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Title: *Hollaway v. Direct General*: A Good Bad-Faith Recap

By: Ashley Smith Lant

In a published opinion, the Kentucky Supreme Court recently affirmed the entry of summary judgment in favor of an insurer on a bad-faith claim. In *Hollaway v. Direct Gen. Ins. Co. of Mississippi, Inc.*, 497 S.W.3d 733 (Ky. 2016), a third-party bad-faith claim arose out of a low-speed, parking lot automobile accident. *Id*. The facts concerning which driver was at fault and whether the accident caused Plaintiff's injuries were contested. *Id* at 734. Plaintiff Hollaway brought a personal injury claim against the driver of the other involved vehicle, along with an underinsured motorist claim against her insurer and a bad-faith claim against Direct General. *Id*. at 735. Direct General settled Hollaway's property damage claim for approximately $460 and her personal injury claim for $22,500. *Id*. Hollaway had originally demanded $125,000 to resolve her personal injury claim, and proceeded with her bad-faith claim notwithstanding the settlement. *Id*.

> At the close of discovery, Direct General moved for summary judgment on the theory that it had not acted in bad faith because it had the right to insist that Hollaway prove her case that the insurer was liable before it had a duty to offer her any settlement.
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> The trial court ultimately granted summary judgment in favor of Direct General, primarily by finding that a legitimate dispute existed regarding who had been liable for the accident *and* what injuries to Hollaway were caused by the accident. Because liability and causation were legitimately disputed, the trial court ruled that Direct General could not have acted in bad faith as a matter of law.

Id. at 735-36.

The Court of Appeals later affirmed the entry of summary judgment, but focused primarily on evidentiary issues. *Id*. at 736-37. In the Kentucky Supreme Court's opinion, the Court delved into

the truly punitive nature of bad-faith claims: "The tort of bad faith is non-existent under our law, unless the underlying conduct is sufficient to warrant punitive damages. Absent evidence of punitive conduct, an insurer is entitled to a directed verdict for any bad-faith claim levied against it." *Id*. at 739. The Court also instructed that Direct General's early investigation notes that indicated its insured was at fault for the accident should not be construed as evidence of bad faith.

> We will not attribute changing positions as a result of new information or evidence to bad-faith failure to settle claims. Such a stance would stand contrary to our quest for truth and would likely lead to obfuscation in the early stages of accident investigations. Candidness in the investigatory process should be encouraged; a rule disallowing an insurer to evolve its position as the investigation unfolds cuts against our goal of speedy, fair, and transparent investigation.

Id. at 738.

The Court briefly addressed a Direct General representative's comment that the Plaintiff's settlement demand was "crazy nuts," a comment the Plaintiff suggested was indicative of bad faith, but the Court chalked it up to proof that Direct General contested liability for Hollaway's claimed injuries. *Id*. at 739. In closing, the Court confirmed that the "[Kentucky Unfair Claims Settlement Practices Act] only requires insurers to negotiate reasonably with respect to claims; it does not require them to acquiesce to a third party's demands." *Id*. at 739.

If prosecuting or defending a bad-faith claim that arises out of an automobile accident, *Hollaway* is certainly worth a read. *Hollaway* serves as a reminder to evaluate the merits of filing a motion for summary judgment when a bad-faith claim survives a settlement, especially those with contested underlying facts concerning liability or causation; that bad-faith claims are inherently punitive in nature and Plaintiff has to offer proof of misconduct; and, although the Court didn't hold it against the Defendant here, maybe be mindful of comments in claim notes and how they may be presented and misconstrued in future litigation.