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## INSURANCE

### SIXTH CIRCUIT ALLOWS BOTH PUNITIVE DAMAGES AND BAD FAITH DAMAGES AGAINST INSURANCE COMPANY ON BAD FAITH REFUSAL TO PAY

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Recently, the United States Court of Appeals for the Sixth Circuit, in *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348 (6th Cir. 2018), ruled that a plaintiff may recover both bad faith damages and punitive damages against an insurer for bad faith refusal to pay on a policy. The District Court held that the statutory remedy for bad faith was not the exclusive remedy for an insurer's bad faith refusal to pay on a policy. The Sixth Circuit upheld the District Court ruling.

While it is too early to tell if the Sixth Circuit decision will be permanent or adopted by the Tennessee Supreme Court, the case is important because it is currently binding in the Sixth Circuit and the district courts within the circuit.

The case involved a dispute regarding a \$350,000 life insurance policy. Plaintiff was designated as the primary beneficiary of a life insurance policy provided by the defendant, Jackson National Life Insurance Company, and the decedent's surviving children were the contingent beneficiaries. After Plaintiff submitted a claim for the benefit, Defendant sent a list of requirements to Plaintiff that had to be met before it would pay out. Defendant wanted Plaintiff to sign waivers and obtain court-appointed guardians for the decedent's surviving minor children or Defendant said Plaintiff could "waive her rights to the claim so that Defendant could disburse the proceeds to the minor children." As a result of communications with Defendant, Plaintiff filed suit. Eventually, the life insurance policy was paid out, and a jury proceeded to hear Plaintiff's "claims for common law breach of contract, statutory bad faith, and common law punitive damages predicated on breach of contract." The jury found for Plaintiff and awarded \$350,000 in compensatory damages plus \$87,500 for the claim of bad faith and \$3,000,000 in punitive damages. Defendant moved the court to apply the Tennessee punitive damages cap, and the court granted the motion, reducing the punitive damages award to \$700,000. Plaintiff appealed the application of the punitive damages recovery.

On appeal, Defendant argued that the district court erred in failing to dismiss Plaintiff's claim for punitive damages in its entirety rather than allowing the claim to proceed to the extent it was based on breach of contract. Defendant argued that existing Tennessee case law held that the statutory remedy for bad faith was the exclusive extra contractual remedy for an insurer's bad faith refusal to pay on a policy.

The Sixth Circuit held that nothing in the bad faith statute (Tenn. Code Ann. § 56-8-113) or a 2011 statutory amendment "limits an insured's remedies to those provided therein[.]" and the statute effectively disclaims any effect on the availability of common law remedies like punitive damages: "Nothing in this section shall be constructed to eliminate or otherwise affect any . . . [r]emedy, cause of action, right to relief or sanction available under common law[.]" Tenn. Code Ann. § 56-

8-113. In upholding the district court's denial of Defendant's Motion to Dismiss and Plaintiff's punitive damages claim for breach of contract, the court held that the statute has no effect on the conclusion that punitive damages, while generally not available in a breach of contract case, may be awarded in a breach of contract action under certain circumstances.

After ruling that the claim for bad faith damages and punitive damages were consistent with Tennessee law, the court addressed Defendant's claims that the district court should have granted its motion for judgment as a matter of law regarding Plaintiff's claims for a statutory bad faith and punitive damages predicated on breach of contract. The Sixth Circuit ruled that a reasonable juror could conclude that Defendant acted in bad faith and that Defendant's refusal to pay was at least reckless based upon clear and convincing evidence.

The dissent reviewed the issue of what remedies were available to an insured who believed that her insurer has, in bad faith, breached its obligation to pay on an insurance policy. "The fundamental question in this litigation is whether the bad faith statute likewise precludes a claim for punitive damages arising from a common law breach of insurance agreement – put another way, whether the statute provides the exclusive 'punitive' or 'extra contractual' remedy for an insurer's bad faith failure to pay."

The dissent argued that prior Tennessee case law determined that the Tennessee bad faith statute precluded punitive damages for common law breach of an insurance contract. The dissent focused upon a Tennessee intermediate appellate decision (*Riad*). However, the dissent noted that the Tennessee Supreme Court stated that a 2016 opinion "the issue of the availability of the common law remedy of punitive damages in addition to the statutory remedy of the bad faith penalty is one which has not been addressed by this court . . ." The dissent concluded "[b]ecause we thus have serious reason to doubt whether the Tennessee Supreme Court would agree with *Riad*, I would stick with our own precedent, *Heil*. I would therefore reverse the district court and vacate the punitive damages award."

It is not known whether the defendant will seek an appeal of this ruling either by requesting a rehearing by the entire panel of Sixth Circuit judges or an outright appeal.

The lasting significance of this case is questionable. Since the Sixth Circuit has ruled that Tennessee law allows both statutory bad faith damages and punitive damages in a claim against an insurance company for bad faith refusal to pay, the decision binds all Federal Courts in the Sixth Circuit, but the decision is not binding in Tennessee State Courts. *Townes v. Sunbeam Oster Co., Inc.*, 50 S.W.3d 446, 452 (Tenn. 2001) ("When a federal court undertakes to decide a state law question in the absence of authoritative state precedent, the state courts are not bound to follow the federal court's decisions.")

Notably, the Sixth Circuit decision could be overturned and its binding effect on Federal Courts could be nullified by a contrary decision by the Tennessee Court of Appeals, a fact that is recognized by the Sixth Circuit

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itself. (“[A] single decision of a state court of appeals may abrogate this Court’s interpretation of state law . . .”).

Until the Tennessee Supreme Court or the Tennessee Court of Appeals rules on this issue, attorneys will be less able to predict whether a state trial judge will rule that statutory damages and punitive damages may be available in a case of bad faith refusal to pay on a policy. However, the law is now certain in the Sixth Circuit and district courts in that Circuit—both statutory damages and punitive damages may be available in a case of bad faith refusal to pay on a policy. This could affect trial strategy for some cases. If punitive damages may be awarded in a case of bad faith refusal to pay, plaintiffs’ attorneys likely will want to adjudicate their cases in Federal Court while defense attorneys might prefer Tennessee State Courts for the time being.

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