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N.Y. court relaxes standard of growth for insurer bad faith

By SALLY ROBERTS

NEW YORK - Insurers do not act in bad faith when, while still investigating a claim, they fail to respond to policyholder's demand to settle within a certain time, New York's highest court has ruled.

The New York Court of Appeals also somewhat loosened what many considered the nation's most stringent standard for insurer bad faith. The Court of Appeals rejected a lower court's ruling that policyholders could only recover if they proved insurers had a "sinister intent" and said policyholders need only show that insurers acted in "gross disregard" of their interests.

Lawyers specializing in bad faith litigation say that the Nov. 18 ruling, *Pavia vs. State Farm Mutual Automobile Insurance Co.*, represents a victory for insurers. They are quick to point out that it remains very difficult to prove bad faith under New York law.

But, the new standard has "opened the door to more bad faith claims," contends one insurer attorney, Bud London of London/Fischer in New York.

It will be very interesting to see if the "insurers gets out of" the next bad faith suit, he added.

The court sent a 'message that bad faith is still very difficult to prove,' says Evan H. Krinick

Other insurer attorneys don't foresee a flood of new litigation.

Proving gross disregard "still requires a heightened burden," said Matt Gehringer of Pope & John Ltd. in Chicago. In some states, policyholders need only show that insurers were negligent.

The Court of Appeals sent a "strong message that bad faith is still very difficult to prove," agreed Evan H. Krinick of Rivkin, Radler & Kremer in New York, who represented the State Farm Mutual Automobile Insurance Co. in the case.

Other attorneys say that the ruling giving insurers the right to a reasonable investigation before settling a claim will decrease the number of bad faith claims brought against insurers.

There are plenty of cases where an "arbitrary deadline was upheld as a trigger point" for bad faith awards, Mr. Gehringer said.

According to the Court of Appeals,

an insurer's failure to respond to a settlement deadline is not a basis for recovery. "Indeed, insurers would be bombarded with settlement offers to prematurely settle their insureds' claims at the earliest possible opportunity in contravention of their contractual right and obligation of thorough investigation," the court said.

The ruling reverses a lower court jury decision that awarded a \$4.6 million and faith judgment to Frank Pavia, who was insured while in a car that was insured by State Farm.

The State Farm policyholder, found liable for a \$3.8 million liability judgment, assigned all causes of action it might have against State Farm to be released of liability for the award exceeding \$100,000 policy limit.

Mr. Pavia sued State Farm alleging it acted in bad faith by "failing to except (the plaintiff's) policy limits settlement offer within a reasonable time, despite the clear liability and obvious damages exceeding the policy limits."

Frank Pavia vs. State Farm Mutual Automobile Insurance Co., New York Court of Appeals, Nov. 18, 1993; no 220.