Louisiana Supreme Court to Insurers: “You can’t abandon your customers in their hour of need. You’re in the protection business”

Good news for Louisiana insurance consumers came this week when the state’s highest court sided with them (and UP’s amicus brief) in Kelly v. State Farm on two important points:

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;

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.”

In this case, the Lousiana Supreme Court answered two certified questions from the U.S. Court of Appeals for the Fifth Circuit related to scenarios where a policyholder gets sued and needs the protection of the liability portion of their insurance coverage. People and businesses that get sued are left hanging and worse when an insurer unfairly refuses to provide them a defense or help bring about a settlement so the matter can be resolved. Where an insurer unreasonably fails to meet its obligation to defend an insured and/or bring about a settlement with an injured party, there can be very negative and serious financial, life, and business consequences.

UP, represented by local counsel at Kean Miller LLP (Baton Rouge), filed an amicus curiae (“friend of the court”) brief arguing that insurers have an affirmative duty to use their power and authority to bring about settlements. Insurers cannot sit back passively while their insureds roast on a spit. They have to

use their resources to get their insured out of the jam. The court also held that “an insurer can be found liable under La. R.S. 22:1973(B)(1) (Louisiana’s bad faith statute) 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.”

This is an important decision for many reasons, chief among them that it makes good law on the subject of whether an insurer has a duty to affirmatively settle cases on behalf of the policyholder. As repeat users of the legal system and sophisticated litigators, insurance companies are in a superior position to bring about settlements and should, as a matter of practicality and good faith duty, play an active role in settlement negotiations. This is a point that policyholder advocates, including UP’s Executive Director Amy Bach, Esq., have been making to the Reporters of the American Law Institute’s Restatement of the Law of Liability Insurance project. The Restatement, as a previous blog points out, once completed, will be the definitive treatise on the subject of insurance law and will be cited to courts for many years to come. Over the objections of insurance lobbyists, the current draft of the Restatement recognizes insurers’ affirmative duty to bring about settlements. This recent ruling bolsters policyholders and UP’s position.