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Summary Judgment in Bad Faith Cases: Strategies and Countermeasures, Current Case Law

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Why Is Summary Judgment Important?

- Can shortcut or streamline litigation
- Can Limit/Eliminate Discovery Fishing Expeditions
- Narrows issues
- Facilitates settlement
- Avoids risks of jury sympathy

Reasons To Know Summary Judgment Standards

- Facilitates Settlement
- Critical to evaluating cases
- Puts focus on questions of law
- Emphasizes importance of file documentation

Types of Bad Faith

- Improper failure to protect insured from a judgment in excess of policy limits by failing to settle within limits
- More states adopting bad faith cause of action for failure to defend
- Increased focus on claims handling

Types of bad faith

- **Usually third-party (liability) but some states have first-party bad faith**
- **Can be a tort or statutory**
- **Improper refusal to pay or delay in providing benefits due under the policy**

Types of bad faith

- **Distinction between bad faith and vexatious refusal to pay statutes**

- **Governed by different standards, with different implications for summary judgment practice**

Improper Failure To Settle

- Duty to make reasonable settlement decisions only applies to covered claims
  - Division of authority where insurer reasonably questions coverage but coverage is later found
  - Prevailing on coverage defense may not be complete bar to recovery
- Must be opportunity to settle within limits at a time when this should have been done
  - Relevant time of inquiry is when demand/opportunity to settle was made
  - Division of authority on whether claimant must make a demand and on whether and when insurer must make offer

Improper Failure To Settle

- Jurisdictions disagree on required insurer culpability
  - Most require only that failure to agree to demand or, where required, failure to make offer be **unreasonable**
  - Some require greater culpability

- May be limited ability to obtain summary judgment
  - May be available where coverage lacking or where claimant did not make a necessary demand

  - Reasonableness and culpability usually questions of fact, not susceptible to summary judgment

Improper Failure to Provide Benefits Due: Basis of Tort or Penal Liability

- Insured suffering loss dependent on insurer
  - Loss unaffordable
  - Borrowing usually unfeasible
  - Litigation expensive
  - Consequential damages not recoverable in contract

Improper Failure to Provide Benefits Due: Basis of Tort or Penal Liability

- Insurer could exploit dependence
  - Insured may give up
  - Insured may take less than is due

Failure to Defend

- Should be a contractual remedy for breach of contract
- Courts are beginning to evaluate in terms of bad faith
- Courts have found breach of duty to defend makes insurer responsible for all resulting damages, without proving bad faith
- Courts have walked this back recently

Claims Handling

- Courts are increasingly looking at claims handling in evaluating bad faith
- Puts timing of claims decisions under microscope
- Can make vulnerable privileged portions of claim file
- Key can be information had and investigation done prior to making decisions on defense or demands to settle within the policy limits

The Standard for Bad Faith/Vexatious Delay

- Absence of a Reasonable Basis for Denying or Delaying Payment
- Culpability (Varies by State, from None to Negligence to Reckless Disregard of Lack of Basis to Gross Disregard of the Insured's Interests)

Variation in Standards

- Substantive standard reasonably uniform on key reasonable basis issue
- A few states (e.g. Florida) have a different substantive standard for bad faith
- Not all states appreciate or accept the summary judgment logic of the usual substantive standard

What Is a Reasonable Basis for Denial/Delay?

- Multiple similar formulations:
  - One that shows claim is "fairly debatable," *Anderson v. Cont'l Ins. Co.,* 85 Wis. 2d 675, 693 (Sup. Ct. 1978) (""when a claim is 'fairly debatable,' the insurer is entitled to debate it, whether the debate concerns a matter of fact or law.");
  - One that shows an "open question of law or fact," *Shirkey v. Guar. Trust & Life Ins. Co.,* 258 S.W.3d 885, 889 (Mo. Ct. App. 2008);
  - One that shows "bona fide dispute," *Transportation Ins. Co. v. Moriel,* 879 S.W.2d 10, 17 (Tex. 1994);
  - One that creates a "factual issue as to the claim's validity," *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, 34.
- Existence of reasonable basis can often be established as a matter of law

Dispute Is Not Bona Fide

- If insurer knew facts making it clear that claim was payable
- Insurer would have learned such facts had it conducted reasonable investigation

Bad Faith Is Not Negligence

- Threshold for proper denial does not depend on costs to insured
- Balancing has been done in defining standard

Overview of Bad Faith

Burden of Proof

Presented By:

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What Is the Burden of Proof?

- How much evidence is needed to prove the case
  - Quantitative or qualitative
    i. If quantitative, will need a lot
    ii. If qualitative, perhaps not as much
  - Depends on whether bad faith is statutory or common law
    i. If statutory, the language will likely state
    ii. If common law, the standard could change
  - In most cases, bad faith requires clear and convincing evidence

What is the Burden of Proof?

- Does evidence gathered in the litigation prove underlying bad faith
  - Hollock v. Erie Insurance Exchange
    i. Possibly, but important to note that Hollock arose in the context of a UIM claim
    i. Also, court affirmed a 2.8 million dollar punitive damages award

How to Get What You Need

- Recorded statement
- Examination under oath

How to Use What You Get

Summary Judgment

- Burden of Proof

Two Standards, One Burden

- *Summary judgment standard:* no dispute of material fact; and movant is entitled to judgment

- *Bad faith standard:* clear and convincing evidence; or preponderance of evidence

Clear and Convincing Evidence

- Highly and more substantially likely to be true than not true; the fact finder must be convinced the contention is highly probable.
- Colorado v. New Mexico, 467 U.S. 310 (1984)
  - Fraud
  - Defamation
  - Bad faith
    - i. What do all these have in common?

Preponderance of the Evidence

- Imagine scales, and the scales tip even slightly in one direction
  - Is there more evidence than less that it occurred
  - Qualitative *OR* quantitative; not *AND*

Bad Faith Is a Legal Question

- Judgment may be appropriate, even if there are open questions of fact
- Is Bad Faith a statutory question of missed deadlines, failure to abide statutory intervention, denial of benefits after failing to investigate, or a questionable decision?
  - Pa 43 Pa.C.S. 8371
  - Arkansas insurance rider
  - California
  - New Jersey: reasonably debatable
- Are punitive damages ripe for disposition on summary judgment?


QUESTIONS?

THANK YOU!

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SUMMARY JUDGMENT IN BAD FAITH CASES: STRATEGIES AND COUNTERMEASURES, CURRENT CASE LAW

CALLAHAN & BLAINE
California's Premier Litigation Firm℠

B. Overview of Bad Faith Claims

Bad Faith Pleading Requirements

2. Substantive Issues
    a. Bad Faith
        1. Best cause of action in CA
            a. Standard is very low – reasonableness
            b. Tort remedies for breach of contract
            c. Attorneys fees
    b. Breach of Contract
        1. Easy to plead for insurance, but attach the policy

Bad Faith Pleading Requirements

2. Substantive Issues
    c. Declaratory relief
        1. Make sure you include separate COA for each dec relief claim
        2. That way you can move for MSA or MSJ
            a. Duty to defend
            b. Right to Cumis counsel

Bad Faith Pleading Requirements

2. Substantive Issues
   d. Use a sniper rifle, not a shotgun for preparing your complaint
      1. All you need are causes of action for bad faith, breach of contract and declaratory relief
         a. Do not include fraud, intentional infliction, 17200, etc
         b. Will waste your time in demurrer and motion to strike
   e. Plead punitive damages in great detail

Bad Faith Pleading Requirements

3. Miscellaneous Issues
    a. Be careful of factual statements
        1. Judicial admissions
        2. Client may not be accurate in explaining facts to you
    b. Attach exhibits
        1. Picture is worth a 1000 words

Proving Insurer Breach of Duties

- What Does A Policyholder Need To Prove?
  - Common Law
  - Statutory

- What Is The Policyholder's Burden Of Proof?
  - Preponderance Of The Evidence
  - Clear And Convincing Evidence

Calculating Damages

(*See *also* Using Experts in Bad Faith Cases)

Direct and Consequential Damages (For Breach of Implied Duty of Good Faith and Fair Dealing)

Punitive Damages (Constitutional Limitations)

Attorneys' Fees (Lodestar; Factors)

Prejudgment Interest (Compound Versus Simple)

Change of Venue and Removal

- Procedural means to move the case from one court to another.
- **Timing**
  - Must be addressed before a responsive pleading is filed.

Change of Venue and Removal

- **Change in Venue**
  - Did the plaintiff file the lawsuit in a venue with a remote connection to the accident or a venue that would be an inconvenient location for a trial?
- **Removal to Federal Court**
  - Does jurisdiction exist in federal court?
  - Diversity jurisdiction?

43

B. Summary Judgement: Burden of Proof

I. Procedural Framework

a. From FRCP Rule 56

> (a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

b. Applying the Rule—*Matsushita, Celotex* and *Anderson*

Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial

Matsushita Elec. Indus. Co., Ltd. v. Zenith, 475 U.S. 574, 587 [1986]

Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action."

Celotex Corp. v. Catrett, 477 U.S. U.S. 317, 327 [1986]

To survive summary judgment, the adverse party must demonstrate that "the evidence presents sufficient disagreement to require submission to a jury" . . . There must be "evidence on which the jury could reasonably find for the [nonmoving party]."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-52 [1986].

45

Balancing Risk and Rewards in Filing Motions for Summary Judgment

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- Before filing a motion for summary judgment, you need to balance the risks and benefits of it. By "motion for summary judgment," I'll be referring to motions for summary adjudication as well, which are treated more favorably in federal court than in state courts such as California.

- Since most motions for summary judgment or summary adjudication are filed by defendants and not plaintiffs, I'll focus on summary judgment motions from the point of view of defendants, with plaintiff as the non-moving party.

- Many defendants automatically file a motion summary judgment in every case, even if they don't reasonably expect to win it. While of course it is to a defendant's advantage to knock out as many claims or issues as possible, the time and costs incurred in filing a motion for summary judgment are substantial. The client will be displeased if after the fact, it seemed obvious that the motion for summary judgment would have been denied, after you billed 50-60 hours on it.

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- Some cases are more amenable to summary judgment, and your decision to file one or not should take that analysis into account. Certainly if the case or a cause of action turns on a pure question of law – such as whether defendant owed a duty to plaintiff under the facts and circumstances at issue – that should be addressed in a motion for summary judgment to the extent it was not resolved in challenges at the pleading stage.

- Summary judgment is more likely to be granted if the issues turn on documentary evidence. Also, if your motion is based on the non-moving party's apparently lack of evidence to support a claim or element of a claim, such as it's devoid discovery responses, that's a summary judgment motion that's worth making.

- On the contrary, summary judgment motions that try to resolve intent or state of mind, issues of causation, or whether negligence has been committed, are harder to win because issues of disputed facts can be more easily found in those cases.

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- There are many benefits to filing a motion for summary judgment.

- Obviously, if the motion prevails, the case is over as to that defendant without going to trial. While the losing plaintiff can and likely will appeal it, and grants of summary judgment do get reversed, it at least gives you significant leverage in negotiating a settlement.

- Even if plaintiff's whole case is not knocked out, you may be able to obtain summary adjudication of one or more causes of action in the pleading, or some issues that are material to the litigation. That would narrow the claims and issues that you need to address at trial, thereby allowing you to focus on the claims and issues that are still remaining and in theory, reduce the fees and costs incurred in preparing for trial.

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- Even if your summary judgment is entirely unsuccessful, in that you neither obtained a dismissal of the action or of any claims or issues, a motion for summary judgment will force the non-moving party to "show its cards" and present its best evidence to support its claims. That would allow you to focus more on that particular evidence in preparing for trial.
- My firm encountered this strategy by defendants in a case where we represented a plaintiff suing for catastrophic injuries, and where we recently obtained for him a $16 million award. This was in California state court, but the same concepts and strategies would apply to a motion for summary in federal court.
- The main issue in the case was whether a road construction project that caused our client's accident constituted a "dangerous condition." Most likely defendants did not realistically expect to win their motions for summary judgment. They provided the declarations of their experts opining why the road condition was not dangerous, and we provided expert opinions to the contrary, which raised a disputed issue of fact. However, as a result, defendants were able to learn well before expert discovery who our liability experts were going to be and what they were going to say, so they could better prepare for them when expert discovery began.

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- Sometimes you get lucky by encountering opposing counsel who's less competent, and who would likely be unsuccessful in opposing a motion for summary judgment that otherwise should have been denied. Opposing a motion for summary takes skill and effort, and it's not rare for plaintiffs to lose motions for summary judgment where they could have easily raised disputed issues of fact.

- Previously discussed were motions for summary judgment that in all likelihood, would be denied, and the client's reaction when such obviously meritless motions are filed. At the same time, many defendant clients, especially corporate clients, expect a motion for summary judgment to be filed as a matter of course. In those cases, you will have to justify a decision not to file a motion for summary judgment, such as the low probability of success versus the cost of preparing one.

Balancing Risk and Rewards in Filing Motions for Summary Judgment

- First, it takes significant time and effort, and therefore attorney's fees and costs, to prepare a strong motion for summary judgment. Even assuming that all the necessary documents are present, the other side's key witnesses have been deposed and have made admissions favorable to you, and your own witnesses are available and cooperative, it can take weeks to prepare a motion for summary judgment that complies with all the procedures but that are legally and factually supported.

- Just as a party opposing a motion for summary will have to show its cards, the party making such motion will have to do the same. Therefore, if you lose the motion, the opposing party will be alerted to what you consider as your strongest factual and legal arguments, and what you consider as its weakest points, so the opposing party will have the chance to focus on those issues and correct any deficiency.

- Also, by having your own witnesses file declarations with facts to support summary judgments, they'll be bound to those statements, and any contrary statements in a subsequent deposition or at trial will be damaging.

52

Planning Discovery to Support a Motion for Summary Judgment, including from Third-Parties

Planning discovery to support a motion for summary judgment, including from third-parties

- Most attorneys start out the case by asking for all documents and information potentially relevant to the claims and issues in dispute, and that's fine as an initial step. However, you risk getting mostly useless material, while potentially missing some discovery that's needed for an effective motion for summary judgment.

Planning discovery to support a motion for summary judgment, including from third-parties

- In most cases, attorneys draft a motion for summary judgment based on the discovery they have already obtained, such as documents already produced or deposition testimony that has already been given. If they happen to have the discovery that supports a particular summary judgment argument, that's great; if they don't, they omit that argument or use whatever available evidence comes closest to supporting the argument, which might not be close at all.
- Ideally, what attorneys should do is almost the opposite, sequence wise. Plan the summary motion judgment first (including the elements of all claims and affirmative defenses), and then in conducting discovery, focus on obtaining the documents, interrogatory responses, or deposition testimony supporting the motion.
- For example, elements of a fraud claim include reliance and materiality. If you take plaintiff's deposition without first considering those elements, and without specifically tailoring your questions to address those elements, you may end up with favorable admissions by happenstance, or you may not. Also, planning ahead such questions will allow you to ask them in different ways at different periods during the deposition, so plaintiff may give an unhelpful answer the first time but not the second time.

Planning discovery to support a motion for summary judgment, including from third-parties

- Basic and relatively easy discovery tools that can lead to effective summary judgment motions are contention interrogatories and requests for admissions.

- Many attorneys faced with answering interrogatories or RFA's will give essentially useless answers that restate the allegations of the pleading.

- However, if those answers are conclusions instead of facts, or if they fail to identify documents supporting one claim or another, such responses to interrogatories and RFA's can be used as part of a motion for summary judgment based on the non-moving party's lack of sufficient evidence to raise any disputed issues of material fact.

Planning discovery to support a motion for summary judgment, including from third-parties

- Discovery from third-parties play a very important role in litigation generally, but also for purposes of summary judgment.
- Even if your adversary is acting in good faith and not withholding documents that it is supposed to produce, there's a good possibility that relevant documents will be missing. If there are third-parties who likely would have the same documents, because, for example, they were on the other side of emails or other correspondence with plaintiff, document and depositions subpoenas should be served on them to obtain those documents. Truly disinterested would have no reason to withhold documents to help your adversary, but even witnesses friendly to your adversary may produce documents that are helpful, because they often don't realize the significance of what materials you're asking for.
- The same concept of planning a summary judgment first and then taking discovery, rather than the other way around, applies equally to third-parties. For examples, third-parties will likely not be coached, or be less coached, by plaintiff's attorney, so they are more apt to make statements helpful to your motion, including recounting any party admissions made by plaintiff (which are admissible as non-hearsay).

Planning discovery to support a motion for summary judgment, including from third-parties

- Much of the evidence supporting a motion for summary judgment will come from declarations by the defendant if he or she is an individual, or witnesses affiliated with defendant. A full and complete declaration that contains and refers to exhibits takes more time and effort to prepare than it would appear given the need to closely work with those witnesses.

- Also, to the extent that you anticipate needing any expert declarations for your summary judgment motion, they should be retained well ahead of time, so that there'd be sufficient opportunity to work out what declarations they'll provide in support of or to oppose a summary judgment motion.

- Therefore, as part of the discovery process, including preparing your witnesses for deposition, take into account the same summary judgment outline that I previously discussed. This would also encourage the witness to focus on the questions and answers that are most relevant to your case.

CURRENT CASE LAW: Bad Faith Is More Like "Malicious Defense"

- A plaintiff is liable for malicious prosecution if suit is brought without probable cause, a reasonable basis to believe the suit might win

- An insurer is liable for bad faith if it forces the insured to sue when the insurer has no reasonable basis to think it might win the suit

CURRENT CASE LAW: Substantive Variations: Missouri

- Even where litigable issue, a penalty may be imposed " 'if the insurance company's attitude is shown to be vexatious and recalcitrant'" *Shirkey v. Guar. Trust & Life Ins. Co.*, 258 S.W.3d 885, 889 (Mo. Ct. App. 2008).
- May be shown by unfair conduct apart from disputed issue, e.g.,
  - "(1) the insurer's delay or refusal to pay the mortgagee; (2) the insurer's denial of liability without stating any ground for denial; (3) the inadequacy of the insurer's investigation of the claim; (4) the explanation given by the insurer for denying the claim; and (5) the insurer's disparate treatment of coinsureds." *Hensley v. Shelter Mut. Ins. Co.*, 210 S.W.3d 455, 465–66 (Mo. Ct. App. 2007) (footnote and citations omitted);

CURRENT CASE LAW: Substantive Variations: Arizona

- *Zilisch v. State Farm Mut. Auto. Ins. Co.,* 196 Ariz. 234 (Sup. Ct. 2000)
- Fair debatability implicates insurer's reasonable belief, rather than a purely objective determination based on the facts of the claim.
- Insured has a right to " 'honest and fair treatment,' " and "if an insurer acts unreasonably in the manner in which it processes a claim, it will be held liable for bad faith 'without regard to its ultimate merits.'" *Id.* ¶ 20.

Substantive Variations: Florida

- Florida applies a unique "totality of the circumstances" standard, requiring consideration of
  - "(2) efforts or measures taken by the insurer to resolve the coverage dispute promptly or in such a way as to limit any potential prejudice to the insureds; (3) the substance of the coverage dispute or the weight of legal authority on the coverage issue; [and] (4) the insurer's diligence and thoroughness in investigating the facts specifically pertinent to coverage …." *State Farm Mut. Auto. Ins. Co., v. Laforet*, 658 So. 2d 55, 63 (1995) (factors relevant only to liability insurance claims omitted).
- Summary judgment rarely proper.

CURRENT CASE LAW: Substantive Variations: Montana

- "An insurer may not be held liable … if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue." MONT. CODE § 33-18-242(5).
- *But* whether an insurer's view of the facts will be considered reasonable is generally one for the jury, not the court. *DeBruycker v. Crop Hail Mgmt.*, 266 Mont. 294, 298 (1994); *Dean v. Austin Mut. Ins. Co.*, 263 Mont. 386, 389 (1994).

CURRENT CASE LAW: Substantive Variations: Colorado

- "[A]lthough fair debatability is part of the analysis of a bad faith claim, it is not necessarily sufficient, standing alone, to defeat such a claim." *Sanderson v. Am. Family Ins. Co.*, 251 P.3d 1213, 1217 (Colo. Ct. App. 2010).
- "The appropriate inquiry is whether there is sufficient evidence from which reasonable jurors could conclude that in the investigation, evaluation, and processing of the claim, the insurer acted unreasonably and either knew or was conscious of the fact that its conduct was unreasonable." *Id.* at 1219.
- Rule stated may reflect failure to realize that determination of fair debatability includes facts that insurer should have learned.
- But some cases following *Sanderson* cannot be so explained.

CURRENT CASE LAW

- Courts are split on whether garnishment actions, which may include bad faith claims, are direct actions for purposes of removal to federal court
  - 8th Circuit recently ruled not a direct action in *Russell v. Liberty Ins. Underwriters, Inc.*, 950 F.3d 997 (8th Cir. 2020)

CURRENT CASE LAW

- **Failure to obtain a Release for insured does not necessarily mean an insurer has committed bad faith**
  - *High County Paving, Inc. v. United Fire and Casualty Co.*, 454 P.3d 1210 (Mt banc 2019)
  - Supreme Court of Montana ruled after federal district court certified question
  - Court held where liability is clear and also clear damages will be in excess of policy limits, insurer does not have to secure release for its insured before tendering policy limits
  - Significant that insurer offered to continue to defend even after paying its limits

CURRENT CASE LAW

- **Court applying Florida law holds a consent judgment does not satisfy element of bad faith claim requiring excess judgment**
  - *David Madison Cawthorn v. Auto Owners Insurance Company*, 2019 WL 5491557 (not cited in Federal Reporter)
  - Involves causation element of a bad faith claim
  - Specifically, there are 3 exceptions to general rule that excess judgment is required
  - Court concluded consent judgment does not fall within any of the 3 exceptions

CURRENT CASE LAW

- **Reliance on report by TPA can support bad faith liability in a first-party claim**
  - *Warren Dudenhefer v. Louisiana Citizens Property Insurance Corporation, et al.*, 280 So.3d 771 (La.App. 2019)
  - Found report of TPA included incorrect assessment and insurer's reliance on it constituted bad faith
  - Were also issues associated with delay of insurer
  - Incompetence of TPA will be imputed to insurer

CURRENT CASE LAW

- **Insurer's duties to insured begin prior to formal submission of claim**
  - *Adams v. Hawaii Medical Services Association*, 450 P.3d 780 (Hi banc 2019)
  - Summary judgment initially granted for the insurer
  - Intermediate appellate court affirmed but Supreme Court reversed and remanded
  - Found trial court failed to consider actions of insured prior to formal submission of claim by insured
  - Held duty to insured begins at first contact
  - Also held complying with own policy provisions alone does not preclude bad faith liability

CURRENT CASE LAW

- "Mere possibility of liability" is not enough to trigger duty to settle under Illinois law
  - *Surgery Center at 900 North Michigan Avenue, LLC v. American Physicians Assurance Corporation, Inc., et al.*, 922 F.3d 778 (7th Cir, 2019)
  - Summary Judgment for insurer was affirmed but reversed
  - After trial case settled with insurer paying its policy limits
  - Trial court granted judgment as a matter of law on bad faith claim, finding the case was highly defensible
  - Lack of a reasonable basis to believe an excess judgment will result does not trigger duty element of bad faith refusal to settle claim

CURRENT CASE LAW

- **Minnesota sets forth elements of a first-party bad faith claim**
  - *Peterson v. Western National Mutual Insurance Company Company*, 2019 WL 2332400 (Mn.App. 2019)
  - Involved a first-party claim for underinsured motorist benefits
  - Court found, as a matter of first impression, that insurer must conduct a reasonable investigation in order to have a reasonable basis for denying a UIM claim
  - Court found first-party bad faith statute ambiguous
  - 2 factor test requires insurer to first conduct a reasonable investigation and then can deny settlement demand without acting in bad faith if claim is "fairly debatable"

CURRENT CASE LAW

- **Missouri's statute allowing an insurer 30 days to intervene after notice of a rollover agreement applies even where there is no case pending**
  - *Aguilar v. Geico Casualty Company*, 588 S.W.3d 195 (Mo.App. 2019)
  - After rejecting defense under reservation of rights, insured and plaintiff entered into Section 537.065 agreement and notified insurer
  - After insurer attempted to intervene, plaintiff dismissed lawsuit without prejudice
  - Plaintiff and insured then went to arbitration and did not notify insurer
  - When sought to have arbitration award converted to judgment, insurer again attempted to intervene
  - Court found intervention was untimely because it had been longer than 30 days since the rollover agreement had been entered
  - Court found also would have had no right to intervene in arbitration because outside of 30 day window to intervene