

11th Circuit U.S. Court of Appeals provides detailed instructive opinion on Georgia's bad faith statute

By Gregory R. Veal August 31, 2023

The 11th Circuit U.S. Court of Appeals has provided a detailed, cogent, and instructive opinion on Georgia's first-party insurance bad faith statute. In *Turner v. CMFG Life Insurance Co.*, Case No. 23-11387 (August 28, 2023), the insurer's investigation began immediately on receipt of the claim for death benefits, continued through the statutory 60-day demand period, and ultimately resulted in full payment under the policy. The policy beneficiary was not satisfied, though, and sued to recover the bad-faith penalty (up to 50% of the amount owed) and attorney's fees allowed by O.C.G.A. § 33-4-6. Under that statute, an insurer may be penalized for failing to pay a claim within 60 days after a proper demand, if the plaintiff can prove the failure was in "bad faith."

The death certificate stated that the cause was an accident, which was a requirement under the policy. The insurer requested medical records and had them reviewed by a nurse consultant, who reported that the cause of death was not an accident. With conflicting evidence in hand, the claims examiner continued the investigation by retaining a second medical consultant, who determined that the cause of death in fact was accident. On receipt of that report, the examiner recommended the claim be paid, and it was 11 days later. The beneficiary, however, already had sent his statutory demand, and payment came over 40 days later than the 60th day, so the beneficiary sued for penalty and attorney's fees.

The court rejected every argument attempting to show bad faith. The insurer was not required to respond to the beneficiary's demands within the 60-day period (although evidence showed the insurer had communicated). In fact, the insurer's alleged violations of the Georgia Unfair Claims Practices Act, O.C.G.A. § 33-6-30, *et. seq.*, were held no evidence of bad faith, in part because that statute expressly disavows any private right of enforcement. The insurer was not required to accept the death certificate as conclusive proof of an accident but was fully entitled to conduct a reasonable investigation. Moreover, the trial court allowed the insurer to present expert testimony of the reasonableness of its investigation, under the policy and industry standards, and the appeals court affirmed that ruling, even though the statute provides that expert testimony cannot be the "sole basis" for the court to rule against the bad-faith claim. Finally, the court emphasized that insurance bad faith is "a 'frivolous and unfounded refusal' to pay—not merely a refusal for any reason at all." Because the beneficiary of the policy failed to submit any evidence of a frivolous or unfounded refusal to pay, the court of appeals affirmed summary judgment for the insurer.

This well-reasoned decision reaffirms insurers' right to investigate claims even beyond the 60-day demand deadline and even if the claim ultimately is owed. Sureties in Georgia also can rely on this opinion and its reasoning, because the courts have recognized that the surety bad-faith statute, O.C.G.A. § 10-7-30, is "virtually identical" and have applied the reasoning of the insurance statute to bad-faith claims under surety bonds. *McDevitt & Street Co. v. K-C Air Conditioning Service, Inc.*, 203 Ga. App.

640, 646, 418 S.E.2d 87, 93 (1992).

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