[The Mood Swings on Insurer Bad-Faith in Oregon: An Analysis of the Oregon Supreme Court Decision in Moody v. Oregon Community Credit Union](https://uphelp.org/the-mood-swings-on-insurer-bad-faith-in-oregon-an-analysis-of-the-oregon-supreme-court-decision-in-moody-v-oregon-community-credit-union/)

Notice of Appeal Law Blog by Cameron Zangenehzadeh and Lou Ferreira

The Oregon Supreme Court has long held the legislature did not create a private right of action under the Unfair Claims Settlement Practices Act (ORS 746.230). Policyholders could bring a tort claim against their insurance company only if the insurer was subject to a standard of care independent of the insurance policy.[1] But the Court's mood changed last month in *Moody v. Oregon Community Credit Union*, 371 Or 772 (2023).

Moody's facts are not complex. Plaintiff Christine Moody's husband, Troy, was accidentally shot and killed by a friend during a camping trip. Christine sought life insurance benefits, and the insurer denied Christine's claim based on a policy exclusion for deaths caused by or resulting from the insured being "under the influence of any narcotic or other controlled substance." Troy evidently had marijuana in his system when he died.

Christine sued the insurer, alleging claims for breach of contract, breach of an implied contractual covenant of good faith and fair dealing, and negligence. She sought both economic damages and emotional distress damages. In her negligence claim, Christine alleged the Unfair Claims Settlement Practices Act provided an independent standard of care outside the terms of the insurance contract. She asserted the insurer violated several claims handling practices, such as failing "to pay the insurance benefits without conducting a reasonable investigation based on all available information" and "[n]ot attempting, in good faith, to promptly and equitably settle a claim in which the insurer's liability has become reasonably clear." Christine further alleged that the insurer "knew, or in the exercise of reasonable care as a corporation engaged in the business of marketing and selling insurance, should have known, that one or more of its foregoing acts or omissions would create an unreasonable risk of harm to the beneficiaries of its insured, including [Christine]." Finally, because of the insurer's negligence, she had suffered "the noneconomic loss of increased emotional distress and anxiety caused by having fewer financial resources to navigate the loss of a bread-winning spouse."

At trial, the insurer moved to dismiss Christine's claims for negligence and breach of the implied covenant of good faith and fair dealing and to strike the allegations seeking damages for emotional distress, arguing that Christine's only remedy under Oregon law was contractual. The trial court granted those motions and entered a limited judgment dismissing all but the breach of contract claim.

Christine appealed from the limited judgment, challenging the dismissal of her negligence claim and striking of her allegations of emotional distress damages. The Court of Appeals reversed, holding that Christine could bring a claim for "negligence *per se*" and seek emotional distress

damages based on the insurer's violations of ORS 746.230(1). Of note, it rejected the insurer's arguments that (1) *Farris v. United States Fidelity & Guaranty Co*., 284 Or 453 (1978), foreclosed any negligence *per se* claim based on a violation of ORS 746.230; (2) a plaintiff must have a common-law negligence claim for a negligence *per* se claim to be viable; and (3) the emotional injury that Christine alleged was not of a type that ORS 746.230 was enacted to prevent.

The Supreme Court affirmed the Court of Appeals on other grounds, noting "[a]lthough our reasoning differs, we concur in the decision of the Court of Appeals, and we hold that plaintiff has pleaded facts sufficient to give rise to a legally cognizable common-law negligence claim for emotional distress damages."

*The Court began by answering an important issue of first impression, ruling: "*to make out a claim of negligence *per se* and take advantage of a presumption of negligence arising from a statutory violation, a plaintiff must show not only that the statute sets out an applicable standard of care, but also that the plaintiff has an existing negligence claim." Next, it ruled that, to have a viable common-law negligence claim, a plaintiff must establish that they have a "legally protected interest" sufficient to subject a

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defendant to liability for purely emotional damages. The Court examined several factors *it had previously recognized before answering whether Christine had alleged a legally protected interest sufficient to subject her insurer to liability for emotional damages. It ultimately concluded, on balance, that Christine alleged a sufficient legally protected interest.*

It reasoned Christine's negligence *per se* claim for emotional distress damages aligned with ORS 746.230's purpose of prohibiting an insurer from engaging in unfair claims settlement practices. The act provided warning of the specific conduct that is prohibited. In terms of the adequacy of existing remedies and the extent to which a common-law negligence action would aid, supplement, or interfere with existing claims and remedies and other means of enforcement, the Court *reasoned a* common-law negligence claim would aid and supplement ORS 746.230 rather than interfere with it. It emphasized permitting tort actions in this context could potentially improve compliance with the law by deterring insurance companies from unreasonably engaging in prohibited conduct, thus advancing the statute's purpose. It then grappled with the legislature's decision not to create a statutory private right of action, determining that permitting recovery of emotional distress damages in this context is consistent with the same recovery in other common-law actions and would not place an undue burden on insurers. Finally, it held the harm Christine alleged—emotional distress stemming from the unfair denial of life insurance benefits—is of sufficient importance as a matter of public policy to merit protection.

Although *Moody* could have far-reaching implications for recovery of extra-contractual damages, the Court expressly maintained its decision was "narrow," cautioning its opinion "does not make every contracting party liable for negligent conduct that causes purely psychological damage, nor does it make every statutory violation the basis for a common-law negligence claim for emotional distress damages."

Despite the Court's closing remarks, Moody signals a coming sea-change in Oregon bad-faith insurance practice. The Court expressly recognized the principle that insurance contracts are made for a policyholder's economic and financial peace of mind and re-opened the door to bad-faith litigation in Oregon. Policyholders now have an important tool to assist them when seeking to recover their insurance assets, especially when an insurer runs afoul of the unfair claims settlement practices provided in ORS 746.230.

Please contact Cameron Zangenehzadeh or Lou Ferreira at Stoel Rives if you need help with your

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insurance recovery efforts.

As posted at: Noticeofappeallawblog.com by Cameron Zangenehzadeh, Lou Ferreira & Seth Row.

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[1] An independent standard of care may arise out of a “special relationship” between the contracting parties but may also arise out of a statute or administrative rule. Courts have held a “special relationship” exists when an insurer agrees to defend its insured against a third-party suit, for example.