

Insurer Must Fully Cover \$1.17M Crash Award, Fla. Panel Says

By **Ganesh Setty**

Law360 (November 6, 2024, 6:12 PM EST) -- A Florida state appeals court upheld a directed verdict finding an auto insurer acted in bad faith while attempting to settle a woman's injury claims over a drunken driving crash, affirming Wednesday that the company must fully cover her \$1.17 million compensatory damages award, less a prior \$25,000 payment.

Largely rejecting a **consolidated appeal** brought by Safeco Insurance Co. of Illinois, a three-judge panel unanimously found that Safeco failed to properly advise its insured, the at-fault driver, that a settlement for his \$25,000 policy limit still exposed him to an uncovered, potential judgment for punitive damages.

However, Judge Martha C. Warner wrote for the panel that the trial judge "inserted himself" into the trial frequently, and his "extensive" questioning of witnesses "sought to establish facts which would tend to favor" the position of the injured plaintiff, Rebecca Heikka.

Though the panel said the trial court's directed verdict on Heikka's insurer bad faith claims was still appropriate, they reversed her subsequent \$825,000 attorney fee award, granting Safeco's bid to disqualify the trial judge and remanding the case back for further proceedings before a new judge.

According to court filings, the insurance bad faith dispute centers on a January 2007 motor vehicle accident caused by Safeco's insured, who while under the influence of alcohol rear-ended a motorcycle that Heikka was riding on as a passenger, causing her to suffer serious injuries. The driver later served prison time for a DUI conviction.

Safeco insured the at-fault driver under a policy providing a \$25,000 limit for bodily injury. Crucially, the policy barred coverage for punitive damage awards, and provided that no duty to defend existed once the limit was paid out, meaning Safeco would have no duty to defend against a claim for compensatory damages.

Heikka's attorney, Kenneth Cooper, told a claims adjuster for Safeco that given her medical bills already totaled \$195,000 in the three weeks following the accident, any coverage settlement and release of claims would have to exclude potential claims for punitive damages against the at-fault driver.

Safeco ultimately tendered its full \$25,000 bodily injury limit to Heikka. However, the corresponding release agreement Safeco sent was a "standard release for any and all claims," and did not make an exception for punitive damages, as Cooper demanded, Wednesday's decision states.

After Cooper said he sent back an amended release signed by Heikka stating that the agreement would still allow her to pursue punitive damages and coverage from other policies, he testified that the Safeco adjuster said the new release "looked good." Cooper then cashed the \$25,000 check.

However, Safeco maintained that it never received the amended release, and neither Safeco nor Cooper followed up about the modified release, the decision continued.

Heikka then filed a lawsuit against the Safeco insured, which sought compensatory damages as a predicate for seeking punitive damages. Safeco in turn sought to enforce the original release agreement sent, which would bar Cooper from seeking compensatory damages in the first place. And

after back and forth with Cooper, the insurer filed a declaratory action over the settlement's terms. The court in that action ruled against Safeco, however, saying there was no "meeting of the minds" and thus no settlement was reached.

That allowed Heikka to go forward with her compensatory damages claims, ultimately winning a \$1.17 million award at trial but receiving nothing in punitive damages. Safeco, meanwhile, still defended its insured in the proceedings.

Heikka then asserted insurance bad faith claims against Safeco in her action, which the trial court granted in a directed verdict. She won an \$825,000 attorney fee award thereafter.

On Wednesday, Judge Warner first cited the Florida Supreme Court's opinion in the 2018 case *Harvey v. GEICO General Insurance Co.*, which built on a prior decision broadly outlining an insurer's claims handling duties.

In the *Harvey* case, Florida's justices wrote in part that an insurer is "not absolved of liability simply because it advises its insured of settlement opportunities, the probable outcome of the litigation, and the possibility of an excess judgment."

"Rather, the critical inquiry in a bad faith is whether the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment," the state high court said.

In the current case, Judge Warner said Safeco and its insured had two choices. The first was to pay out the \$25,000 limit, thereby protecting the insured against an award for compensatory damages but not protecting him for punitive damages claims and accompanying defense costs. Or, they could refuse to settle, risking exposure to judgments for both compensatory and punitive damages, but still allowing Safeco to cover the insured's defense costs.

"Nothing presented at trial showed that Safeco explained these options to the insured," Judge Warner wrote for the panel, adding that the insurer should have "at least" advised the insured about his potential exposure to a punitive damages judgment, compared to an avoidable judgment for compensatory damages.

"Instead of protecting its insured, by refusing to except the punitive damages claim when it tendered the policy limits, Safeco likely exposed the insured to significantly more risk," she further wrote for the panel.

Given the prior finding that there was no meeting of the minds between Cooper and Safeco, "it was clear" that after Heikka sued for both compensatory and punitive damages, the release agreement containing a punitive damages exception was the "only available means to limit the insured's exposure," Judge Warner noted.

"Thus, Safeco acted in bad faith by not accepting Heikka's clear and unambiguous offer to settle the compensatory claims for the policy limits, leaving only a claim for punitive damages," the panel ultimately ruled.

Judges Martha C. Warner, Melanie G. May and Burton C. Conner sat on the panel.

Representatives of the parties did not immediately respond to requests for comment.

Safeco is represented by Mihaela Cabulea of Butler Weihmuller Katz Craig LLP and Gary J. Guzzi of Akerman LLP.

Heikka is represented by Joseph R. Dawson of the Dawson Law Firm.

The case is *Safeco Insurance Co. of Illinois v. Heikka*, case numbers 4D2022-2969 and 4D2023-1916, in the Fourth District Court of Appeal of the State of Florida.

--Editing by Roy LeBlanc.

