

Alabama Supreme Court Corrects the Perception that Alabama Law Contemplates Two Bad Faith Torts

In *Brechbill v. State Farm Fire & Cas. Co.*, No. 1111117, ___ So. 3d ___, 2013 WL 5394444, 2013 Ala. LEXIS 126 (Ala. Sept. 27, 2013), the Alabama Supreme Court held that there is only one, as opposed to two, causes of action for bad faith. More important, the Alabama Supreme Court held that a bad faith claim, no matter how plead, will not survive when an insurer can show a debatable reason for the denial.

A Windstorm Leads to Dueling Expert Reports and a Lawsuit

In *Brechbill*, Shawn Brechbill purchased a 30-year-old home, which he had inspected prior to closing. The inspector noted some floor squeaking and no long-term settling. A State Farm representative inspected the house and confirmed that it met underwriting guidelines. Specifically, State Farm's file reflected there was "no unrepaired damage."

Approximately four months after purchasing the home, a windstorm occurred. Brechbill alleged the windstorm shook the house and windows severely. A wind speed device on Brechbill's home measured wind speeds of approximately 59 miles per hour. After the windstorm, Brechbill observed roof shingle damage, wall cracks and buckling, extensive floor squeaking and dislodged door frames. Brechbill submitted an insurance claim to State Farm.

In response, State Farm sent an adjuster who also observed roof shingle damage, cracked drywall and separated door jams. The adjuster concluded that the State Farm policy covered damage to the roof, but not to the interior and suggested that State Farm engage an engineer. State Farm's engineer concluded that long term settlement caused the home's interior damage, potentially exacerbated by poor design and construction. The State Farm engineer opined that the damage likely existed when Brechbill bought the home but had gone "unnoticed." State Farm denied Brechbill's claim for the home's interior damage on two grounds: wear and tear from the home's age and construction/design defects. Brechbill hired his own expert, who issued a report contradicting the findings of State Farm's engineer. State Farm's engineer prepared a responsive report, and State Farm reissued a denial of claim for the interior damage.

The Trial Court Distinguishes Causes of Action for Bad Faith and the Elements of Proof Needed to Support Them

Brechbill sued State Farm for breach of contract, bad faith failure to pay claims (a "normal" bad faith claim) and bad faith failure to investigate (an "abnormal" bad faith claim). In support of the latter claim, Brechbill alleged that State Farm's investigation failed to consider the absence of interior home damage prior to the windstorm — as documented by Brechbill's pre-purchase home inspection and State Farm's own underwriting inspection — when deciding to deny his claim for interior home damage.

State Farm moved for partial summary judgment on both of Brechbill's bad faith claims, contending that the competing expert opinions demonstrated that State Farm had a legitimate reason to deny Brechbill's claim at the time of denial, thereby negating any bad faith as a matter of law. The trial court granted State Farm's motion in part, dismissing the normal bad faith claim, but denied State Farm's motion on Brechbill's abnormal bad faith claim. The trial court held that "for a plaintiff to survive a motion for summary judgment on a 'normal' bad faith claim, his underlying breach of contract claim must be so strong that he would be entitled to a preverdict judgment as a matter of law In 'abnormal' bad faith cases however, the predicate of a preverdict judgment as a matter of law on the plaintiff's breach of contract claim is not required." In support of this distinction, the trial court cited prior Alabama Supreme Court authority holding "[an insurer's]



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knowledge or reckless disregard of the fact that it had no legitimate or reasonable basis for denying a claim may be inferred and imputed to an insurer when it has shown a reckless indifference to facts or proof submitted by the insured.”

The case proceeded to trial. The jury returned a verdict in Brechbill’s favor, awarding him \$150,000 in compensatory damages for his contract claim and \$150,000 damages for his abnormal bad faith claim. State Farm appealed only the latter judgment, contending that the trial court erred in denying State Farm’s summary judgment motion on Brechbill’s abnormal failure to investigate bad faith claim once it concluded that State Farm had a reasonable basis for denying the claim at the time of the denial.

The Alabama Supreme Court Clarifies the Tort of Bad Faith and the Elements Required to Prove Bad Faith

On appeal, the Alabama Supreme Court addressed the considerable confusion regarding the existence and scope of bad faith claims under Alabama law. The court stated that four elements defined a normal bad faith claim:

1. an insurance contract that the insurer breaches;
2. an intentional refusal to pay the claim;
3. without any reasonably legitimate or arguable reason (the absence of debatable reason) ;and
4. the insurer’s actual knowledge that there is no legitimate or arguable reason;

The court further stated that, when a bad faith failure to investigate was alleged, a plaintiff would need to additionally prove:

5. the insurer’s intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim.

See Chavers v. Nat’l Sec. Fire & Cas. Co., 405 So. 2d 1 (Ala. 1981). *Brechbill*, 2013 WL 5394444, 2013 Ala. LEXIS 126 (quoting *Nat’l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982)).

The Alabama Supreme Court held that only one tort of bad faith exists under Alabama law, quoting the language from *Chavers*, stating that “*an actionable* tort arises for an insurer’s intentional refusal to settle a direct claim” (Emphasis in original). Regardless of which “type” of bad faith was alleged, the court held that a plaintiff must demonstrate that the insurer acted “without any reasonably legitimate or arguable reason” when denying a claim. The Alabama Supreme Court held that, by dismissing Brechbill’s normal bad faith claim, the trial court determined as a matter of law that State Farm had a legitimate or arguable basis to deny Brechbill’s claim and this finding was dispositive regardless of the type of bad faith claim alleged. The court also stated that, although State Farm’s investigation may not have been perfect, State Farm’s conduct did not rise to the level of bad faith, which it described as “dishonesty, self-interest or ill will.”

Conclusion

Brechbill clarifies Alabama law, holding that Alabama recognizes only one cause of action for bad faith. No matter how the bad faith is alleged, whether as a failure to pay or as a failure to investigate, an insurer can defeat a bad faith cause of action by demonstrating that it had an arguable basis for denying a claim at the time of denial. The Alabama Supreme Court distinguished other cases finding bad faith based on a failure to investigate by noting that the proof supporting a reasonable basis for denial cannot be developed after the denial, but instead must exist at the time the denial is issued. In finding that State Farm’s conduct did not show “dishonesty, self-interest of ill will,” the court also noted State Farm’s willingness to review and re-evaluate its denial based on additional facts as presented by Brechbill. In this regard, *Brechbill* is instructive to an insurer in how to investigate a claim, document findings and respond to additional information provided by an insured.
