2012
CASE LAW SUMMARY

Insurance Coverage

Ambiguity in Application

Redland Insurance Company v. CEM Site Constructors, Inc., 86 So. 3d 1259 (Fla. 2d DCA 2012)

CEM took out a commercial auto insurance policy with Redland which contained a "Commercial Auto Drivers List" in the application, but it contained no definition for the term "driver." CEM's owner's son, not listed in the application, caused a fatal accident while using his father's personal car for business purposes. The decedent's Personal Representative sued CEM and CEM made a claim for coverage under the policy. Redland filed a declaratory action that it was entitled to rescission of the policy because the failure to list the son on the application was a fraudulent, material misrepresentation. The Personal Representative and CEM were granted summary judgment on the grounds that: (1) the application was ambiguous because the term "driver" was not defined; (2) the son was not an employee at the time of submitting the application; and (3) the son qualified as an insured under the policy because he was not a part of the owner's household at the time of the accident.

On appeal, the Second District reversed, holding that summary judgment was not appropriate as the determination of ambiguity in the case involved disputed issues of fact. Specifically, whether the son was a CEM employee, how often he drove for CEM at time of the application, what effect prior dealings between the parties had on CEM's understanding of the application terms, and whether Redland's failure to use its Non-Specified Operators form impacted CEM's ability to properly complete the application.

Appraisal

Panjikaran v. State Farm, 77 So. 3d 1278 (Fla. 2d DCA 2012)

State Farm demanded appraisal following a dispute over benefits owed under the Building Ordinance or Law Coverage Endorsement provision of the policy. Plaintiff filed suit, seeking a declaration of whether an appraisal was

required, and a claim for breach of contract. Plaintiff asserted that the disputed issue was coverage not the amount of loss. State Farm was granted summary judgment. The Fourth District found that summary judgment was premature where there was a disputed issue of whether State Farm refused to provide any coverage for the loss.

United Property and Casualty v. Concepcion, 83 So.3d 908 (Fla. 3d DCA 2012)

United appealed the granting of a motion to compel appraisal under an insurance policy. The trial court granted the motion without conducting an evidentiary hearing. United contended that Concepcion failed to comply with post-loss obligations under the policy by failing to provide requested documents, failing to respond to material inquiries under oath, and failed to provide a sworn statement of proof of loss. The Third District reversed, holding that United's reasonable dispute created a factual issue which required an evidentiary hearing.

Jyurovat v. United Property and Casualy., 84 So. 3d 1238 (Fla. 2d DCA 2012)

After a fire damaged the insured's home, the parties engaged in an appraisal process under the policy. Each party appointed an appraiser, and those appraisers selected an umpire. However, when the umpire failed to issue a decision, the insured's appraiser terminated the umpire. The trial court granted summary judgment for the insurer, finding that the insured breached the policy by unilaterally terminating the umpire and by filing suit before completing the appraisal process. The Second District reversed, holding that genuine issues of material fact remained as to whether the insured materially breached the policy. The insured's appraiser fired the umpire but did not end the appraisal process. The policy did not address a breakdown in the appraisal process. The issue of whether this was a material breach of the policy was a question of fact and summary judgment was improper.

Bad Faith

General Star Indemnity Co., v. Atlantic Hospitality of Florida, LLC., 93 So. 3d 501(Fla. 3d DCA 2012)

The Third District quashed an Order compelling General Star to produce all training manuals, company policy memoranda, and guidelines relating to the underwriting and administration of the subject insurance policies and/or estimating, adjusting and payment of claims under the subject insurance policies.

The Court held that these "classic bad faith materials" were not subject to discovery until there had been a resolution of the underlying coverage claim.

QBE Ins. Corp. v. Chalfonte Condominium Apartment Ass'n, 94 So.3d 541 (Fla. 2012)

After a hurricane caused damage to its property, the insured filed a claim. Dissatisfied with the insurer's investigation and processing of the claim, the association filed a four count complaint for declaratory relief, breach of contract, breach of an implied warranty of good faith and fair dealing and a violation of §627.701, Fla. Stat. On a certified question from the 11th Circuit Court of Appeals, the Florida Supreme Court held that there is no common law first-party bad faith action in Florida. Any such bad faith claims must be brought under §624.155 Fla. Stat.

Lime Bay Condominium, Inc. v. State Farm, 94 So. 3d 698 (Fla. 4th DCA 2012)

The Fourth District upheld the trial court's dismissal of a bad faith complaint where the insured's breach of contract sued against the insurer was still pending and there had not yet been a final determination of liability on the part of the insurer.

GEICO Indemnity Company v. DeGrandchamp, 102 So. 3d 685 (Fla. 2d DCA 2012)

The jury's verdict was substantially in excess of Ms. DeGrandchamp's uninsured motorist coverage. The trial court then entered judgment for the amount of the insurance coverage and proceeded to award "contingent" attorney's fees. The order challenged in the certiorari proceeding was not a judgment and was not subject to execution. Further, it did not create a lien against anyone's property. Essentially, it was a preemptive determination of issues that may or may not arise in the subsequent action for bad faith. As such, they found that certiorari was not appropriate because it did not appear that it would cause any irreparable damage or harm.

Goheagan v. American Vehicle Insurance Company, 37 FLW D2774 (Fla. 4th DCA 12/5/12)

American Vehicle's insured rear-ended a vehicle at a high rate of speed. The insured had a blood alcohol level of .19. As a result of this accident, Molly

Swaby suffered catastrophic injuries and remained in a coma until she died more than two months after the accident. Suit was filed and a judgment was obtained (with costs) of over $2,800,000. Policy limits were $10,000/$20,000.

Two days after the accident, the insured reported the accident to the insurance company. The adjuster assigned to the claim advised the insured of the low policy limits and advised him that she would make every attempt to settle all claims within the policy limits. Within a few days of being assigned the claim, the adjuster concluded that their insured was the sole cause of the accident and that Ms. Swaby's injuries were far in excess of the policy limits and that the claim should be settled.

Within four days of the accident, the adjuster spoke with Swaby's stepfather who advised that Ms. Swaby's mother had retained an attorney and that the adjuster would have to talk to the mother to obtain the name of the attorney. The same day, the adjuster called a different number for the mother and spoke to a person identified as a friend and advised that the mom was unavailable.

The following day, the adjuster left a voice mail for the mother, but no further attempts were made to contact her until three weeks later at which time the mother again advised the adjuster to call back at a later time. Two additional phone calls were made and, less than two months after the accident, the adjuster learned that suit had been filed against their insured and, thereafter, American Vehicle attempted to tender its policy limits which were not accepted.

American Vehicle moved for summary judgment in the bad faith action asserting that it acted fairly and honestly towards its insured and that they were prohibited from entering into settlement negotiations or consummating a settlement because Swaby was in a coma and there was no one to make the offer to and because they had been made aware of the fact that there was a lawyer involved and the Florida Administrative Code prohibited the insurance company from communicating or negotiating a settlement with Swaby or her mother.

The trial court ruled that the insurance company did not act in bad faith. The Fourth District reversed and noted that a guardian or personal representative who has not yet been appointed can negotiate a settlement on behalf of the claimant. Further, there was no case law to support that American Vehicle's argument that it could not have at least made a written offer and/or tender to Swaby through her mother.

Claims File

State Farm v. Ramirez, 86 So. 3d 1198 (Fla. 3d DCA 2012)

The Third District granted a writ of certiorari to quash an order in an action for a declaration of property insurance benefits and alleging breach of contract. The order compelled the petitioner to produce its entire claim file. The Third District found that the order departed from the essential requirements of law and would cause irreparable harm which could not be remedied on appeal following final judgment.

State Farm v. Aloni, 101 So. 3d 412 (Fla. 4th DCA 2012)

The insured brought a claim against State Farm for roof damage caused by a hurricane. Coverage for the loss was in dispute and had not been resolved. In discovery, the trial court ordered discovery of the insurance company's activity logs, notes, e-mails and photographs contained within their claim file. The Fourth District granted certiorari finding that the trial court departed from the essential requirements of law and caused irreparable injury by allowing this discovery before the coverage issue was resolved.

Late Notice Must Be Prejudicial

Kings Bay Condominium Association, Inc. v. Citizens Property Insurance Corp., 102 So. 3d 732 (Fla. 4th DCA 2012)

The insured filed a notice of claim 29 months after an alleged loss. The trial court granted summary judgment finding that the claim was barred as a matter of law due to late notice. The Fourth District reversed and held that the proper inquiry for the trial court was to determine whether the insurance company was prejudiced by the untimely notice.

No Coverage for Herpes

Clarke v. State Farm, 37 FLW D2540 (Fla. 4th DCA 10/31/12)

The Plaintiff brought an action for injuries after she contracted herpes from a State Farm insured. State Farm agreed to defend its insured subject to a reservation of rights. They then brought a declaratory action seeking relief from

any obligation to defend or indemnify their insured and the trial court entered final summary judgment in favor of the insurance company.

The Fourth District upheld the granting of summary judgment finding that the policy excluded any claim for bodily injury caused by communicable diseases "transmitted by any insured to any other person."

Notice to Agent

Gay v. Association Casualty Insurance Company, 103 So. 3d 1028 (Fla. 5th DCA 2012)

The trial court entered a summary judgment finding that there was no uninsured motorist coverage because the insured failed to give written notice to the insurer of his uninsured motorist claim. The Fifth District reversed because notice was given by the insured to the insurance broker and the Fifth District held that the notice was given to the insurer because the broker was both an agent of the insured and the insurer. They also noted that, even though was no written notice of claim as required by the policy, the written notice requirement can be waived when the insurer had actual notice of the claim.

Payments After Policy Expiration

Progressive Express Ins. Co., v. Camillo, 80 So. 3d 394 (Fla. 4th DCA 2012)

Camillo, the named insured, contacted Progressive to notify of an auto accident involving an additional insured. Progressive told him that the policy had expired. The same day, Camillo made a payment and his policy was reinstated. Thereafter, he made monthly premium payments that Progressive accepted. When it refused to pay, Camillo sued Progressive, seeking a declaration that the policy provided coverage for the accident. Progressive filed a counterclaim seeking the opposite. The trial court granted Camillo summary judgment, holding that Progressive's unconditional acceptance of premiums waived its right to claim that there had been a lapse in coverage.

The Fourth District reversed, finding that where a policy expired without the insured's making a renewal payment, and a loss occurred after the expiration of the policy period, the insurer could accept premium payments and reinstate the policy prospectively without waiving the right to deny coverage for the loss.

Policy Language-Covered Cause or Loss

Kings Ridge Community Ass'n v. Sagamore Ins. Co., 98 So. 3d 74 (Fla. 5th DCA 2012)

Kings Ridge appealed an order granting summary judgment to Sagamore. The basis for summary judgment was that the clubhouse was not in a "state of collapse" within the terms of the policy. Kings Ridge owned and maintained the common areas, including the clubhouse of a housing community. The exterior doors of the west wing of the clubhouse began to shake and the drop ceiling and soffits deflected downward. The clubhouse was insured under an all-risks business owner's policy issued by Sagamore. The policy provided that Sagamore would pay for direct physical loss of, or damage to, the subject premises caused by or resulting from any "Covered Cause or Loss." The Fifth District reversed, finding that the policy language was ambiguous and resolved the ambiguity in favor of the insured by adopting the reasonable interpretation of the policy's language that provided coverage.

Policy Language-Occurrences

Citizens Property Ins. Corp., v. Cook, 93 So. 3d 479 (Fla. 5th DCA 2012)

The insured served alcohol to three minors at his residence. The minors left intoxicated and caused an auto accident, killing Cook and another. In a declaratory action, the trial court held the policy's $100,000 per occurrence limit applied to each consumed drink and to the insured's negligence for serving the minors alcohol and allowing them to drive intoxicated. On appeal, the Fifth District reversed, applied the "cause theory" to the term "occurrence." Under the cause theory, the immediate cause of Cook's death was the car crash, not the consumption of alcohol or the insured's negligence. Thus there was only one "occurrence" under the policy.