
BAD FAITH CLAIMS IN ALABAMA

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A. Breach of Contract and Bad Faith

The elements of a breach of contract claim are: “(1) the existence of a valid contract binding the parties in the action, (2) his own performance under the contract, (3) the defendant’s nonperformance, and (4) damages.” *Employees’ Benefit Ass’n v. Grissett*, 732 So. 2d 968, 975 (Ala. 1998) (quoting *Southern Medical Health Systems, Inc. v. Vaughn*, 669 So. 2d 98, 99 (Ala. 1995)).

The elements of a bad-faith claim are:

- (a) an insurance contract between the parties and a breach thereof by the defendant;
- (b) an intentional refusal to pay the insured’s claim;
- (c) the absence of any reasonably legitimate or arguable reason for that refusal (the absence of a debatable reason);
- (d) the insurer’s actual knowledge of the absence of any legitimate or arguable reason;
- (e) 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.

State Farm Fire & Cas. Co. v. Slade, 747 So. 2d 293, 303 (quoting *Nat’l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982)). Elements “(a) through (d) represent the ‘normal’ case. Requirement (e) represents the ‘abnormal’ case.” *Grissett*, 732 So. 2d at 976 (Ala. 1998). Therefore, a plaintiff has “two methods by which to establish a bad-faith refusal to pay an insurance claim....” *Id.* at 977.

In a “normal” case, the evidence should “show that the plaintiff is entitled to a directed verdict on the contract claim....” *Nt’l Ins. Ass’n v. Sockwell*, 829 So. 2d 111, 129-130 (Ala. 2002) (quoting *Nt’l Savings Life Ins. Co. v Dutton*, 419 So. 2d 1357, 1362 (Ala. 1982)). Of course, this should not be read as requiring that the tort claim

be barred unless the trial court has “literally granted plaintiff’s motion for a directed verdict on the contract. Indeed, the words ‘entitled to a directed verdict’ so indicate.”¹ *Sockwell*, 829 So. 2d at 111 (quoting *Safeco Ins. Co. of Am. v. Slims*, 435 So. 2d 1219, 1224 (Ala. 1983) (emphasis in original)). Instead, this test is only “intended as an objective standard by which to measure plaintiff’s compliance with his burden of proving that defendant’s denial of payment was without any reasonable basis either in fact or law....” *Id.*

Additionally, in a “normal case” an insurer cannot simply use “ambiguity in the contract as a basis for claiming a debatable reason not to pay a claim. Otherwise, an insurer would have the incentive to write ambiguous policies in order to create an absolute defense to bad faith.” *Id.* Also, a “defendant’s knowledge or reckless disregard of the fact that it had no legitimate or reasonable basis for denying the claim may be inferred and imputed to an insurer when it has shown a reckless indifference to facts or proof submitted by the insured.” *Id.*

The directed verdict showing is not required in an “abnormal case”. “The requirement that ...the plaintiff be entitled to a directed verdict on the breach-of-contract claim -is limited to the ‘normal’ case, and does not apply when the contract of insurance has an ambiguity.” *Id.* To meet her burden in the abnormal case, the plaintiff need only show one of the following: “(1) intentionally or recklessly failed to investigate the plaintiff’s claim; (2) intentionally or recklessly failed to properly subject the plaintiff’s claim to a cognitive evaluation or review; (3) created its own debatable reason for denying the plaintiff’s claim; or (4) relied on an ambiguous

¹ In fact, it is not a requirement that a plaintiff move for a directed verdict on the contract action. See e.g. *Continental Assur. Co. v. Kountz*, 461 So. 2d 802, 807 (Ala. 1984).

portion of the policy as a lawful basis to deny the plaintiff's claim." *Nt'l Ins. Ass'n v. Sockwell*, 829 So. 2d 111, 129-130 (Ala. 2002).

B. Mental Anguish Damages

There is no fixed standard for determining the amount of compensatory damages a jury may award for mental anguish. The amount of the damages award is left to the jury's sound discretion, subject to review by the Court for a clear abuse of discretion. See e.g. *Delchamps, Inc. v. Bryant*, 738 So. 2d 824 (Ala. 1999). "The plaintiff is only required to present some evidence of mental anguish, and once the plaintiff has done so, the question of damages for mental anguish is for the jury. The amount of the jury's award is left to the jury's sound discretion, and the jury's award will not be set aside absent a clear abuse of discretion. Also, a jury's verdict is presumed correct, and that presumption is strengthened by the trial court's denial of a motion for new trial." *Liberty Nat. Life Ins. Co. v. Daugherty*, 840 So. 2d 152, 162-163 (Ala. 2002).

In *Acceptance Insurance Company v. Brown*, 832 So. 2d 1 (Ala. 2001), the Court held that plaintiff was entitled to \$21,000.00 for mental anguish damages in a bad faith insurance case. The only evidence of mental anguish was the plaintiff's testimony that the insurance company's failure to defend her "worries me yet."

The Court in *Brown* cited *Foster v. Life Insurance Company of Georgia*, 656 So. 2d 333 (Ala. 1994). In *Foster*, the Court held that plaintiff was entitled to \$50,000.00 for mental anguish in an insurance fraud case. The only evidence of mental anguish was plaintiff's testimony that discovery of the fraud affected her "a lot" and that she sued two months after the mental anguish began.

In *National Insurance Association v. Sockwell*, 829 So. 2d 111 (Ala. 2002), the Court upheld a compensatory award of \$201,000.00 in compensatory damages for mental anguish and physical pain and suffering in a bad faith case based on the denial of underinsured motorist benefits. The evidence supporting the award was plaintiff's testimony that she was "confused," "really hurt," "angry" "stressed," "mad," and that she suffered physically by inability to sleep, tiredness and that her physical pain (unrelated to the bad faith claim) worsened.

Mental anguish includes anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience. *Daughtery*, 840 So. 2d at 163.

C. Basic Discovery Requests

1. Interrogatories

1. With regard to any and all policies of insurance and/or binding receipts of insurance coverage you have issued to (insured), please state the following as to each:

- a. policy and/or receipt number;
- b. type of coverage;
- c. named insured(s);
- d. original issue dates;
- e. names of the beneficiaries;
- f. original premium amount;
- g. the amount and date of each premium payment paid on the policy and receipt; and
- h. reason for termination of each policy and/or receipt, if applicable.

Attach to your answers to these interrogatories (a) copies of each document which evidences or relates to the items listed (a-h); (b) copies of each correspondence, document or any other writing ever received by you from or relating to any policy and/or binding receipt issued to (insured) or received by you from anyone acting on (insured's) behalf or the Plaintiff's behalf.

ANSWER:

2. Regarding any conversations, communications and/or discussions (whether written or oral) that you or any of your agents, servants and/or employees have had with the Plaintiff, which relate in any way to any insurance policies and/or binding receipts issued to (insured) by you; please state the following:

- a. the date and location of each conversation, communication and/or discussion;
- b. names, titles, addresses and telephone numbers of each party to said conversation, communication and/or discussion;
- c. names, titles, addresses and telephone numbers of any and all persons present during such conversation, communication and/or discussion; and
- d. specifically and in detail what was said by each party in each conversation, communication and/or discussion.

Attach to your answers to these interrogatories copies of each document which relates in any way to each conversation, communication and/or discussion.

ANSWER:

3. Please state the name of any person who participated in the decision to pay or not pay the claim by Plaintiff for benefits under the policy issued to (insured).

ANSWER:

4. At any time prior to the filing of Plaintiff's Complaint, did you investigate and/or evaluate Plaintiff's claims for coverage of her claim. If so, please state specifically and in detail each and every action or measure taken by you in the investigation and each and every conclusion reached as a result of said investigation and/or evaluation and the date when each conclusion was reached.

ANSWER:

2. Request for Documents

1. Produce in its entirety each claims file, which relates to any claims or requests for coverage made by the Plaintiff relating to (insured).

RESPONSE:

2. Produce any and all procedures, policies, manuals, or other guidelines employed by agents or employees of this Defendant regarding the claims handling methods employed by this Defendant in this case.

RESPONSE:

3. Produce any and all documentation in the possession of this Defendant or any of its agents, servants and/or employees, which relates to the Plaintiff and/or (insured). This request includes, but is not limited to, interoffice memoranda, electronically maintained data, notes, or any other written documentation or records pertaining to Plaintiff and/or (insured).

RESPONSE:

4. Produce a certified copy of the insurance policy made the basis of this suit.

RESPONSE:

5. Produce a copy of the insurance application completed by (insured).

RESPONSE:

6. Produce copies of any recorded conversations in this Defendant's possession taken of the Plaintiff or anyone acting on behalf of Plaintiff prior to the filing of the Plaintiff's Complaint.

RESPONSE:

7. Produce copies of any and all documents and/or information received by you regarding (insured)'s application for insurance and/or regarding Policy No. _____.

RESPONSE:

8. Produce a complete copy of your entire claims file(s), which pertains in any way to Plaintiff's claim for coverage relating to (insured), including but not limited to, the following:

- a. copies of any and all documents or writings which evidence or relate in anyway to the investigation of the facts of Plaintiff's claim;
- b. copies of any and all documents or writings which evidence or relate in anyway to the evaluation of Plaintiff's claim for coverage, including any and all documents or writings which evidence or relate to any evaluations and reviews of Plaintiff's claim;
- c. copies of any and all documents or writings which evidence or relate in anyway to any dispute on the issue of liability with regard to Plaintiff's claim for coverage;
- d. copies of any and all documents or writings which evidence or relate in anyway to any legal or factual defenses to Plaintiff's claim for coverage;
- e. copies of any and all documents or writings which evidence or relate in anyway to any correspondence exchanged between Defendant and Plaintiff;
- f. copies of any and all documents or writings which evidence or relate in anyway to any correspondence exchanged between Defendant and (insured);
- g. copies of any and all documents or writings which evidence or relate in anyway to any correspondence exchanged between Defendant and any witnesses, including any notes or memoranda pertaining to any interviews of witnesses that were prepared before Plaintiff filed the above-styled lawsuit;
- h. copies of any and all documents or writings which evidence or relate in anyway to any notes, letters, reports, internal memoranda, progress sheets or any other type writings prepared by any adjusters, officers, committees, agents, servants, and/or employees of this Defendant that were prepared or entered before Plaintiff this lawsuit;

RESPONSE:

9. As to any documents or tangible thing which you have withheld from production on the ground that (i.) it was prepared in anticipation of litigation or for trial, (ii.) it is work product, (iii.) it is privileged, please identify each document or tangible thing and answer the following concerning it:

- a. description of what the document is;
- b. name, address, and employer of the author of the document, or the person taking the statement or the like;
- c. the subject of the document;
- d. persons indicated thereon as having received copies;
- e. the purpose for which the document was created and transmitted;
- f. degree of confidentiality with which it was treated both at the time of its creation and transmission, and since that time; and
- g. any other facts relevant to the elements of the particular privilege asserted.

RESPONSE: