APPELLATE UPDATE

JUNE 4, 2013

WHAT SHOULD A FINAL JUDGMENT IN AN UNINSURED MOTORIST CASE CONTAIN?

The wording of the final judgment in an uninsured motorist case is always a highly disputed issue, especially when an excess jury verdict has been entered. Plaintiffs almost always seek language reserving their "right" to amend the complaint to add a claim for bad faith and to recover the full amount of the jury's verdict. In practice, we object to this requested language. However, Florida courts continue to enter final judgments with this language.

The Fifth District Court of Appeal has clarified the proper wording of the final judgment and found it was error to include a reservation of jurisdiction to amend the complaint to add a claim for bad faith.

In Safeco Ins. Co. of Ill. v. Fridman, -- So. 3d --, 2013 WL 2256531 (Fla. 5th DCA May 24, 2013), Fridman was involved in an automobile accident and sustained injuries. Fridman made a demand to Safeco for the UM policy limits and subsequently filed a Civil Remedy Notice. After the cure period expired, Fridman filed suit against Safeco seeking UM benefits. Before trial, Safeco tendered its policy limits to Fridman and filed a Confession of Judgment and Motion for Entry of Confession of Judgment. In these filings, Safeco expressly agreed to a final judgment in favor of Fridman for the policy limit. Fridman opposed entry of a confessed judgment arguing that the jury verdict would determine the upper limits of Safeco's bad faith liability. The case proceeded to trial and resulted in a $1,000,000 jury verdict.

The trial court entered final judgment in the amount of the policy limit; however, the Court also reserved jurisdiction to determine the Plaintiff's right to amend his complaint to add a claim for bad faith and litigate bad faith damages. In addition, the final judgment stated: "If the Plaintiff should ultimately prevail in his action for bad faith damages against Defendant, then the Plaintiff will be entitled to a judgment, in accordance with the jury's verdict, for his damages in the amount of $980,072.91 plus interest, fees, and costs."

On appeal, the Fifth District held that the trial court erred by requiring the parties to proceed to trial. The issues between the parties became moot when Safeco agreed to entry of judgment against it in the amount of the policy limit. There was no pending bad faith count in the complaint. The Court rejected Fridman's argument that entry of a confessed UM judgment would render a bad faith case under Florida Statute § 624.155 "impotent and obsolete." The Court noted that Fridman could still seek the full measure of his damages in a subsequent bad faith action.

Notably, the Court remanded and ordered the trial court to enter final judgment without any reservation of jurisdiction to consider Fridman's request to amend the complaint to add a claim for bad faith. The Court also ordered that the trial court delete any reference to the jury verdict obtained and only reference the policy limit.

Judge Sawaya wrote a strong dissent and asserted that the majority denied the Plaintiff his right to bring a bad faith claim because, absent a full determination of the Plaintiff's damages, a cause of action for bad faith cannot exist. Safeco was attempting to deprive the Plaintiff of his right to have the jury determine the amount of damages in a UM case. He further argued that the mootness doctrine did not apply because not all issued between the parties were resolved.

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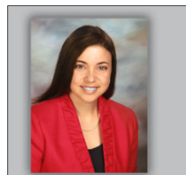

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