Despite No Privity of Contract, Indiana Appellate Court Holds Additional Insured with UIM Claim May Sue for Bad Faith

Insurance Coverage and Bad Faith Alert | **March 11, 2020**
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Your friend invites you out to dinner. She offers to pick you up since your house is on the way. As you head toward the restaurant, your friend's car is sideswiped by a driver who blew through a red light. You are seriously injured, and the driver that hit you is underinsured. You request underinsured motorist (UIM) benefits from your friend's insurer, but they refuse to pay. Can you sue the insurer for bad faith? In a recent decision, the Indiana Court of Appeals reversed the lower court's grant of summary judgment to the insurer, rejected contrary authority and answered that question with an emphatic "Yes." In doing so, Indiana joined the relatively few states that have squarely held that an insurer owes a duty of good faith and fair dealing to an insured, regardless of whether the insured is named or unnamed, or whether it is a policyholder.

SCHMIDT V. ALLSTATE PROPERTY & CASUALTY INSURANCE COMPANY

Schmidt v. Allstate Property & Casualty Insurance Company, 2020 Ind. App. LEXIS 44 (Ct. App. Ind. Feb. 12, 2020), arose from injuries sustained by Schmidt when her friend collided with another driver, who was underinsured. Schmidt qualified as an insured under her friend's policy, issued by Allstate, which provided that an "Insured Person" is any person while in, on, getting into or out of, or getting on or off of an insured auto with your permission." The Allstate policy provided UIM coverage totaling $100,000. Schmidt demanded the Allstate policy's UIM limits. Allstate refused to pay. Schmidt filed suit against her friend and the other driver. She later amended the complaint to include a claim against Allstate, alleging that Allstate breached its duty of good faith and fair dealing by failing to inform her of the UIM coverage, failing to promptly assign an adjuster and respond to her claim, failing to make a reasonable settlement offer, and falsely asserting that she had to sue Allstate and dismiss her friend from the lawsuit before the claim would be considered.

THE TRIAL COURT'S RULING

After Allstate settled Schmidt's claim for UIM benefits, Allstate filed a motion for summary judgment on Schmidt's bad faith claim, asserting that it did not owe Schmidt a duty of good faith because she was not the named insured under the policy, or the policyholder. The trial court granted summary judgment on behalf of Allstate, finding that an insured who is not a policyholder does not have the required "special relationship" with the insurer, and thus, is not owed a duty of good faith and fair dealing.

THE COURT OF APPEALS WEIGHS THE WEBB FACTORS

The Court of Appeals of Indiana disagreed. In determining whether to impose a duty of good faith and fair dealing upon Allstate, the *Schmidt* Court relied on the three-prong balancing test enumerated in *Webb v. Jarvis*, 575 N.E.2d 992, 995 (Ind. 1991) (the Webb Factors), balancing the "special relationship" between the parties, the reasonable foreseeability of

harm to the person injured, and public policy concerns to determine whether a breach of the duty of good faith constitutes a tort.

"SPECIAL RELATIONSHIP" BETWEEN THE PARTIES

The *Schmidt* court determined that the "special relationship" of the parties factor favored a finding that Allstate owed a duty of good faith and fair dealing to Schmidt, an additional insured. The court agreed with Schmidt's contention that both policyholder and additional insured have a relationship with the insurer which is, at times, fiduciary (*e.g.* providing statements to the insurer concerning the accident) and at other times, adversarial (*e.g.* claims for first-party benefits). The court found that as a result, although Schmidt did not sign the insurance contract and did not pay the policy premiums, there was little difference between her relationship with Allstate as an additional insured and the "special relationship" between Allstate and the policyholder.

REASONABLE FORESEEABILITY OF HARM TO THE INJURED PERSON & PUBLIC POLICY CONCERNS

The *Schmidt* court determined that the reasonable foreseeability of harm to the injured person factor favored a finding that an additional insured could sue for bad faith, as she had a legal right to UIM coverage and lacked any means of enforcing that right. The *Schmidt* court also determined that the public policy factor weighed in favor of allowing an additional insured to sue for bad faith, as Indiana's unfair claims handling and underinsured motorist statutes do not differentiate between policyholders and additional insureds, signaling a public policy that coverage should be provided to all innocent insureds who have been injured by uninsured or underinsured motorists.

Finding that all of the Webb factors weighed decisively in favor of allowing additional insureds to sue for bad faith, the *Schmidt* court reversed the trial court's decision and remanded the case for further consideration of Schmidt's bad faith claim.

The Indiana Court of Appeals' decision in *Schmidt* follows the majority of states that have considered this issue. Nonetheless, a minority of states have rejected the concept that a non-policyholder insured can sue for bad faith for the reasons enumerated in the trial court's opinion, and seventeen states have no settled law. Consequently, as is always the case when dealing with issues of bad faith, make sure you know the law of the relevant jurisdiction.

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