

9th Circ. Backs \$6M Verdict Against Farmers Over Crash Injury

By **Gina Kim**

Law360 (October 23, 2023, 8:07 PM EDT) -- The Ninth Circuit on Monday affirmed a verdict finding a Farmers Insurance unit engaged in bad faith and breached insurance practice laws stemming from a \$5.7 million award to a woman involved in an auto crash, noting Farmers barely investigated her injuries "for the first five months after the accident."



A Ninth Circuit panel disagreed with Farmers Insurance's contention that substantial evidence didn't support a jury's finding of bad faith in awarding \$5.7 million to a car crash victim. (Smith Collection/Gado/Getty Images)

In an eight-page unpublished opinion, a three-judge panel with the Ninth Circuit rejected Farmers Insurance Co. of Arizona's appeal seeking to reverse a \$5.7 million award to Barbara Stein, a New Mexico resident who accused the company of bad faith for not paying the full policy limits for injuries she suffered from a life-altering auto crash in 2018.

The case went to trial, and a California federal jury found Farmers breached its contract with Stein, engaged in bad faith and violated New Mexico's Unfair Insurance Practices Act in handling her personal injury claim under her policy. Farmers **appealed last December**, arguing that its decision not to offer the full \$500,000 policy limit to her was based on her "lengthy history of prior conditions and surgeries," along with the opinion of a doctor who determined some of her claimed injuries weren't related to the crash.

Farmers appealed the trial court's denial of its bid for a directed verdict on the bad faith and UIPA claims, along with a denial of its motion to correct the judgment.

On Monday, the panel disagreed with Farmers' position that substantial evidence didn't support the jury's finding of bad faith, noting that "substantial evidence supports that FICA engaged in unfounded delay" in adjudicating Stein's policy claim.

"Immediately after the accident, Stein gave FICA a medical authorization, allowing it to obtain her medical records. FICA, however, did almost nothing in investigating Stein's injuries for the first five months after the accident," Monday's **opinion** said.

Stein sent Farmers a 28-page letter in April 2019 spelling out her physical and mental injuries from the crash and her related medical procedures. While Farmers made a partial payment a month later and continued its investigation, it didn't do an independent medical examination to determine Stein's injuries until September 2020, "nearly two years after the accident," the panel pointed out.

"Stein's insurance claims expert testified that FICA's delay in investigating Stein's claim and conducting an IME was unfounded," the panel said. "Based on this evidence, the jury could have reasonably found that FICA's two-year-long investigation amounted to an unfounded delay, and thus FICA acted in bad faith."

Stein was in an auto crash in September 2018 when she and her husband were on their way to Denver for a gem show. According to Farmers' opening appellate brief, the couple's car was rear-ended by an uninsured Texas resident's vehicle, causing the car to travel 160 feet and roll over onto its side.

According to Farmers, the Steins had an insurance policy that included uninsured motorist coverage up to a \$500,000 limit; the couple submitted a claim the day after the crash, and Farmers said that in the first month of the accident, it paid for the value of the Steins' car and began paying their medical bills.

In February 2019, Stein claimed extensive surgeries. The Steins also said they had been planning to start a jewelry business, but her injuries prevented her from following through, Farmers said.

The Steins sued Farmers, prompting Farmers to request an independent medical examination. The doctor determined that wrist and hand surgeries Stein had after the accident weren't related to the crash, while foot surgery may have been related since it was to remove an extra bone in her foot that may have caused pain after the crash.

Farmers said it offered to settle by paying an additional \$95,000, but Stein proceeded with a jury trial, and the jury ruled in Stein's favor.

In March, Stein filed a response to Farmers' appeal, **arguing there was "overwhelming" evidence** to back her claims, including testimony from Farmers' own witnesses and employees. Stein argued Farmers ignored New Mexico's "'eggshell' plaintiff rule," meaning that even if she had prior medical conditions, the company was still responsible "for the aggravation" of those conditions.

On Monday, the Ninth Circuit found there was substantial evidence backing the claim Farmers failed to conduct an adequate probe, rendering its coverage argument unfounded. Stein's April 2019 letter said she suffered from post-traumatic stress disorder and traumatic brain injury from the crash.

While she never handed over records supporting those injuries, they were plausible given the "extremely violent nature of the crash," a bruise on Stein's head and her subsequent vision problems, the opinion said, adding that trial evidence showed the auto crash caused those injuries.

The jury could have also determined Farmers had a general practice of failing to effectuate prompt and fair settlements the panel said, pointing out that its own claims adjuster, who was with Farmers for 27 years, testified he typically calculated a dollar-value range for claims and that it was his "custom and practice" to begin negotiating at the "low end of the range."

That adjuster said that at times, he wouldn't pay out claims for 10 to 15 years, or that he might withhold payment until a policyholder was ready to settle and sign a release, even if that policyholder suffered severe injuries, believed Farmers' offer was too low or was under financial pressure, the opinion said.

"Based on this evidence, the jury could have reasonably found that FICA's settlement practices — starting at the low end of its calculated dollar-value range and withholding payment for over a decade, even for

insureds who suffer severe injuries and are under extreme financial stress — showed that, even when liability is reasonably clear, FICA waits out its insureds to obtain a release rather than trying to achieve a prompt and fair settlement in violation of the UIPA."

The appellate court affirmed the lower court's denial of Stein's motion for post-judgment interest.

Representatives for Stein and Farmers Insurance Co. of Arizona did not immediately respond to inquiries seeking comment Monday.

Circuit Judges Jay S. Bybee, Mark J. Bennett and Salvador Mendoza Jr. sat on the panel for the Ninth Circuit.

Stein is represented by Michael N. Poli of Poli Moon & Zane PLLC.

Farmers Insurance Co. of Arizona is represented by Mitchell C. Tilner and Curt Cutting of Horvitz & Levy LLP, and Andrew S. Hollins of Messner Reeves LLP.

The case is Barbara Stein et al. v. Farmers Insurance Co. of Arizona et al., case number 22-55356, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Emily Enfinger. Editing by Kristen Becker.