

Insurer Liable for Bad Faith Despite Judgment Within Policy Limits

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The Supreme Court of Wisconsin has held that an insurer may be liable for bad faith even though the judgment against its insured in the underlying personal injury claim did not exceed policy limits. *Roehl Transp., Inc. v. Liberty Mut. Ins. Co.*, 2010 WL 2486808 (Wis. June 22, 2010).

The case involved a liability policy issued to a trucking company, which provided up to \$2 million in coverage, subject to a \$500,000 deductible. Under the policy, the insurer had the right and duty to defend any claim against the insured as well as the right to investigate and settle any claim as it deemed appropriate. The claim at issue was a lawsuit that followed an accident in which one of the insured's trucks rear-ended a car and caused certain injuries to the driver. It proceeded to trial, and the jury found the trucking company liable and awarded damages of \$830,400 to the driver. The trucking company subsequently brought suit against the insurer for bad faith, alleging that the insurer's purported mishandling of the claim resulted in a missed opportunity to settle the action for an amount less than the full deductible. The jury returned a verdict in favor of the insured for \$127,000.

On appeal, the state high court rejected the insurer's argument that a cause of action for bad faith could not be sustained absent an underlying judgment in excess of policy limits. The court recognized that the issue was one of first impression but that the tort itself generally arose from the notion that once the insured has relinquished control of the claim to the insurance company, the insurance company must act to protect the insured's interests, even when those interests are in conflict with its own. The court found that an insurer and insured in a situation such as this have competing interests with respect to the deductible and the possibility exists that the insurer will "gamble" with the insured's money in an effort to avoid liability on the policy. According to the court, potential liability for bad faith is necessary to guard the insured against this possibility.

The court also concluded that the evidence presented was sufficient to support a finding by the jury of bad faith. In reaching this conclusion, the court pointed to, among other things, evidence that the assigned claims handlers had little training or experience with trucking claims, that the insurer failed adequately to investigate the accident and the driver's injuries and that the insurer did not attempt to settle the claim when it had an opportunity to do so. As to this last point, the court noted that an insurer may not "merely wait for a legally binding offer to settle," but rather "has a positive duty 'to take the initiative and attempt to negotiate a settlement'"