

Florida Supreme Court Rejects Common Law First Party Bad Faith Cause of Action

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On May 31, 2012, the Florida Supreme Court announced its long-awaited decision in *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n*, Case No. SC 09-441, 2012 WL 1947863 (Fla. May 31, 2012), and clarified three significant insurance issues: (1) whether a first party insured may maintain a common law action for breach of an implied warranty of good faith and fair dealing against an insurer; (2) whether an insurer's failure to comply with a statutory mandate pertaining to its policy form and language may be a basis for a claim by the insured; and (3) whether policy language requiring payment of policy benefits upon entry of final judgment precludes an insurer from posting an appeal bond to avoid execution pending appeal of the judgment. The Court answered each question in the negative.

Chalfonte sued QBE, its property insurer, for hurricane damage and asserted a claim for violation of the purported common law implied contractual warranty of good faith and fair dealing, a cause of action intended to protect "the reasonable expectations" of the contracting parties.

The Court reviewed the history of Florida bad faith actions noting that Florida did not recognize a common law action for first party bad faith. A first party insured attempting to assert a bad faith claim is limited to pursuing the statutory remedies specified in section 624.155, Florida Statutes. The Court rejected Chalfonte's argument that a common law claim for breach of the implied contractual warranty of good faith and fair dealing is not the same as a statutory first party bad faith claim and concluded that such claims are "actually statutory bad-faith claims that must be brought under Section 624.155."

Pursuant to this decision, first party insureds may only assert extra-contractual bad faith claims against their insurers by alleging a violation of section 624.155. In order to pursue a first party bad faith claim, an insured must first establish that the insurer is liable under the insurance policy and that the insured has suffered covered damages. The insureds must also file and serve a statutory

civil remedy notice and provide the insurer with a 60-day safe harbor period to cure the alleged contractual violation as a condition precedent to seeking extra-contractual damages.

In addressing the second issue, the Court held that an insurer's failure to comply with section 627.701(4), which requires that a property damage policy set forth a hurricane deductible in specific language and font size, did not give rise to a private cause of action by the insured, nor did it void the policy deductible. The legislation did not specify a penalty or a private remedy for violation of the statute and, thus, the Court declined to supply one.

In *Chalfonte*, the insured argued that, because the loss payment provision in the policy required payment of the insured's damage within 30 days of entry of judgment, the insurer was required to make payment within 30 days of the trial court's entry of judgment and could not delay payment by posting a supersedeas bond to avoid execution during appeal. The Court rejected this argument and held that this contractual provision did not waive the insurer's right to post a supersedeas bond and stay execution on the final judgment pending resolution of an appeal.

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