Insurance Bad Faith Litigation:

Third DCA Decision Opens Door to Continued Abuse of Current Law

Issue

On March 30, 2011, the Third District Court of Appeal issued its opinion in United Automobile Insurance Co. v. Levine, Case No. 3D09-3234, and made clear that bad faith litigation will continue to thrive without immediate action by the Florida Legislature

Facts

A driver with PIP insurance through United Automobile Insurance Co. ("United") crashed into a car driven by Circuit Court Judge Steve Levine. Judge Levine and his passenger died, and the insured and his passenger were injured. Two months later, United received notice of the accident but not from the Levine estate. The following day, despite still having received no notice from Levine's estate, United tendered a check for $10,000 – the bodily injury limits of the PIP policy – along with a general release in favor of the its insured to the Levine estate. Acceptance of the check was NOT conditioned on the estate signing the release.

Two months later, without explanation, the estate returned the check. When United inquired why, counsel for the estate indicated that the tender was insufficient because the release would preclude the estate from pursing all of its potential claims. The estate's counsel did not communicate any further despite repeated phone calls from United.

On appeal, the Third DCA upheld the $5.2 million award against United that was brought by the Levine estate after assignment from the insured, stating:

> **The essence of United's claim in this case, though not directly articulated, is that it was set up for a bad faith claim as a strategy, by the Levine estate's failure to tell United why United's tender, release, and other requirements were unacceptable. The "strategy" question was debated in the majority and dissenting opinion in Berges, and it is far from over. Until there is a substantial change in the statutory scheme or the rationale explained in the majority opinion in Berges, however, juries will continue to render verdicts regarding an insurer's alleged bad faith when the pertinent facts are in dispute.**

Solution

As the dissent stated, "United did everything it could to maximize protection for *its insured*. Without a demand or claim, it promptly paid an amount exceeding policy limits for bodily injuries; it attempted to secure a release from liability for its insured; and it timely attempted to determine who should be paid and in what amount for property damage." Nevertheless, in a situation like this where "an injured party refuses to communicate or negotiate following a good faith offer by an insurer and after dodging information requests via vague responses by office," Florida law permits multi-million dollar awards against insurers, leading to steep increases in premiums for all. Consequently, absent immediate action by the Legislature to reform Florida's bad faith law, affordable liability insurance will soon be unavailable to Florida's citizens.