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Illinois Coverage Basics

Illinois' "Bad Faith" Statute Provides Limited Extracontractual Remedies For Vexatious and Unreasonable Misconduct

Section 155 Preempts Common Law Extracontractual Remedies

Although Illinois is often an unfriendly venue for liability insurers, the state's laws governing extracontractual remedies against insurers are more benign than the laws of many jurisdictions. Illinois law still recognizes a traditional common law cause of action against insurers for bad faith failures to settle. However, all other types of bad faith claims are preempted by Section 155 of the Illinois Insurance Code. (215 ILCS 5/155.) The preemptive effect of Section 155 is important to insurers, because the statutory remedies are significantly more limited than the traditional common law remedies.

Before 1997, Illinois courts allowed a broad range of common law bad faith claims against liability insurers, providing extracontractual damages for many different types of insurer misconduct. This position by the courts was detrimental to insurers, because there was no cap on the amount of common law damages that could be awarded by a jury. But, in 1997 the Illinois Supreme Court decided that the only common law action for bad faith against liability insurers in Illinois should be for an insurer's bad faith failure to settle. (*Cramer v. Insurance Exchange Agency* (1997), 174 Ill.2d 513, 675 N.E.2d 897.) Consequently, Section 155 provides the remedy for all other bad faith conduct of insurers.

Standard for Liability Under Section 155

Ironically, Illinois' "bad faith" statute does not contain the words "bad faith." Instead, liability under the statute is triggered by "vexatious and unreasonable" misconduct on the part of an insurer. Section 155 provides that its remedies become available in any action against an insurance company:

"[W]herein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable . . ."

The words "vexatious" and "unreasonable" are not defined by the statute.

Remedies Available Under Section 155

Section 155 allows a court to award both attorney fees and extracontractual damages against an insurer, but the statute places a cap the amount of extracontractual damages that may be awarded. Paragraph (1) of the statute authorizes a court to award extracontractual damages as follows:

“[A]n amount not to exceed any one of the following amounts:

(a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;

(b) \$60,000;

(c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.”

The courts have clarified that the *most* that can ever be recovered as extracontractual damages under the statute is the specific dollar limit contained in Paragraph (1)(b), which is currently \$60,000. (Nelles v. State Farm Fire & Casualty Co., 318 Ill.App.3d 399, 742 N.E.2d 420 (1st Dist. 2000).)

Defenses to Section 155 Claims

The question of whether any given behavior is “vexatious and unreasonable” within the meaning of Section 155 is a question of fact, and as such the primary defense to a Section 155 claim is to present evidence to rebut the charge that the alleged conduct of the insurer meets the definition of “vexatious and unreasonable.” (See Buckner v. Causey, 311 Ill.App.3d 139, 724 N.E.2d 95 (1st Dist. 1999); Green v. International Insurance Co., 238 Ill.App.3d 929, 605 N.E.2d 1125 (2nd Dist. 1992).)

It is well established that Section 155 remedies will *not* lie where a bona fide dispute exists concerning coverage. (Nudi Auto RV & Boat Sales, Inc. v. John Deere Insurance Co., 328 Ill.App.3d 523, 765 N.E.2d 1163 (1st Dist. 2002).) Thus, it has been held that:

“[A]n insurer's conduct is not "vexatious and unreasonable" if: (1) there is a bona fide dispute concerning the scope and application of insurance coverage; (2) the insurer asserts a legitimate policy defense; (3) the claim presents a genuine legal or factual issue regarding coverage; or (4) the insurer takes a reasonable legal position on an unsettled issue of law.

(Citizens First National Bank of Princeton v. Cincinnati Insurance Co., 200 F.3d 1102 (7th Cir. 2000).)

Summary

Section 155 preempts common law remedies for “bad faith,” except in cases involving an insurer’s alleged bad faith failure to settle. Where Section 155 applies, it is significantly more favorable to insurers than the common law of bad faith, because the statute caps the amount of the available damages and provides clearly defined defenses to extracontractual damages liability.

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If you have questions or would like to discuss the subject of this article further, please feel free to contact James K. Horstman at Cray Huber Horstman Heil & VanAusdal LLC, 303 West Madison Street, Suite 2200, Chicago IL 60606; 312-332-8494; jkh@crayhuber.com.