Insurance Companies Behaving Badly

By Robert D. Chesler, Steven J. Pudell and Christina Yousef

The ability to win punitive damages or attorneys' fees as a result of insurance companies' wrongful conduct gives policyholders vital leverage in insurance coverage disputes. States vary widely in the extent to which such awards are obtainable. In three cases this past month, courts in New Jersey, Kansas and Illinois found that policyholders were entitled to extra-contractual relief because of their insurance companies' egregious failures in dealing with their policyholders.

A recent decision by the Third U.S. Circuit Court of Appeals, applying New Jersey law, is of particular interest to New Jersey policyholders. In *Alpizar-Fallas v. Favero*, No. 17-3837 (3d Cir. 2018), the policyholder, insured by Progressive Garden State Insurance Company (Progressive), was involved in a car accident. Allegedly, the Progressive claims-handler fraudulently induced the policyholder to enter into a release, which in fact released the other driver in the accident — who was also a Progressive policyholder.

The policyholder brought suit against Progressive under the New Jersey Consumer Fraud Act (CFA). The lower court dismissed her claim, holding that the CFA only applied to the sale or marketing of insurance policies. The Third Circuit reversed. It found that the law covers "fraud both in the initial sale (where the seller never intends to pay) and fraud in the subsequent performance (where the seller at some point elects not to fulfill its obligations)."

Alpizar-Fallas is a groundbreaking decision of the highest importance. The Consumer Fraud Act provides for an award of treble damages and attorneys' fees as remedies, providing policyholders with a potent weapon against bad faith behavior by insurance companies.

Another noteworthy case is *Gruber v. Marshall,* No. 2014-cv-00302 (Kan. Dist Ct. 2018), from the United States District Court for the District of Kansas. There, the policyholder was awarded approximately $11,600,000 on a $100,000 policy. The case involved an airplane crash resulting in the death of a passenger, and despite the policyholder's desire to settle the case early, the insurance company did not offer its policy limit of $100,000 for over a year. No coverage issues existed. The court found that had the insurance company offered its policy limit earlier, it would have protected the policyholder's estate from exposure to any further claims or suits brought by the victim's estate. As a result, the court found the insurance company liable for the entire verdict of $11,600,000.
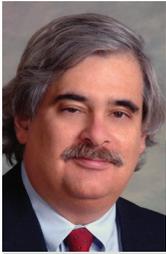
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The Appellate Court of Illinois also awarded extra-contractual damages in *Charter Properties Inc. v. Rockford Mutual Insurance Co.,* 2018 Ill. App. LEXIS 829 (Ill. App. Ct. 2018). The policyholder was an owner of a commercial building that partially collapsed. The policyholder submitted a claim to its insurance company for the loss of the building and lost business income. While the insurance company made some payments, the claims were ultimately "held in abeyance" until further inspection. The insurance company did not explain why it denied certain damages, did not complete the property investigation, and failed to complete its liability determination. As a result, under the Illinois Insurance Code, the court awarded the policyholder, in addition to its damages, $27,692 for other costs, $48,784 for attorneys' fees, and $30,697 in statutory penalties.

These three cases establish that policyholders have available remedies when insurance companies act badly. In every insurance coverage case, policyholders must consider whether they have facts that support a viable extra-contractual claim. With the added deterrent of punitive damages, insurance companies may think twice before unnecessarily denying or limiting claims. ◣