

[Kelly v. State Farm Ins. Co.](#)

Year: 2015

Court: Louisiana Supreme Court

Case Number: 2014-CQ-1921

On certified question from the U.S. Court of Appeals for the 5th Circuit, the Louisiana Supreme Court was confronted with the issue of whether an insurer can be liable for statutory bad faith for failure to settle a claim when it never received a firm settlement offer and/or when it fails to disclose pertinent facts its insured that are not the terms of the policy? UP argued in its brief that as a general matter, an insurer owes a high fiduciary duty to its insured. Under Louisiana law, this duty encompasses the duty to fairly settle claims and that in doing so an insurer must place the insured's interests above its own. UP reminded the Court that this is especially important when its insured may be subject to tort liability well in excess of its policy limits. Louisiana law prohibits an insurer from "misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue" and failure to negotiate a claim or inform its insured of claim developments. UPdate May 5, 2015: Great news for policyholders! The Louisiana Supreme Court answered both certified questions in the policyholder's favor, holding: (1) A firm settlement offer is unnecessary for an insured to sustain a cause of action against an insurer for a bad-faith failure-to-settle claim, because the insurer's duties to the insured can be triggered by information other than the mere fact that a third party has made a settlement offer; and (2) An insurer can be found liable under La. R.S. 22:1973(B)(1) for misrepresenting or failing to disclose facts that are not related to the insurance policy's coverage because the statute prohibits the misrepresentation of "pertinent facts," without restriction to facts "relating to any coverages." (See Opn. at 2).

UP's brief was authored pro bono by Michael J. deBarros, Esq., Todd A. Rossi, Esq., and Mark Mese, Esq. of Kean Miller LLP Of Counsel: Executive Director Amy Bach, Esq.