

Ga. Justices Should Weigh \$8M Bad Faith Case, 11th Circ. Told

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The Georgia Defense Lawyers Association has urged the Eleventh Circuit to seek the Georgia Supreme Court's guidance on whether insurance carriers may be held liable for negligent, as opposed to bad faith, failure to settle a claim against a policyholder, saying the issue is key to deciding Nationwide's appeal of an unfavorable \$8 million trial award.

In a proposed amicus brief filed May 5, GDLA — whose members represent insurance companies and other defendants in civil litigation — said Georgia law remains “substantially uncertain” regarding the standard for when an insurance company may be held liable for failing to settle a tort claim against a policyholder.

In the case before the Eleventh Circuit, Nationwide Mutual Insurance Co. was hit with an \$8 million award after a Georgia federal court instructed a jury that it could find Nationwide liable for failing to settle claims against its policyholder over a deadly car crash based solely on a determination that the insurer's conduct was negligent.

According to GDLA, however, the Georgia Supreme Court has never explicitly recognized a claim for “negligent failure to settle” or defined the requirements for any such claim. As such, the best course of action for the Eleventh Circuit is to seek guidance from the Georgia high court on whether an insurer's mere negligence in failing to settle is sufficient to support a finding of extra-contractual liability.

“While there are certainly public policy reasons to encourage liability insurers to act reasonably and promptly settle meritorious claims, something more than simply negligence should be required before an insurer will be held liable in excess of the contractual policy limits,” GDLA argued. “It is unreasonable to impose liability when an insurer rejects a claim due to legitimate questions regarding liability or the claimant's damages.”

The case stems from a July 2005 incident in which 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.

At the time of the crash, Park held a Nationwide policy with limits of \$100,000 per injury and \$300,000 per accident. In February 2006, a Nationwide claims specialist offered to pay the \$100,000 policy limit to Jesus Camacho and the administrator of Stacey Camacho'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, according to court papers. 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.

A federal jury, however, 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.

On appeal to the Eleventh Circuit, Nationwide is contending that the district court made numerous errors, including instructing the jury that a finding of negligence was sufficient for liability.

In addition to the GDLA's brief, the case has attracted a bevy of other amicus filings. The Georgia Chamber of Commerce has thrown its support behind Nationwide, blaming courts' application of a negligence standard for an "epidemic" of bad faith claims. Meanwhile, the Georgia Trial Lawyers'

Association and the nonprofit policyholder advocacy group United Policyholders have urged the Eleventh Circuit to uphold the award against Nationwide.

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.

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

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

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 Joe Phalon.