989). Writing that punitive damages are designed to deter misconduct, the court rejected the contention of the insurance company that they were penal in nature. The Court went on to reject the Defendant's argument that the Illinois Insurance Code preempted common law liability relative to punitive damages noting that while Section 155 preempts punitive damages in first party insurance benefit cases, that the Illinois Supreme Court has carefully distinguished an insurer's wrongful refusal to settle a third-party claim.

It is important that defendants in injury actions hold their insurance companies to the terms of the insurance contract. These generally require the insurance company to defend the claim and to engage in good faith settlement negotiations in an attempt to protect the interests of their policyholder. Any person made a defendant in a catastrophic injury claim would be wise to retain the services of a private attorney to help encourage the insurance company to meet its obligations and settle the matter. If the insurance company refuses, they may then be required to protect the insured and pay any judgment rendered in excess of the limits provided by the insurance policy.

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