

Insurer Can Point to Claimant's Conduct in Defense of Bad Faith Failure to Settle Claims

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U.S. District Court, M.D. Florida, Tampa Division

In *Losat v. Geico Cas. Co.*, 2011 WL 5834689 (M.D. Fla. Nov. 21, 2011), the District Court granted summary judgment for Geico on a bad faith failure-to-settle claim based on the totality of the circumstances, including the conduct of the claimant.

The insured, Raghunadh Lnu, caused an accident that severely injured the third-party claimant, Shawn Losat. Geico attempted to offer Losat the full policy limits to settle the claim as soon as it learned of his identity and whereabouts, but Geico mistakenly came to believe that Theresa Losat, Losat's mother, was actually his wife. Losat's first attorney refused to settle for the policy limits and did not respond to Geico's offers except to refer Geico to Losat's second attorney. Losat's second attorney similarly refused offers to settle, and then alleged that Geico committed bad faith by not responding to a settlement demand and by issuing a release that mistakenly referred to Losat's mother as his wife – even though Geico subsequently attempted to correct the mistake.

The court held that, in Florida, bad faith failure-to-settle allegations are judged by the "totality of the circumstances" test. While the focus of the bad faith inquiry is on the insurer, when the claimant ignores the insurer's repeated letters and phone calls and refuses to negotiate a settlement, the claimant's conduct is part of the "totality of the circumstances." The court also noted that while Geico may have been negligent in misidentifying Losat's mother as his wife, it did not act in bad faith, particularly given Geico's attempts to correct the mistake. Therefore, the court entered summary judgment for Geico on Losat's bad faith failure-to-settle claim.

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