

VERDICTS & SETTLEMENTS

Attorneys Win \$9.6M Against GEICO for Bad Faith

Case: James M. Harvey v. GEICO General Insurance
Case no.: 50-2013-CA-017284

Description: Bad faith

Filing date: Nov. 20, 2013

Verdict date: Oct. 23, 2015

Judge: Palm Beach Circuit Judge Cheryl Caracuzzo

Plaintiffs attorneys: Fred Cunningham and Greg Yaffa, Cunningham Whalen & Gaspari, Palm Beach Gardens

Defense attorneys: Richard Young, Pensacola, and Adam Duke and Cody Pfleuger, Miami, Young, Bill, Boles, Palmer & Duke

Verdict amount: \$9.6 million

Details: James Harvey drove his Hummer H2 into an intersection on a flashing red light and collided with motorcyclist John Potts, who was killed Aug. 8, 2006.

Harvey contacted his car insurance company, GEICO, and the insurer sent a settlement check to the attorney for Potts' estate for \$100,000, the limits of Harvey's auto insurance policy.

Potts' attorney, Sean Domnick, asked the GEICO insurance adjuster whether Harvey could be made available to make a statement about any other insurance policies or collectable assets that he might have. Without consulting Harvey, the adjuster said no, according to court documents.

Domnick continued to reach out to GEICO, but the adjuster did not answer him even after Harvey asked her to do so, Cunningham said.

Potts' widow filed a wrongful death lawsuit against Harvey after weeks of silence from GEICO about whether Harvey would make a statement.

The lawsuit resulted in an \$8.47 million jury verdict against Harvey in May 2011.

Plaintiffs case: Harvey filed suit against GEICO alleging bad faith, which Cunningham said is most simply explained as "insurance company malpractice."

Harvey argued GEICO knew or should have known the Potts estate wouldn't settle without the information Domnick requested.

"If GEICO had let him know about the request early enough, he would have gotten this done because he was perfectly willing to sit down with Mr. Domnick and had nothing to hide," Cunningham said.

Harvey told the adjuster he wasn't on work time when the crash happened. He had retirement

savings, a pension and some investments. He and his wife also owned a home in West Palm Beach and a Canadian vacation home.

If Harvey had given the requested statement, the plaintiffs argued the Potts estate would have executed a release for the \$100,000 policy limit.

Domnick testified for the plaintiffs that he had a duty to the widow, Tracey Potts, to gather information necessary for her to make an informed decision about whether it was best to settle quickly or file a lawsuit. GEICO's trial expert admitted this was a reasonable request, Domnick said.

Harvey's attorneys called witnesses who testified the adjuster was reprimanded for mishandling another file and had been warned she might lose her job if it happened again, Cunningham said.

"The year she mishandled this file, her supervisors knew that she was disorganized and had problems managing her caseload," he said. "We pointed out that GEICO's decision to leave her to adjust this catastrophic loss claim was not acting with due regard for Mr. Harvey's interests."

Defense case: Duke did not respond to a request for comment by deadline.

Cunningham said the defense argued the insurance adjuster's actions did not amount to bad faith.

"What GEICO argued was, 'We might have made a lot of mistakes, but they were just negligent, and negligence is not bad faith,' " he said.

The defense also argued Harvey never would have given a statement and blamed the attorney he hired after receiving the initial "excess letter" from GEICO informing him the damages from his accident could exceed his coverage.



MELANIE BELL

Fred Cunningham and Greg Yaffa won a \$9.6 million award after arguing that GEICO didn't fulfill its duty to help a policyholder settle a claim after a fatal collision.

"GEICO admitted that even when Mr. Harvey got his own attorney, that didn't give GEICO the ability to delegate the duty of protection owed to Mr. Harvey," Cunningham said, particularly because the insurance adjuster did not tell Domnick about Harvey's attorney.

Outcome: After a four-day trial, the jury found GEICO liable for bad faith. Jurors awarded Harvey the full amount of the previous verdict plus interest, which amounts to \$9.6 million.

"That money will go to the estate," Cunningham said. "All Mr. Harvey will get is a satisfaction of judgment."

Under Florida law, GEICO will be liable for the attorney fees and costs of Harvey's lawyers.

Comments: "This case establishes that paying the policy limits alone does not settle the case," Cunningham said. "The insurance company has to try to get a release for its policyholder. The case is not settled until a release is signed."

Post-verdict: "Of course, we fully expect GEICO to appeal," Cunningham said.

—Celia Ampel