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MASSACHUSETTS INSURANCE LAW UPDATE

Plaintiff Awarded in Excess of $1 Million For Insurer's Failure to Settle Automobile Liability Claim Within $20,000 Policy Limits
Gore v. Arbella Mut. Ins. Co., 77 Mass. App. Ct. 518 (2010)

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The Massachusetts Court of Appeals recently took review of a decision from the Middlesex Superior Court awarding a plaintiff $1,007,342.58 for an insurer's failure to settle her bodily injury claim. The case of Gore v. Arbella Mut. Ins. Co., 77 Mass. App. Ct. 518 (2010), arose out of a Florida automobile accident in which the plaintiff, Angelina Dattilo, was injured seriously when her car was struck by Anthony Caban. Three passengers in Caban's vehicle were also injured. Caban was insured under a policy that had been issued in accordance with Massachusetts laws, and contained bodily injury protection coverage of $20,000 per person/$40,000 per accident. Following the accident, Dattilo retained counsel, and her attorney demanded that Caban's insurer tender its per person limits of $20,000 in settlement of Dattilo's bodily injury claim. By the time the demand was issued, the insurer had conducted its own investigation, the results of which concluded that Caban was at fault for the accident (and in fact had been drinking alcohol and smoking marijuana prior to the collision), and that Dattilo was free from comparative fault. The insurer was also provided detailed medical bills and an operative report regarding Dattilo's surgery for fractures she sustained in the accident. All information indicated that the value of the claim exceeded the $20,000 policy limits. Dattilo's demand gave the insurer 30 days in which to accept the policy limits in exchange for a full and final release in Caban's favor. The insurer never responded to the settlement demand, and several days after the time period to accept it had lapsed, Dattilo filed suit against Caban for injuries and losses arising out of the subject accident. The insurer later notified Caban of his exposure in excess of the policy limits in a letter stating that the insurer had been "presented with a bodily injury claim" - but failed to mention that a demand had earlier been made, and in fact, stated that "a formal demand has not been received" upon the insurer.

Approximately five months after issuance of the demand letter, and four months into litigation, the insurer sent a letter to Dattilo's attorney stating that the insurer was then attempting to determine

what claims the other three injured persons might have in order to structure a possible global settlement. At some point following that letter, the insurer notified Dattilo's attorney that it was offering the $20,000 policy limits, so long as Dattilo entered into an appropriate settlement agreement releasing Caban and the insurer from all liability. (Around that same time the insurer had settled with one other claimant, and determined that the two other injured parties did not intend to pursue bodily injury claims.) Dattilo refused the offer, and instead settled with the insured in accordance with an agreement whereby Caban stipulated to a judgment in the amount of $450,000 with a covenant not to execute upon the same (thus shielding Caban from any personal liability), and in exchange Caban assigned Dattilo all rights against his insurer for unfair settlement practices. Dattilo later individually, and as assignee of the insured's rights, filed suit against the insurer seeking compensatory and multiple damages pursuant to Chapter 93A. Following a jury-waived trial the judge found that the insurer had engaged in unfair claim settlement practices in violation of Massachusetts law, and awarded Dattilo a total of $1,007,342.58, consisting of a) $670,000 in compensatory and multiple damages; b) $313,728.77 for prejudgment interest; c) $23,194.40 in costs; and d) $419.41 in further interest on the costs from the date of judgment to the date judgment was later corrected. (The corrected judgment awarded the plaintiff the specified damages, with the original judgment simply resulting in a finding against the insurer.)

The $670,000 in compensatory and multiple damages included $430,000 for the amount of the stipulated judgment over and above the $20,000 per person policy limits, an additional $40,000 - twice the $20,000 policy limits (doubled by the court because of the insurer's misconduct), and an additional $200,000, which represented Dattilo's attorneys fees of $100,000, also doubled.

The appeal concerned several issues - whether the insurer engaged in willful and knowing conduct, what damages were subject to doubling, and the interest that was awarded on the stipulated judgment between Dattilo and Caban. (The last issue will not be discussed at length in this article, which instead will focus on the court's analysis of the insurer's actions.)

The Appellate Court chastised the insurer for failing to extend the $20,000 policy limits before suit was filed against the insured, given the evidence then existing. The court further stated that even if the insurer required more time to make a settlement offer, it was obligated to inform Dattilo's attorney of the need for more time, and advise on the status of the claim's investigation. The court rejected the insurer's argument that a global settlement was needed and criticized its decision to try to resolve the other potential claims before offering to settle Dattilo's claim. The court further criticized the insurer for belatedly notifying Caban - only after the lapse of the 30-day period - that he was exposed to an amount in excess of policy limits, rebuking it for misstating (after Dattilo brought his lawsuit) that a formal demand had never been made. Also rejected was the insurer's argument that Dattilo's lawyer had submitted the demand early on in order to manufacture a bad faith insurance claim, with the court accepting Dattilo's position that the demand was made quickly so as to place himself first in line before the other potential claimants.

The court found that the insurer's actions were reckless, and held it liable for all damages awarded by the trial court. It further concluded that the stipulated judgment itself should also have been subject to doubling, and the case was remanded to the Superior Court with instructions to further consider the insurer's actions, and decide whether to double the stipulated judgment as a possible additional award.

This case underscores the obligations incumbent upon an insurer to act quickly and reasonably when presented with a demand for policy limits. When the information provided shows that the claim exceeds policy limits, the insurer must offer the limits of coverage, and in exchange is entitled to a release extinguishing all liability in favor of the insurer, and insured. When further time is needed to investigate the claim and the demand for policy limits, the decision reaffirms the fact that insurers will be required to advise the claimant of the need to investigate and inform the insured of ongoing developments. As Gore illustrates, the responsibility to promptly address the claimant's benefit demand is all the more incumbent when the claim may exceed the limits of coverage. In this decision the insurer was punished for not responding to the claimant within the given time window, and for neglecting to inform its insured of the policy limits demand.

The court in Gore refused to accept the insurer's reasoning that multiple claimants justified the decision not to accept the policy limits offer. Though there was little discussion in the case concerning the claims of the other injured parties, it does not appear they had significant value (and in fact two of the claims were not pursued). If those claims had been quickly presented with values exceeding policy limits the situation would have changed, and the insurer would have been allowed - and in fact required to coordinate a division of the coverage limits.

Had the insurer agreed to indemnify the insured for damages over the policy limits, and rejected the policy limits offer, the insurer should not have been held responsible for extracontractual damages, including those equal to the stipulated judgment. This option remains available in those circumstances where there are questions whether the claim's value exceeds the limits of coverage, and the insurer is being pressured to offer its policy limits to settle the claim.

ABOUT THE AUTHOR

JON A. HALABY is an attorney practicing with The McCormack Firm, LLC located in Boston, Massachusetts. Throughout the northeast, he represents insurers, corporations and governmental entities in a wide variety of matters including automobile liability, premises liability, insurance bad faith, construction disputes and general litigation. From 1995-2006, he practiced in Denver, Colorado with the law firms Seaman, Giometti and Murphy, P.C., Godfrey and Lapuyade, P.C. and Halaby, Cross and Schluter. His experience primarily involved automobile, tort, general liability, fraud and insurance coverage matters. Mr. Halaby has been practicing in Massachusetts since 2006 with The McCormack Firm, LLC and continues his focus on these areas as well as others. Throughout his career Mr. Halaby has tried and arbitrated cases involving negligence, automobile, premises liability, uninsured motorist coverage and insurance bad faith. He has represented insurers in appeals concerning uninsured motorist and PIP coverage, as well as insurance claim handling practices. Outside of his law practice he has served as a panelist for Continuing Legal Education seminars on automobile liability, premises liability, insurance bad faith and wrongful death in Colorado and Massachusetts and is a former officer of the Colorado Defense Lawyers Association. He presently serves on the insurance and bad faith law committee for the Massachusetts Defense Lawyers Association. He has contributed to authoritative works published by the Colorado State Bar Association concerning automobile and insurance law. Mr. Halaby is a graduate of Denison University and the Case Western Reserve University School of Law.