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INSURANCE LAW BLOG

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11th Circuit Affirms Bad Faith Judgement Against Primary Insurer

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In *American Builders Insurance Co. v. Southern-Owners Ins. Co.*, 2023 U.S. Dist. LEXIS 15386, No. 21-13496 (11th Cir. June 20, 2023), the Eleventh Circuit affirmed a bad faith judgment against a primary insurer.

On April 1, 2019, Ernest Guthrie fell from a roof, causing him to became paralyzed from the waist down. At the time of the accident, Guthrie was employed by his own subcontracting company and was performing work for Beck Construction. Beck Construction was insured under a general liability policy issued by American Builders and an excess policy issued by Evanston. Each of those policies provided $1 million in liability limits. Guthrie's company was insured under a policy issued by Southern-Owners, which provided a per occurrence limit of $1 million. Under the Southern-Owners policy, Beck Construction was an additional insured and coverage was provided to Beck Construction on a primary basis.

Guthrie's attorney initially issued a demand to American Builders for its $1 million policy limit and, after learning that there was additional coverage, he issued a $2 million demand to American Builders and Evanston. In the meantime, American Builders tendered Beck Construction's defense and indemnity to Southern-Owners. Two months later, Southern-Owners agreed to defend Beck Construction under a reservation of rights, but only after it had an opportunity to interview Mr. Beck and complete its investigation. American Builders continued to investigate Guthrie's claim and concluded it was worth $20 million to $30 million—far more than the available coverage even if Beck Construction was not largely responsible. After numerous demands and efforts to encourage Southern-Owners to tender its $1 million primary limit to meet the demand, on December 19, 2019, American Builders and Evanston tendered their policy limits to Guthrie, in exchange for a release for Beck Construction, American Builders and Evanston.

American Builders filed suit against Southern-Owners for common law bad faith under Florida's doctrine of equitable subrogation. The case proceeded to trial and the jury returned a verdict in favor of American Builders. On appeal, Southern-Owners challenged the district court's denial of Southern-Owners' motion for judgment as a matter of law and motion for a new trial.

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