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INSURANCE

***Actions Against Insurance Companies: Change Provisions
Relating to an Insurer's Liability for Bad Faith Refusal to Pay for
Loss Covered by Insurance; Provide for Insurer's Duties with
Respect to Settlement of Motor Vehicle Liability Policy Claims;
Provide for a Private Cause of Action for Unfair Claims Settlement
Practices in Certain Circumstances***

CODE SECTIONS: O.C.G.A. §§ 33-4-6 (amended), -7 (new)
BILL NUMBER: HB 478
ACT NUMBER: 229
GEORGIA LAWS: 2001 Ga. Laws 784
SUMMARY: The Act amends provisions relating to claims against insurance companies, increasing an insurer's liability for bad faith refusal to pay for a loss covered by insurance. The Act specifically identifies an insurer's duties with respect to the settlement of motor vehicle liability policy claims. In addition, the Act provides for a private cause of action for third parties injured as a result of unfair claims settlement practices in certain circumstances and provides for damages and procedures associated with that cause of action.

EFFECTIVE DATE: July 1, 2001

History

Some insurance companies engage in bad faith settlement practices by either refusing to honor insurance policy claims or by "shaving the claim"; that is, offering insufficient amounts to the insured, realizing that many individuals cannot afford a lawyer to dispute the settlement.¹ This type of situation arose recently in House Speaker Thomas

1. See Audio Recording of House Proceedings, Mar. 2, 2001 (remarks by Rep. Jim Martin), at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter House Audio]; Telephone Interview with Rep. Jim Martin, House District No. 47 (Apr. 23, 2001) [hereinafter Martin Interview].

Murphy's law practice.² Speaker Murphy had a client with property damage to a car that the insurance company refused to settle, and the case had to go to court.³ Most states, including Georgia, have statutes that provide penalties for insurers who engage in bad faith refusal of insurance claims with their insureds.⁴ However, the penalty provided by the Georgia statute is quite low, and the statute does not specify a floor for recovery.⁵ In addition, an insurer can "cure" its bad faith by paying off the claim on the eve of the trial.⁶ HB 478 was drafted to amend the present law to increase the penalty for bad faith settlement practices and to establish a floor recovery of \$5000 so that wronged policy claimants would retain an incentive to bring a stubborn insurer into court.⁷

Bad faith settlement practices are also a major problem when a third party is injured in an auto accident.⁸ Under the present statute, a third party cannot directly sue the insurer for damages.⁹ Rather, the third party sues the insured for damages; the insurance company is not technically a party being sued.¹⁰ There may be little motivation for the insured to assert a claim against the insurer.¹¹ HB 478 enacts a new Code section that provides a procedure for recovery against the insurer in bad faith situations involving claims for automobile property damage.¹²

Members of the insurance industry in Georgia, insurance consumer advocates, and lawyers that practice in the insurance industry helped to perfect HB 478 as introduced in the House.¹³

2. See House Audio, *supra* note 1.

3. See Martin Interview, *supra* note 1.

4. See House Audio, *supra* note 1 (remarks by Rep. Jim Martin). The present Georgia statute provides for liability of 25% if the insured can prove bad faith on the part of the insurer. See *id.*

5. See *id.*

6. See *id.*

7. See *id.*

8. See *id.*; Martin Interview, *supra* note 1.

9. See Martin Interview, *supra* note 1.

10. See *id.*

11. See *id.*

12. See *id.*; see also Telephone Interview with Tommy Chambless, Lobbyist, National Association of Independent Insurers (Apr. 23, 2001) [hereinafter Chambless Interview].

13. See Martin Interview, *supra* note 1; House Audio, *supra* note 1. Rep. Martin commended insurance companies as being good corporate citizens in realizing that bad faith settlement practices are a problem in Georgia. See House Audio, *supra* note 1. He also noted that the trial bar would have liked more significant changes, but realized that this bill was a step in the right direction. See *id.*

HB 478

House Speaker Thomas Murphy, Representatives Jim Martin, Tom Bordeaux, Allen Hammontree, and Scott Dix of the 18th, 47th, 151st, 4th, and 76th House Districts, respectively, sponsored HB 478.¹⁴ The bill was introduced on February 9, 2001, and the House of Representatives assigned the bill to the House Judiciary Committee.¹⁵ The House Judiciary Committee favorably reported HB 478, as substituted, on February 27, 2001.¹⁶

As introduced, HB 478 would have awarded exemplary damages upon a finding of the insurer's bad faith.¹⁷ The House Judiciary Committee changed HB 478 by striking the award of exemplary damages and replacing that portion with liability in the amount of not more than fifty percent of the liability of the insurer for the loss, or \$5000, whichever is greater.¹⁸ Tommy Chambless, a lobbyist for the National Association of Independent Insurers (NAII), negotiated the changes in the bill including the change in the damage amount.¹⁹ He noted that the current law provides for twenty-five percent bad faith damages and that the bill as introduced would have removed any ceiling at all for liability and, therefore, would have been too burdensome.²⁰ The most significant change in the committee substitute conformed the third party claim to parallel the first party bad faith provisions and limited the action to property damage.²¹ The House adopted the committee substitute and unanimously passed the bill, without further changes, on March 2, 2001.²²

14. See HB 478, as introduced, 2001 Ga. Gen. Assem.

15. See State of Georgia Final Composite Status Sheet, HB 478, Mar. 21, 2001.

16. See *id.* Compare HB 478, as introduced, 2001 Ga. Gen. Assem., with HB 478 (HCS), 2001 Ga. Gen. Assem.

17. See HB 478, as introduced, 2001 Ga. Gen. Assem.

18. Compare HB 478, as introduced, 2001 Ga. Gen. Assem., with HB 478 (HCS), 2001 Ga. Gen. Assem.

19. See Chambless Interview, *supra* note 12; Martin Interview, *supra* note 1.

20. See Chambless Interview, *supra* note 12. Mr. Chambless commented that had the bill not been amended, many businesses might have fled Georgia in favor of states with less harsh penalties. See *id.*

21. See HB 478 (HCS), 2001 Ga. Gen. Assem.; Martin Interview, *supra* note 1; Chambless Interview, *supra* note 12. Mr. Chambless noted that few other states have enacted such legislation at this time. See Chambless Interview, *supra* note 12. California had enacted similar legislation, but had to change the law due to the tremendous increase in insurance rates. See *id.*

22. See Georgia House of Representatives Voting Record, HB 478 (Mar. 2, 2001). Compare HB 478 (HCS), 2001 Ga. Gen. Assem., with HB 478, as passed, 2001 Ga. Gen. Assem. Mr. Chambless noted that although there was tremendous opposition to the bill as introduced, the substituted bill passed without much debate. See Chambless Interview, *supra* note 12. He explained that compromises were made possible after discussing the purpose of the bill—protection of people with small property damage claims from being taken advantage of by insurance companies—with Speaker Murphy. See *id.* Mr. Chambless stated that Speaker

Upon introduction, the Senate assigned HB 478 to its Judiciary Committee.²³ Without any changes, the Senate Judiciary Committee favorably reported the bill to the Senate floor on March 14, 2001.²⁴ The Senate adopted and unanimously passed the bill on March 19, 2001.²⁵ Governor Roy Barnes signed HB 478 into law on April 26, 2001.²⁶

The Act

The Act amends Chapter 4 of Title 33 by replacing Code section 33-4-6 with new Code sections 33-4-6 and 33-4-7.²⁷ The Act increases the liability of insurers for bad faith settlement practices in first party claims from twenty-five to fifty percent.²⁸ In addition, the Act establishes a floor recovery of \$5000, providing that the insurer found to have engaged in bad faith settlement practices will be liable to the policy holder for fifty percent of the insurer's liability for the loss, or \$5000, whichever is greater.²⁹ The Act further provides that an action for bad faith shall not be abated by the insurer's payment after sixty days from the policy holder's demand.³⁰ The Act establishes that the testimony or opinion of an expert witness may not be the sole basis for a summary judgment or directed verdict on the issue of bad faith.³¹

The Act incorporates new Code section 33-4-7, which provides a procedure for recovery in a third party motor vehicle property damage claim where the insurer engages in bad faith settlement practices.³² The new Code section provides that the insurer will be liable to the third party for bad faith damages in the amount of fifty percent of the liability of the insured for the loss, or \$5000, whichever is greater, as well as all

Murphy's concern was legitimate and that HB 478 as substituted should appropriately address that concern. *See id.*

23. *See* State of Georgia Final Composite Status Sheet, HB 478, Mar. 21, 2001.

24. *See id.*

25. *See* Georgia Senate Voting Record, HB 478 (Mar. 19, 2001).

26. *See* 2001 Ga. Laws 784, § 2, at 786.

27. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), *with* O.C.G.A. § 33-4-6 (Supp. 2001).

28. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), *with* O.C.G.A. § 33-4-6 (Supp. 2001).

29. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), *with* O.C.G.A. § 33-4-6 (Supp. 2001).

30. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), *with* O.C.G.A. § 33-4-6 (Supp. 2001).

31. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), *with* O.C.G.A. § 33-4-6 (Supp. 2001).

32. *See* 2001 Ga. Laws 784, § 1, at 785-86; *see also* Chambless Interview, *supra* note 12.

reasonable attorney's fees.³³ Litigation under this Code section will go through its normal course—the claimant must deliver a demand letter by overnight delivery or certified mail offering to settle for a certain amount and may file a complaint only if the insurer refuses to settle.³⁴ The insurer will be an unnamed party; however, if the judgment comes back in an amount equal to or greater than the amount that the claimant had offered to settle for before trial, then the jury will go through a process to determine if the insurer acted in bad faith and to ascertain the extent of damages.³⁵

In an action brought under either Code section 33-4-6 or -7, the plaintiff must mail a copy of the demand letter and the complaint to the Commissioner of Insurance and the Consumers' Insurance Advocate by first class mail.³⁶

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33. *See id.* This new Code section includes the bad faith penalty of fifty percent of the liability of the insured for the loss or \$5000, whichever is greater. *See id.* This difference in wording was intended to impose a stricter penalty on insurance companies that have engaged in bad faith settlement practices involving a third party. *See* Telephone Interview with Rep. Jim Martin, House District No. 47 (June 14, 2001); Telephone Interview with Nick Moraitakis, Legislative Chairman and Secretary, Georgia Trial Lawyers' Association (June 28, 2001).

34. *See* 2001 Ga. Laws 784, § 1, at 786.

35. *See id.*

36. *Compare* 1962 Ga. Laws 712, § 1, at 712 (formerly found at O.C.G.A. § 33-4-6 (2000)), with O.C.G.A. §§ 33-4-6 to -7 (Supp. 2001).