

# Client Alert

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## Florida Appellate Court Expands Florida Bad Faith Law

On September 3, 2014, Florida's Fourth District Court of Appeal held en banc in *Cammarata v. State Farm Florida Insurance Company*, No. 4D13-185, that a cause of action for insurer bad faith matures upon a finding of coverage and damages owed, and that liability for breach of contract is not necessary. The court also confirmed that the liability and damages determinations may be established by settlement instead of litigation. The *Cammarata* opinion is a departure from the Fourth District's decision in *Lime Bay Condominium, Inc. v. State Farm Florida Insurance Company*, 94 So. 3d 698 (Fla. 4th DCA 2012), which held that breach of contract liability must exist before a bad faith action becomes ripe.

### Background

The policyholders in *Cammarata* sustained damage to their home as a result of Hurricane Wilma. Nearly two years later, they filed a claim for benefits under their homeowners' policy. The insurer inspected the home and estimated damages to be lower than the policy deductible. The policyholders disputed the damages estimate and, along with the insurer, invoked the policy's appraisal process. Competing damage estimates were submitted. The umpire then issued a damage determination for an amount lower than the policyholders' appraiser's estimate but higher than the insurer's estimate. The insurer paid the umpire's damage estimate minus the policy deductible and the circuit court entered an agreed order dismissing the petitions. The policyholders then filed a bad faith action against the insurer for failing to attempt in good faith to settle their claim. The insurer moved for summary judgment, which the trial court granted. The appellate court reversed.

### Analysis and Holding

The insurer argued, among other things, that because there had been no finding that the insurer breached the policy, the policyholder's bad faith action was not ripe. The insurer relied on *Lime Bay*. The policyholders responded, arguing that under other binding precedent, breach of contract claims need not be decided before bad faith claims can become ripe. The appellate court analyzed Florida Supreme Court precedent and held that a cause of action for insurer bad faith requires only that the insurer owe coverage and some amount of unpaid damages, but that there need not be any threshold finding that the insurer breached the contract. Further, the court explained that both conditions may be established through settlement of the coverage claim; a determination reached through litigation is unnecessary.

Applying these principles in *Cammarata*, it was clear that the settlement reached via the appraisal process was sufficient to determine the existence of liability and the extent of the insured's damages. The trial court erred, therefore, in finding that the policyholders' bad faith action was not ripe simply because there had been no determination of insurer liability for breach of contract.

Furthermore, Judge Gerber specially concurred to express his concern about the effect the majority's opinion might have: that without requiring a predicate showing of breach by the insurer, policyholders will be able to sue insurers for bad faith any time the insurer disputes a claim but ultimately pays just slightly more than the insurer's initial offer to settle. Judge Gerber offered two proposals to resolve his anticipated problems for insurers going forward. On the one hand, Judge Gerber suggested that a breach of contract be established as a condition precedent to any bad faith claim. Alternatively, Judge Gerber suggested that any settlement be at least a certain percentage above the insurer's initial

settlement offer. Neither suggestion is presently workable however, since each would require reversal of Florida Supreme Court precedent or implementation by the legislature.

### **Implications**

*Cammarata* represents a significant broadening of insurer bad faith law in Florida. As the concurring opinion notes, the facts of this case illustrate the substantial protections that now exist for policyholders under Florida law. Specifically, where an insurer previously could avoid bad faith exposure simply by defeating the policyholder's breach of contract claim, even where that defeat occurred based on procedural grounds and not the merits of the claim, such a defeat no longer offers the insurer safe harbor. Rather, insurers can (and will) now be required to justify their conduct even where they manage to escape liability for what might be only a technical breach of the policy.

### **Contacts**

**Walter J. Andrews**  
wandrews@hunton.com

**Lon A. Berk**  
lberk@hunton.com

**Lawrence J. Bracken, II**  
lbracken@hunton.com

**John C. Eichman**  
jeichman@hunton.com

**Robert J. Morrow**  
rmorrow@hunton.com

**Syed S. Ahmad**  
sahmad@hunton.com

**Michael S. Levine**  
mlevine@hunton.com

**Sergio F. Oehninger**  
soehninger@hunton.com

**William T. Um**  
wum@hunton.com

**Anna Lazarus**  
alazarus@hunton.com