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BAD FAITH CLAIMS DEPENDED ON EVIDENCE. ANYTHING LESS DIDN'T COUNT.

by

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There are two types of insurer bad faith claims under Ohio law, the federal judge ruled in a case involving coverage and bad faith claims under an insurance policy for losses from fire. The case is *Jordan v. Liberty Mut. Fire Ins. Co.*, NO. 4:19CV0093, 2019 WL 3082304 (N.D. Ohio July 15, 2019), and the judge's ruling applies at least in a first-party case subject to Ohio law like this case:

There are two types of bad faith claims that can be asserted: (1) when the insurer had no lawful basis for its refusal of the claim or (2) when the insurer failed to determine whether there was a lawful basis for the refusal. [Citations omitted.] This principle would appear to remain intact even after *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994), overruled the portions of these decisions inserting an intent element. [Citations omitted.] The first type involves the merits of the contract claim. Therefore, in this type of bad faith claim, the success of the tort claim hinges on the success of the contract claim. [Citations omitted.]

Jordan v. Liberty Mut. Fire Ins. Co., NO. 4:19CV0093, 2019 WL 3082304, at *4 (N.D. Ohio July 15, 2019).

The second type of bad faith claim recognized under Ohio law, according to the federal court in this case, is predicated on an insurance carrier's failure to determine a legitimate basis to deny the claim before it denies the claim. "A bad faith claim based on failure to determine whether there was a lawful basis to deny coverage is not tied to the underlying merits of the decision to grant or deny coverage." *Jordan v. Liberty Mut. Fire Ins. Co.*, NO. 4:19CV0093, 2019 WL 3082304, at *4 (N.D. Ohio July 15, 2019).

The federal court ruled that the plaintiff's allegations in this case triggered both types of bad faith claims. The court denied the carrier's motion for judgment on the pleadings, which was based on an argument that the contractual limitations period was exceeded as a matter of law when applied to the allegations in the complaint in this particular case.

Evidence is necessary in this case, not judgment on the pleadings, the federal judge ruled.

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