

## **11th Circ. Set To Weigh Insurance Bad Faith Standard**

Law360

The Eleventh Circuit will hear arguments Thursday on whether Nationwide's mere negligence in failing to settle claims against a policyholder is sufficient to hold the insurer liable for a judgment exceeding policy limits, in a case that could have a widespread impact on insurance bad faith cases under Georgia law.

### What's At Stake

Nationwide Mutual Insurance Co. has asked the appellate court to overturn a Georgia federal jury's \$8 million award against the insurer for its failure to settle claims against a policyholder over a fatal car crash within policy limits. The jury concluded that Nationwide had acted either negligently or in bad faith in failing to resolve the claims.

Nationwide's appeal has attracted a torrent of amicus briefs on both sides of the dispute, indicating that the Eleventh Circuit's holding stands to significantly influence Georgia bad faith law. The core issue in the case is whether an insurance company's negligence in failing to settle claims against a policyholder is sufficient to place the carrier on the hook for a subsequent excess verdict rendered against the insured.

Writing in support of Nationwide, the Georgia Chamber of Commerce contended that a standard allowing claimants to prevail in bad faith cases based on a finding of mere negligence invites manipulation of the insurance market by unscrupulous plaintiffs' attorneys and could exacerbate what it characterized as an "epidemic" of bad faith litigation in the Peach State.

"The consequence of adopting a negligence standard, notably rejected by the majority of jurisdictions, is bad-faith litigation based on as little as simple misjudgment," the Chamber argued.

Meanwhile, the Georgia Trial Lawyers Association and the nonprofit policyholder advocacy group United

Policyholders filed briefs suggesting that a decision in Nationwide’s favor could give insurance companies a free pass for ineffective or incompetent claims handling practices that harm insureds.

“Nationwide was given multiple opportunities to settle a clear policy-limits case for the amount of the available insurance coverage, but failed to do so, leaving its insured’s personal assets at risk,” the association wrote in its brief. “Rather than accept responsibility for its errors, it has attempted to turn this case into a vehicle for abrogating the extensive body of Georgia law that is fatal to its arguments.”

### How We Got Here

The case stems from a July 2005 incident in which Nationwide policyholder Seung Chun Park ran a red light while driving drunk and collided with a car driven by Stacey Camacho, who died two days later. Park was later convicted of vehicular manslaughter and sentenced to seven years in prison.

In February 2006, a Nationwide claims specialist offered to pay Park’s \$100,000 policy limit to Stacey Camacho’s widower, Jesus, and the administrator of the woman’s estate, LeJean Nichols, in exchange for a general release of all claims against Park, court papers show.

Jesus Camacho rejected the offer, and two months later his lawyer sent Nationwide a time-limited demand for Park’s \$100,000 limit, but with the caveat that the agreement would release only some of the claims arising from the accident. When the parties failed to reach an agreement, Camacho and Nichols sued Park in Georgia state court.

In April 2009, the plaintiffs made a deal with Park, agreeing that if a jury returned a verdict in excess of the Nationwide policy limits, they would not seek to collect that sum from Park personally. In exchange, Park agreed to assign any potential bad-faith and negligence claims against Nationwide to Camacho and Nichols.

A Georgia jury awarded the plaintiffs \$5.8 million against Park in October 2009. Two years later, Camacho and Nichols sued Nationwide in Georgia federal court, claiming the insurer acted in bad faith by failing to settle their claims against Park. Nationwide shot back that it had acted reasonably in its handling of the claims.

However, a federal jury ultimately concluded that Nationwide had acted either negligently or in bad faith

in failing to settle the claims against Park. The insurer was found liable for the underlying \$5.8 million award, plus an additional \$2.4 million in prejudgment interest, according to court papers. Nationwide then appealed the result to the Eleventh Circuit.

### Nationwide's Stance

In briefs filed with the appellate court, Nationwide argued that it was the victim of a “set-up” scheme, wherein Camacho’s lawyer in the fatal accident litigation submitted an untenable settlement demand that didn’t resolve all the claims against Park and required that the insurer respond within an unreasonably short time period. According to Nationwide, set-up demands are a sort of “Catch-22” strategy designed to form a foundation for subsequent claims that an insurance company failed to settle claims against its policyholder, in bad faith.

“This case exemplifies an acute and escalating problem in automobile insurance law that needs to be addressed: Opportunistically contrived claims for ‘bad-faith’ failure to settle where either an acceptance or rejection of a claimant’s time-limited demand by an insurer can lay the foundation for an extra-contractual bad-faith lawsuit,” Nationwide said.

The insurance company contends that it had no duty under Georgia law to accept the time-limited settlement demand because, among other things, the letter was deliberately worded to release only Camacho’s wrongful death claim against Park, and not any subsequent claims by his wife’s estate.

Moreover, Nationwide said, the district court erroneously instructed the jury that mere negligence not rising to the level of bad faith was sufficient to support a verdict putting Nationwide on the hook for the entire excess judgment against Park.

“[L]ongstanding Georgia precedent requires that excess verdict liability be based on a finding of bad faith,” the insurer argued. “Because the district court failed to apply the proper legal standard, the judgment should be reversed — or the question certified to the Georgia Supreme Court — for that mistake of law alone.”

### Camacho's Stance

Camacho, on the other hand, told the Eleventh Circuit that Nationwide “had no right” to dictate the scope

of the release in the settlement demand, and asserted that the insurer should be held accountable because its rejection of the demand caused the excess verdict against Park.

“Accusations of greedy plaintiff attorneys and tales of the law run amok should fool no one,” Camacho said. “The sole reason the Camachos could not settle their claim under ordinary and reasonable terms is Nationwide’s self-serving rejection of a vanilla-flavored [limited liability release].”

According to Camacho, the Georgia Supreme Court resolved any confusion over whether negligence is sufficient to impose liability on insurers for failure to settle in its 1992 decision in the case of Southern General Insurance Co. v. Holt. The Georgia justices held in Holt that an insurer may be held liable for damages stemming from its failure to settle claims against a policyholder if it is “guilty of negligence, fraud or bad faith.”

Camacho added that Nationwide’s arguments constitute a bid for “judge-made immunity” for insurers whose negligent claims-handling leads to financially ruinous judgments against their policyholders.

“The notion that Nationwide should be immune if its ‘misjudgment’ damages its insured is a grant of immunity for a failure to perform as promised,” Camacho said. “This court should follow existing Georgia law and affirm.”

#### Counsel

Camacho and Nichols are represented by Brandon Graham Cathey and Darrell Hinson of Swope Rodante PA and Richard Dolder and James N. Sadd of Slaphey & Sadd LLC.

Nationwide is represented by Michael P. Kenny, Tiffany L. Powers, Andrew J. Tuck and Bryan W. Lutz of Alston & Bird LLP.

The Georgia Chamber of Commerce is represented by Adwoa Ghartey-Tagoe Seymour and William V. Custer of Bryan Cave LLP.

The Georgia Defense Lawyers Association is represented by its own Peter D. Muller and Garrett W. Meader and by David M. Atkinson and Jonathan J. Kandel of Swift Currie McGhee & Hiers LLP.



The Georgia Trial Lawyers Association is represented by John D. Hadden of Turkheimer & Hadden LLC and Caleb F. Walker of Katherine L. McArthur LLC.

United Policyholders is represented by Jeffrey D. Diamond of Law Offices of Jeffrey D. Diamond and its own Amy R. Bach and Daniel R. Wade.

The case is Camacho et al. v. Nationwide Mutual Insurance Co., case number 16-14225, in the U.S. Court of Appeals for the Eleventh Circuit.

-Editing by Pamela Wilkinson and Kelly Duncan.

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