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# Florida Appellate Court Finds Implications Of Bad Faith In Claims Handling Not Proper In First Party Insurance Coverage Dispute

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In two separate opinions, Florida's Fourth District Court of Appeals reiterated the longstanding principle that issues regarding the quality of an insurer's adjustment of a claim and bad faith should not be interjected into a first party insurance coverage action. In *Citizens Prop. Ins. Corp. v. Mendoza*, 42 Fla. L. Weekly D. 1523 (Fla. 4th DCA 2018), an issue on appeal was whether the trial court properly instructed the jury on a duty to adjust the claim. In that case, the insureds incurred water damage to their home caused by a water heater leak. The insurer investigated the claim and denied coverage based on the policy's constant or repeated seepage or leakage exclusion. At trial, the insureds took issue with the way the adjuster denied the claim, asserting that he violated ethical rules and the policy itself. Over the insurer's objection, the trial court instructed the jury regarding the adjuster's "duty to adjust" the claim.

On appeal, the Fourth District reversed final judgment in favor of the insureds, explaining that the trial court's instruction "transformed the case into a referendum on the quality of the adjuster's performance instead of focusing the jury on the factual issue of whether the loss fell under the policy exclusion." Continuing, the Court explained that, while issues regarding whether the adjuster "properly investigated" or "properly adjusted" the claim may be appropriate in a bad faith case, such considerations have no place in a simple breach of contract claim.

On that same day, the Fourth District issued a similar opinion in the case of *Homeowners Choice Prop. & Cas. Ins. Co. v. Kuwas*, 43 Fla. L. Weekly D 1513 (Fla. 4th DCA 2018). In *Kuwas*, the insured alleged two counts of breach of contract in connection with the insurer's denial of coverage for two claims for property damage as a result of a water loss. At trial, the insured's theory of his case focused on the insurer's handling of his claim and other claims in general. For example, in opening statement and questioning of the insurer's litigation manager, counsel for the insured commented that the insurer was "playing the odds" in hopes that the party seeking to be paid will not sue or it would deter others from making claims. Counsel for the insured suggested that this "playing the odds" was the wrong thing to do and would be a breach of the policy. The jury returned a verdict in favor of the insured and the trial court denied the insurer's motion for a new trial.

On appeal, the insurer argued that "implications of bad faith should not form a basis to determine liability in a first party insurance coverage action." The Fourth District agreed, finding that criticism of the insurer's claim handling practices as a business practice was improper. The Court likewise agreed that the insured improperly used his questioning of the litigation manager as an opportunity to paint the insurer as a carrier that denies claims for any (or no) reason, which inappropriately shifted the focus to the insurer's claim handling and bad faith. The issues of claim handling and bad faith were not before the jury and not proper considerations in a breach of contract action, where the insurer's liability for coverage and damages has yet to be determined. The Court concluded that this, along with other errors at trial, warranted a new trial.