

Alabama Law on Claim Handling Property and Casualty Claims

Bad Faith

Prerequisite

Coverage of the underlying claim is an absolute prerequisite to a claim for bad faith. An insured who cannot prove it is entitled to benefits under an insurance policy cannot recover on a bad faith claim. Insurers have a broad range of freedom to thoroughly evaluate claims and decline payment in non-meritorious cases. Bad faith is limited to those instances where the insurer, without debatable excuse, either fails to process a claim or, on processing, fails to pay a claim for benefits as provided by the policy.

Burden of Proof

The plaintiff asserting a bad faith claim bears a heavy burden. An insurer is not liable for bad faith simply because it exercised poor judgment or was negligent. Rather, bad faith must be supported by evidence showing the insurer had no reasonably arguable ground for disputing the insured's claim or it acted with an intent to injure.

Elements of Proof

The elements of a bad faith refusal case are: (1) an insurance contract between the parties and a breach thereof by the defendant; (2) an intentional refusal to pay the insured's claim; (3) the absence of any reasonably legitimate or arguable reason for refusal; (4) the insurer's actual knowledge of the absence of any legitimate or arguable reason; and (5) if the intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim.

First-Party Bad Faith

Alabama does not recognize a right of an underlying third party to assert a claim for bad faith in the handling of a third-party insurance claim. The tort of bad faith refusal to pay is that refusal to pay valid claims made by the insured of his insurance carrier. Once a third party obtains a judgment against the insured, however, the third party stands in the shoes of the insured and may bring an action against the insurer as a judgment creditor under Alabama's direct action statute.

Statute of Limitations

A bad faith failure to pay action is governed by a two-year statute of limitations.

Principles of Contract Interpretations

The insured bears the burden of establishing coverage by demonstrating a claim falls within the policy, while the insurer bears the burden of proving the applicability of any policy exclusion. Exclusions are interpreted as narrowly as possible as to provide maximum coverage for the insured and to be construed most strongly against the insurance company that drafted and issued the policy. Any ambiguities in an insurance contract must be construed liberally in favor of the insured.

However, courts are not at liberty to rewrite policies to provide coverage not intended by the parties. In the absence of statutory provisions to the contrary, insurance companies have the right to limit their liability and write policies with narrow coverage.

Misrepresentations/Omissions

During Underwriting

An insurer has the right to expect applicants for insurance policies to tell the truth. An insurer may avoid a policy due to a misrepresentation by the insured during the application process. A policy will not be voided based on the insured's misrepresentation or incorrect statement, unless those statements were: (1) fraudulent; (2) material to the acceptance of the risk or to the hazard assumed by the insurer; or (3) such that the insurer in good faith would not have issued the policy at all, would not have issued the policy at the premium rate, would not have issued a policy as large as that which was issued or would not have provided coverage for the hazard resulting in the loss if the true facts had been made known to the insurer.

Post-Loss

A carrier may deny a claim when an insured makes an intentional, material misrepresentation in support of the claim. Ala. Code § 27-14-29. The code section is read into policies regardless of whether they contain such a clause.

Arson

Arson by an insured is an absolute defense to an action upon an insurance policy. The elements of a *prima facie* case of arson authorizing an insurer to deny a claim are: (1) the fire was intentionally set; (2) the insured had a motive for committing the alleged arson; and (3) the insured either set the fire or had it set, which may be proved by unexplained surrounding circumstantial evidence implicating the insured. Motive to commit arson can be deduced from an insured's financial difficulties. That the insured either set the fire or directed it to be set can be proved by circumstantial evidence, including no one other than the insured had access to the home, the insured was the last one inside the home and there was no possibility of others having entered the home.

Fraud

The four elements of fraud by the insured are: (1) a misrepresentation of a material fact; (2) made willfully to deceive, recklessly, without knowledge or mistakenly; (3) which was reasonably relied on by the plaintiff under the circumstances; and (4) which caused damage as a proximate consequence.

Overvaluation of the insured's property can raise a presumption of fraud. The overvaluation must be so egregious as to lead to the conclusion that it was due not to a mistake in judgment but to an intention to defraud. Putting undamaged or non-existent items on the proof of loss can void the entire policy.

Failure to Cooperate and Comply with Conditions

A condition requiring reasonable notice of claims is enforceable. To determine the reasonableness of a delay in giving notice to an insurer, the court traditionally considers the length of and reasons for the delay. The question of whether there was prejudice as a result of the delay is immaterial to this determination where the giving of reasonably timely notice is made a condition precedent to any action against the insurer.

Only material and substantial failure to cooperate relieves an insurer of its duty to cover and defend.

Production of reasonable document requests is a strict condition precedent to coverage. All of the post-loss duties contained in the "Your Duties After Loss" section amount to strict conditions precedent to coverage. Failure to fulfill those obligations on the part of the insured allows the insurer to refrain from paying out on a claim. Compliance with each of the post-loss duties is required; insurance companies have no obligation to investigate or pay a claim until the insured has complied with all the terms of the contract with respect to submitting claims for payment.

An insured must comply fully with contractual duties and cannot pick which they want to comply with and shirk the rest. When an insured breaches a condition precedent to coverage, the insurance company does not have to prove prejudice.

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