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California Breathes New Life Into the Genuine Issue Defense in Bad Faith Litigation

By Andrew B. Downs

For the past several years, the genuine issue defense – the doctrine that the existence of a genuine issue regarding coverage or the amount due establishes the reasonableness of the insurer's position – has been in decline in California, with courts treating the presence of a "genuine issue" as simply being another way of saying the insurer's conduct was reasonable, not as a separate defense. A recent decision from California's Second District Court of Appeal, *Paslay v. State Farm General Ins. Co.*, may reverse that trend.

Paslay involved a mostly covered property insurance claim under a Homeowners policy. A dispute arose between the elderly policyholders and the insurer over payment for various items of claimed damage and regarding the duration of additional living expense payments. The Court of Appeal reversed summary judgment in favor of the insurer on the disputed claim items, but affirmed the trial court's summary judgment on the policyholder's bad faith, elder abuse and punitive damages claims. Evaluating the insurer's conduct "in light of the totality of the circumstances surrounding its actions," including the fact that the policyholders curtailed the insurer's ability to investigate the disputed claim items, the appellate court affirmed the summary judgment in favor of the insurer. This is noteworthy because in this case, the appellate court concluded the policyholders might be owed more money, but nevertheless, the insurer's conduct, even if more money was owed, was not in bad faith.

In concluding the policyholder's bad faith claim lacked merit, the Court of Appeal relied upon the genuine issue doctrine and explained "The genuine dispute doctrine 'does not relieve an insurer of its obligation to thoroughly and fairly investigate, process and evaluate the insured's claim. A genuine dispute exists only where the insurer's position is maintained in good faith and on reasonable grounds.' [citation] Those grounds include reasonable reliance on experts hired to estimate repair benefits owed under the policy."

The Court of Appeal also affirmed the summary judgment in favor of the insurer on the policyholder's statutory elder abuse claim. The court concluded that a "mere incorrect denial" of policy benefits constitutes a "wrongful use" of those funds within the scope of the elder abuse statute. The court said that for the failure to pay to be a wrongful use of funds, the insurer must have actually known it was engaging in a harmful breach of the insurance contract or that it reasonably should have been aware that it was engaging in a harmful breach of the insurance contract. In reaching this conclusion, the court relied upon the fact that it had already concluded the insurer's claims adjusting conduct was reasonable, regardless of whether additional policy benefits were owed.