

The Importance of Applicable State Law in a Bad Faith Action

March 25, 2014 Steven A. Meyerowitz, Esq., Director, FC&S Legal

Oregon and Arizona's policies regarding insurance bad faith are drastically different. Arizona recognizes that conduct constituting insurance bad faith may cause a person to suffer more than mere economic injuries, and thus recognizes it as a tort. Oregon, however, limits bad faith causes of actions to contract, thus making emotional or physical damages unrecoverable. A recent decision by an Arizona appellate court highlights the practical significance of determining, in the first instance, the applicable law governing a bad faith claim.

The Case

When they were Oregon residents, Kenneth and Dorene Callies purchased a homeowner's insurance policy from United Heritage Property and Casualty Insurance that covered the Callies' home in Eugene, Oregon, as well as their personal property: while it was anywhere in the world.

Moving from Oregon to Arizona, the Callies rented a moving truck. One night while they were staying in a lodge in Arizona, the Callies asserted, the truck, containing all of their personal property, was stolen.

The Callies filed a claim and United initiated a fraud investigation. The Callies asserted that, after Mr. Callies learned of the investigation, he began displaying behavioral issues, suffering from emotional and mental agitation and confusion.

The Callies asserted that they received a phone call from an attorney representing United who asked that they agree to be questioned under oath and that Ms. Callies explained that she did not believe that her husband would be able to handle the examination. Mr. Callies later was civilly committed to a mental health facility in Oregon.

The Callies subsequently sued United for insurance bad faith. United moved to dismiss for failure to state a claim. The trial court agreed with the insurer, and the Callies appealed.

The Appellate Court's Decision

The appellate court reversed.

In its decision, the court first explained that, as the forum state, Arizona law governed the choice of law determination and that Arizona courts followed the Restatement (Second) of Conflict of Laws (1971) (Restatement) in determining the controlling law for multistate torts.

It then stated that the “place of the injury,” in the context of § 146, equated to the place where “the last event” necessary for liability occurred. In this case, the appellate court noted, the Callies alleged that Mr. Callies had begun suffering emotional and psychological problems in Arizona immediately following United’s informing the Callies their claim was being investigated. Further, the Callies alleged, Mr. Callies experienced extreme stress during the months they remained in Arizona due to United’s decision to withhold payment on the Callies’ claim during its investigation.

Accordingly, the appellate court held that the place of injury was Arizona, “as it was the state where they were located when they allege having initially suffered damage by virtue of United’s actions.”

Then, the appellate court found that Oregon did not have a more significant relationship to the parties and the issue than Arizona.

Among other things, the appellate court determined that Arizona was not a fortuitous place of injury and that the Callies not only had moved to Arizona but had proceeded with the purchase of a home by the time United determined to further investigate their claim. Moreover, the appellate court said, the Callies had filed their insurance claim with United from Arizona.

The appellate court also pointed out that the Callies were domiciled in Arizona at the time of the alleged bad faith by United.

The appellate court next rejected United’s argument that Arizona law was appropriate because none of the parties could have expected the Callies to gain greater contractual rights by moving to Arizona, noting that “the very language of United’s insurance contract specifically asserted the contracted-for coverage for personal property applied anywhere in the world.” In the appellate court’s view:

United could not have believed that no matter where the Callies moved and regardless of the circumstances giving rise to a claim or subsequent actions following a claim being filed, throughout the world, Oregon law would apply.

Finally, the appellate court said that Arizona had a strong interest in ensuring its residents were made whole for injuries sustained while in Arizona and, toward that end, it allowed recovery for plaintiffs injured by insurance bad faith practices to recover all damages caused by an insurer’s conduct, including economic and emotional damages.

Therefore, the appellate court concluded that Arizona had the more substantial interest to this occurrence, and Arizona law appropriately was applied.

The appellate court then found that, taking the Callies’ allegations as true and “drawing all reasonable inferences” therefrom in favor of the Callies, the Callies had

alleged “sufficient facts to support a tort bad faith claim and withstand United’s Rule 12(b)(6) motion.”

The case is *Callies v. United Heritage Property and Cas. Ins. Co.*, No. 1 CA–CV 13–0189 (Ariz. Ct.App. March 18, 2014). Attorneys involved include: Dawson & Rosenthal PC, By Steven C. Dawson, Anita Rosenthal, Sedona, Co–Counsel for Plaintiffs/Appellants; Adelman German PLC, By Steven J. German, Scottsdale, Co–Counsel for Plaintiffs/Appellants; Thomas Thomas & Markson PC, By Neal B. Thomas, Phoenix, Counsel for Defendant/Appellee.