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RECENT DEVELOPMENTS IN ALABAMA AND THE ELEVENTH CIRCUIT
Selected Insurance Cases and Other Matters of Interest

In this Alabama Update, we have summarized a number of cases from the past several months. This Update includes the Alabama Supreme Courtôs opinion in *Hilyer v. Fortier*, --- So. 3d ----, 2017 WL 65346 (Ala. Jan.6, 2017). The Alabama Supreme Court held that the trial court erred when it denied the insuredôs motion to set aside the default judgment that was entered after the insurer failed to timely retain counsel. Also, in *Pittman v. State Farm Fire & Cas. Co.*, 2016 WL 7047987 (11th Cir. Dec. 5, 2016), the Eleventh Circuit affirmed the district courtôs dismissal for failure to state a claim and held that an insured could not maintain a Constitutional and § 1983 action against his insurer. Finally, in *Brown v. State Farm Fire & Cas. Co.*, 2017 WL 492992 (N.D. Ala. Feb. 7, 2017), a federal court in the Northern District of Alabama held that the insurer and insurance agent carried their burden to show the federal-court amount in controversy when the complaint did not include a demand for a specific damage amount, and held that the insured fraudulently joined the agent to destroy federal-court diversity.

We hope you find this information useful. If you have any questions or would like to discuss, please do not hesitate to let us know.

Alabama State Law Update

Uninsured Motorist - Justiciable Controversy

Privilege Underwriters Reciprocal Exchange v. Grayson, 2016 WL 7321571, --- So. 3d ---- (Ala. Dec. 16, 2016).

Facts: Peter Grayson (ñGraysonò) was involved in a motorcycle accident caused by an uninsured motorist. He did not pursue an action against the motorist, but he made a claim with his UM carrier. After the insurer tendered its UM policy limits to Grayson, he made a claim with his sisterôs insurer, Privilege Underwriters Reciprocal Exchange (ñPUREò). PURE denied coverage on the basis that Grayson was not living in his sisterôs house at the time of the accident. PURE filed a declaratory judgment action in Mobile Circuit Court asking the court to declare that no coverage existed for Grayson. Grayson answered the complaint and filed a counterclaim alleging breach of contract.

The trial court granted PUREôs motion to bifurcate the declaratory judgment action and counterclaim, and Grayson did not object. The parties tried the declaratory judgment action first, and the jury determined that Grayson was not a resident of his sisterôs house and so PURE did not owe coverage to Grayson. Grayson moved to vacate the judgment on the grounds that the court lacked subject matter jurisdiction. After the court granted the motion, PURE appealed.

Issue: ***Whether the insurer's declaratory judgment action in the UM context created a***

justiciable controversy that gave the trial court subject matter jurisdiction.

Holding: Yes. Grayson argued that the court lacked subject matter jurisdiction because PURE had not established that his damages exceeded what he received from his personal UM carrier, and so it was premature to examine whether coverage existed. The Alabama Supreme Court disagreed, and relied on this statement: ñneither party to an insurance contract should be compelled to wait until the events giving rise to liability have occurred before having a determination of the rights and obligations under the policy.ò Borchardôs Declaratory Judgments (2nd ed. 1941). Therefore, the Court held that a determination whether Grayson was an insured was the justiciable controversy that existed when PURE filed the action. The Court also noted that Grayson did not file any motion before the motion to vacate arguing the court did not have subject matter jurisdiction. *See Harper v. Brown, Stagner, Richardson, Inc.*, 873 So 2d 220 (Ala. 2003)(ñThe lack of a justiciable controversy may be raised by either a motion to dismiss or a motion for summary judgment.ò). Therefore, the Court reversed and remanded the action.

Default Judgment based on Insurer's Failure to Retain Counsel
Hilyer v. Fortier, --- So. 3d ----, 2017 WL 65346 (Ala. Jan.6, 2017).

Facts: Adam Hilyer (ñHilyerò) backed his tractor-trailer into his driveway when Betti Fortierôs daughter (ñFortierò) collided with the tractor-trailer and was injured. Hilyer notified his insurance agent of the claim, and the agent forwarded the claim to his insurerôs third-party administrator, Alteris Insurance Services (ñAlterisò). The Alteris representative hired an investigator and intended to assign the claim to another adjuster, but neglected to do so. On behalf of her daughter, Fortierôs mother filed a negligence and wantonness action against Hilyer in state court. Thinking he had assigned the claim to another adjuster, the Alteris representative did not read the correspondence regarding the lawsuit until after the trial court entered a $550,000 default judgment against Hilyer. Once the Alteris representative realized his mistake, he hired counsel for Hilyer, and the attorney filed a motion to set aside the default judgment.

The trial court denied the motion to set aside the default judgment, and Hilyer appealed. The Alabama Supreme Court reversed the judgment and remanded the case to the trial court to consider specific factors when deciding whether to set aside the default judgment. The trial court considered the factors, but again did not set aside the judgment. Hilyer appealed again.

Issue: ***Whether the trial court correctly denied Hilyer's motion to set aside the default judgment entered as a result of Hilyer's insurer's failure to timely retain counsel.***

Holding: No. A trial court may set aside a default judgment pursuant to Alabama Rule of Civil

Procedure 55(c) if the motion is filed less than 30 days after the judgment is entered. In *Kirtland v. Fort Morgan Authority Sewer Service, Inc.*, 524 So. 2d 600 (Ala. 1988), the Alabama Supreme Court set forth guidelines to determine whether setting aside a default judgment is appropriate. The Court held that a trial court should presume cases ñshould be decided on the merits whenever it is practicable to do so.ò The trial court should consider three factors: ñ1) whether the defendant has a meritorious defense; 2) whether the plaintiff will be unfairly prejudiced if the default judgment is set aside; and 3) whether the default judgment was a result of the defendantôs own culpable conduct.ò

A defendant is not required to prove his defense is strong enough to receive a judgment in his favor; he is simply required to prove he has a plausible defense. Hilyer argued that Fortierôs daughter was contributorily negligent, and that there was not enough evidence to prove he was negligent and wanton, and submitted affidavit evidence in support of his argument. Because Hilyer provided defenses to all of Fortierôs claims and his affidavit directly contradicts the negligence claims, the Court held that Hilyer met the requirements of this element.

The Court held that Fortierôs daughter would not be unfairly prejudiced if the default judgment is set aside because the accident happened less than eight months before Hilyer moved to set aside the default judgment, the vehicles were still available for inspection, the witnesses were local and available to be deposed, and the medical records were also available. Even though the tractor-trailer was repaired before the plaintiff could inspect it, repairs were made before counsel for plaintiff sent Hilyer any correspondence. Therefore, no further prejudice would be created by setting side the default judgment.

Finally, the plaintiff must prove that the reason the default judgment was entered against the defendant was due to the defendant acting willfully or in bad faith. The Alteris adjuster acted negligently, but did not wilfully ignore the complaint and other communications. Once he realized the mistake, the adjuster immediately assigned Hilyer counsel and the motion was filed. Reasonable reliance on a third party to provide a defense mitigates against finding the defendant was at fault. *See Samson v. Cansler*, 726 So. 2d 632 (Ala. 1998). Therefore, the Court found that Hilyer did not act wilfully.

The Court held that the trial court exceeded its discretion by denying Hilyerôs motion to set aside the default judgment.

UM/UIM – Issue of Fact Whether Insured Declined Coverage
Johnson v. First Acceptance Ins. Co., --- So. 3d ----, 2017 WL 65326 (Ala. Ct. App. Jan. 6, 2017).

Facts: An automobile insurer denied an insuredôs claim for underinsured motorist (ñUIMò)

benefits after the insured was involved in an accident with an underinsured motorist. The insurer denied on the basis that the insured had declined UIM coverage during the application process. After the denial, the insured filed a declaratory judgment, breach-of-contract, and bad-faith action in state court. The insured agreed to voluntarily dismiss the bad-faith claim, and the parties then filed cross-motions for summary judgment. The trial court granted summary judgment in favor of the insurer, finding that it did not owe UIM coverage to the insured. The insured appealed.

Issue: ***Whether an issue of fact existed as to whether the insured declined UIM coverage when he filled out his application.***

Holding: Yes. The insurer denied coverage on the basis that the insured signed a document in his electronic application declining UIM benefits. The agent that helped the insured fill out the application did not remember assisting the insured, but she provided testimony that she never electronically signs an application for an applicant, and, based on the documents, the insured declined UIM coverage. However, the insured maintains that he was not given the opportunity to decline UIM coverage and wanted full coverage. The court held that determining which party was correct was an issue of fact that was not appropriate for the court to decide on summary judgment.

Express Permission - Use of Auto
Grimes v. Alfa Mut. Ins. Co., --- So. 3d ----, 2017 WL 382294 (Ala. Jan. 27, 2017).

Facts: While driving Teresa Boopôs pickup truck, Amy Arrington collided with Warren and Johanna Grimes, causing damage and injuries. Boopôs automobile insurer, Alfa Mutual Insurance Company (ñAlfaò), provided liability coverage for individuals with ñexpress permissionò to drive the insured pickup truck.

After a bench trial, the trial court held that Alfa did not owe Arrington either a defense or indemnity under Boopôs policy because Arrington did not have ñexpress permissionò to drive the insured vehicle. Arrington appealed.

Issue: ***Whether Alfa was required to provide defense and indemnity to Arrington under the Alabama Motor Vehicle Safety Responsibility Act ("AMVSRA") and the Mandatory Liability Insurance Act ("MLIA") even though Arrington did not have express permission to drive the pickup truck.***

Holding: No. Alfaôs policy was issued under the MLIA, which requires everyone who operates, registers, or maintains registration of a vehicle to have liability insurance, a motor vehicle liability bond, or deposit of cash for liability purposes. The MLIA does require a motor vehicle liability bond or deposit of cash to include coverage to individuals operating a vehicle with either implied or express consent (not just express consent).

However, the Alfa policy is a liability policy, not a liability bond or a deposit of cash. The Supreme Court held that an insurer, like Alfa, has the right to limit coverage unless it violates a law or public policy. Because the limitation of coverage to individuals with ñexpress consentò did not violate public policy, the policy did not conflict with statutory law. The Court affirmed the judgment in favor of Alfa.

Alabama Federal Law Update

Removal - Fraudulent Joinder of Insurer's Attorney Retained to Conduct EUO
Harris v. ACCC Ins. Co., 2016 WL 6986637 (M.D. Ala. Nov. 28, 2016).

Facts: After her automobile insurer denied her claim, the insured filed an action in state court against her insurer, her insurance agent, and the insurance agency. The insured amended her complaint to include the attorney who represented the insurer during the claims process. The insured was an Alabama resident, as were the insurance agent, the insurance agency, and the attorney. When the insured-plaintiff voluntarily dismissed the agent and agency, the insurer removed the action to the United States District Court for the Middle District of Alabama and alleged that the Alabama-resident attorney was fraudulently joined. The attorney moved to dismiss the action arguing that he was fraudulently joined, and the insured moved to remand the action.

Issue: ***(1) Whether the attorney's signature or consent was required to remove the action. (2) Whether the attorney was fraudulently joined.***

Holding: (1) No. The insured argued that the action was improperly removed because the attorney did not provide a signature or give consent to the removal. However, the insured filed her motion to remand more than 30 days after the action was removed. A party may not move to remand a case on any basis outside of lack of subject-matter jurisdiction more than 30 days after the action is removed. 28 U.S.C. § 1446. Therefore, the court held that the argument is waived. Even if the argument were not waived, the lack of signature or consent is irrelevant if the party was fraudulently joined. This is because a signature is not required if the party is fraudulently joined. *Maxwell v. E-Z Go*, 843 F. Supp. 2d 1209 (M.D. Ala. 2012). Also, if the party provided a signature, then there would be no diversity and this court would not have jurisdiction anyway.

(2) Yes. The insured alleged tortious interference of contract and outrage claims against the attorney. Tortious interference of a contract requires the plaintiff to prove the following: ñ(1) the existence of a protectable business relationship; (2) of which the defendant knew; (3) to which the defendant was a stranger; (4) with which the defendant intentionally interfered; and (5) damage.ò *Walter Energy, Inc. v. Audley Capital Advisors, LLP*, 176 So. 3d 821 (Ala. 2015). At issue is whether the attorney was a stranger to the contract. A stranger is defined as a ñparticipantò who is ñan

individual or entity who is not a party, but who is essential, to the allegedly injured relationship and who cannot be described as a stranger.ò *Id.* at 829. The insurer hired the attorney to conduct an examination under oath, and the attorney sent several letters requesting documents and scheduling an EUO several times, but the insured did not sit for the EUO or provide the requested documents. The court concluded that the attorney was a participant and not a stranger to the contract because he was hired to act on the insurerôs behalf to conduct EUOs based on the policy terms. Therefore, this claim cannot survive.

To prove outrage, a plaintiff must prove ñthe defendantôs conduct (1) was intentional or reckless; (2) was extreme and outrageous; and (3) caused emotional distress so severe that no reasonable person could be expected to endure it.ò *Little v. Robinson*, 72 So. 3d 1168 (Ala. 2011). An action is fraudulently joined when ñthere is no possibility that the plaintiff can prove a cause of action against the resident (or non-diverse) defendant.ò *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284 (Ala. 2011). The court determined that the insured would be unable to prove the tort of outrage based on the letters the attorney sent to the insured. Therefore, the court held that the outrage claim could not survive; dismissed the attorney based on fraudulent joinder; and retained federal-court jurisdiction.

Constitutional and § 1983 Claims by Insured against Insurer
Pittman v. State Farm Fire & Cas. Co., 2016 WL 7047987 (11th Cir. Dec. 5, 2016).

Facts: The insured filed a claim with his homeownerôs insurer after items valued around $500,000 were stolen from his home. His insurer determined the insured was involved in the burglary and denied his claim for fraud. Shortly before the insurer denied the claim, the insured filed a breach-of-contract and bad-faith action. The United States District Court for the Middle District of Alabama found in favor of the insurer and the decision was upheld on appeal.

After the insuredôs girlfriend told his former girlfriend that the stolen items were in a storage unit, and a search of the unit recovered many stolen items, the insured was arrested and indicted for theft of property in the first degree. Charges were ultimately dropped after the insured came to an agreement with the prosecutor and paid court costs. The insured then filed the present action in the United States District Court for the Middle District of Alabama against the insurer and others, alleging a violation of his civil rights, malicious prosecution and defamation. The district court dismissed the action for failure to state a claim, and the insured appealed.

Issue:
(1) Whether the insured can maintain a Fourth Amendment action against the insurer.
(2) Whether the insured can maintain a §1983 action against the insurer.
(3) Whether the insured can maintain a Fifth Amendment action against the

insurer.

Holding: (1) No. The insured alleged that the police officer used ñfabricated probable causeò to search the storage unit and violated the insuredôs Fourth Amendment right against search and seizures without probable cause. However, the insured specifically denies any ownership interest or expectation in privacy in the storage unit. In order to maintain a Fourth Amendment claim, the insured must have an expectation of privacy or ownership interest in the place searched. Therefore, the Eleventh Circuit affirmed dismissal of this claim against the insurer.

(2) No. Corporations, like the insurer, may be subject to § 1983 claims if a corporationôs policy or custom violates the United States Constitution. *See Harvey v. Harvey*, 949 F.2d 1127 (11th Cir. 1992). Since the insuredôs amended complaint lacks any reference to a violation of custom or policy, the Eleventh Circuit affirmed dismissal of this claim against the insurer.

(3) No. The insured cannot maintain a Fifth Amendment action against the insurer, as the Fifth Amendment only applies to the federal government. *See Knoetze v. U.S. Dep't of State*, 634 F.2d 207 (5th Cir. 1981). Since the insured failed to allege that any of the defendants was a federal actor, or that the federal government ñdenied him a liberty or property interest,ò the Eleventh Circuit affirmed dismissal of this claim against the insurer.

Homeowner's Policy - Residence Premises/Failure to Notify Insurer of a Change of Occupancy
Bauer v. Travelers Home and Marine Ins. Co., 2017 WL 264460 (N.D. Ala. Jan. 20, 2017).

Facts: The insured owned a house in Florence, Alabama that she insured with Travelers as her ñresidence premises.ò However, the insured sold most of her personal property items, left Florence in February of 2012 and did not return to the house until almost a year later. During her absence, the insured, among other things, rented the house to tenants, had the utilities turned off in April of 2012, and signed up for medical benefits with the State of California. In early January of 2013, almost a year after leaving for California, the insuredôs house was vandalized and items were stolen. The insurer paid over $18,000 to cover personal property losses, but declined coverage for damages to the dwelling because it did not meet the definition of ñresidence premisesò and because the insured failed to comply with the requirements in the policy to inform the insurer of any changes in title, use, or occupancy of the premises. The insured filed a breach-of-contract and bad-faith action against the insurer in state court, and the insurer removed the action to the United States District Court for the Northern District of Alabama. The insured eventually withdrew her bad-faith claim, and the insurer filed a motion for summary judgment, which the district court granted.

Issue: ***(1) Whether the insurer properly declined coverage for the dwelling because it was not the insured's "residence premises." (2) Whether the insured's failure to advise the insurer of the change in title, use, or occupancy of the property breaches the conditions of the policy and forecloses coverage.***

Holding: (1) Yes. The homeownerôs policy only provides coverage for the ñresidence premises.ò ñResidence premisesò is defined as ñthe one family dwelling where you reside . . . and which is shown as the óresidence premisesôin the Declarations.ò The district court held that a dwelling house is not an insuredôs residence premises unless she resides in it, and, here the insured was not residing in her Florence, Alabama home when it was vandalized. Instead, the court found that the undisputed facts established that the insured was residing in California at the time of the loss, as she had not ñset foot in the property for almost a year,ò had rented the property and then ultimately had the utilities disconnected. The district court also distinguished between the concepts of ñresidenceò and ñdomicile,ò holding that while a domicile is where a person plans to return, a ñresidenceò is where a person actually lives. Although the district court sympathized with the insured that a large part of her absence was caused by unforeseen medical issues, the policy did not provide an exception for an absence from the residence premises caused by health problems. A vacant house places the property at a higher risk for vandalism, and the insurer likely would have increased the premium had it known the home was vacant. Since the house was not the insuredôs ñresidence premisesò at the time of the loss, the district court held that the insurer did not owe coverage for any damage to the dwelling.

(2) Yes. The homeownerôs policy contains a requirement that the insured inform the insurer of any change in title, use, or occupancy of the ñresidence premises.ò It was undisputed that the insured did not do so. Therefore, the district court held that the insured failed to meet a condition of the policy, and the insured could not maintain a breach-of-contract claim against the insurer.

Insured's Failure to Provide Notice of Settlement with Tortfeasor in the UIM Context

Heaton v. GEICO General Ins. Co., 2017 WL 359205 (S.D. Ala. Jan. 24, 2017).

Facts: While living with his parents, Phillip Heaton (ñHeatonò) borrowed his parentsô Kia and drove his nephew to Texas. An underinsured motorist struck Heatonôs car while in Texas. Heaton was severely injured and the car was totaled. A month after the accident, the Texas division of his parentsô auto insurer (ñinsurerò) sent Heatonôs father a letter stating that the insurer did not plan to pursue further collection of Heatonôs fatherôs deductible or their subrogation interest. Heaton contacted the insurer about reimbursement of medication and mileage expenses under the ñmed payò section of the policy. The policy does not provide bodily injury UIM coverage for insureds who settle or receive a judgment without the insurerôs approval.

Almost two years after the accident, Heaton filed an action in Texas against the underinsured motorist and Kia Motors Corporation. Heatonôs Texas lawyer was aware of the policy, and Heaton talked to his lawyer about adding the insurer because of the UIMòs limited coverage. Over three years after the accident, Heaton settled the action with the underinsured motorist for $5,000. Almost six years after the accident, Heaton, acting pro se, filed the present action in Alabama federal court against the insurer and later hired a lawyer who filed an amended complaint and alleged that the insurer failed to pay for his ñbodily injury and pain and suffering claimò under the UIM section of the policy. The insurer filed a motion for summary judgment.

Issue: ***Whether the insurer owed UIM coverage after Heaton settled his claims against the underinsured motorist without getting prior approval from the insurer.***

Holding: No. Since *Lambert v. State Farm Mut. Auto. Ins. Co.*, 576 So. 2d 160 (Ala. 1991), Alabama courts have repeatedly held that no coverage exists for an insured who does not provide prior notice of a settlement and release with a underinsured motorist. The court found that this policy provision was not ambiguous. Heaton argued that he was not required to provide *Lambert* notice because the insurer sent Heatonôs father the letter about subrogation interest, and the insurer knew about the Texas lawsuit before the present action was filed. However, Alabama law requires an insurer to receive notice of intent to settle, and this requirement is not waived simply when the insurer receives notice that an action was filed against the alleged tortfeasor. *See Ex parte Morgan*, 13 So. 3d 385 (Ala. 2009). Also, the letter, sent before the Texas lawsuit was filed, did not include any reference to waiving its notice rights or subrogation rights against the UIM with regard to a UIM claim. Therefore, the federal court granted summary judgment is granted in favor of the insurer.

Federal Amount in Controversy/ Fraudulent Joinder of Insurance Agent
Brown v. State Farm Fire & Cas. Co., 2017 WL 492992 (N.D. Ala. Feb. 7, 2017).

Facts: Following a lightning strike that damaged the foundation of the insuredôs home, the insured filed a claim with his homeownerôs insurer. When the insurer denied the claim, the insured filed a lawsuit alleging breach-of-contract, bad-faith, negligent hiring and supervision, negligent procurement of insurance, and breach-of-contract to procure insurance action against his insurer and the insurance agent that helped him obtain homeownerôs insurance. Both defendants removed the action and moved to dismiss the agent due to fraudulent joinder.

Issue: ***(1) Whether the insurer and insurance agent carried their burden to show the federal-court amount in controversy when the complaint does not include a demand for a specific damage amount.***

(2) Whether the insured fraudulently joined the agent to destroy federal-court

diversity and whether the agent should be dismissed from the lawsuit.

Holding: (1) Yes. The insurer, an Illinois corporation, has its principal place of business in Illinois, and the insured and the agent are citizens of Alabama. Although the insured did not specify a damage amount, the policy provided more than $200,000 in coverage to the house, and the complaint alleged that the insured had to ñexpend large sumsò with regard to the loss. The complaint also alleged mental and emotional damages as well as punitive damages. The court concluded that the evidence showed that the amount in controversy is greater than $75,000.

(2) Yes. The court held that the insured could not maintain a negligent procurement of insurance claim against the agent, as the insured had a duty to read the policy that was in full force and effect. Moreover, the insured could not maintain a claim for breach of contract to procure insurance against the agent because no one disputes that the policy was in effect at the time of the occurrence. Also, the insured does not allege that the agent undertook any additional duties beyond assisting with obtaining the policy for the insured. Since the court found that there was no possibility a cause of action existed against the agent, the court dismissed the agent from the action and retained jurisdiction.

Default Judgment against Insureds for Fraudulent Concealment of Insurance Proceeds
Liberty Ins. Corp. v. Stovall, 2017 WL 581355 (N.D. Ala. Jan 5, 2017) (opinion adopted in *Liberty Ins. Corp. v. Stovall*, 2017 WL 568559 (N.D. Ala. Feb. 13, 2017)).

Facts: After a fire damaged the insuredsô property and the insureds filed a claim, the homeownerôs insurer issued a check to the insureds and their mortgagee listed on the policy, MGC Mortgage, Inc. (ñMGCò), for the actual cash value of the loss. The insureds endorsed the check and cashed without MGCôs signature. The insureds did not pay off the mortgage with the proceeds and did not make payments on the mortgage. More than a year after the fire, LPP Mortgage, Ltd. (ñLPPò) and Cenlar FSB (ñCenlarò) demanded that the insurer pay the balance of the mortgage. The insurer was not aware that LPP was the mortgagee and not MGC or Cenlar, as the mortgage note did not name them or contain a property description. LPP filed an action to reform the mortgage, and the insureds corrected the mortgage.

The homeownerôs insurer filed a declaratory judgment action in the United States District Court for the Northern District of Alabama against the insureds, MGC, LPP, and Cenlar, seeking a declaration that there was no valid mortgage when the loss occurred, that MGC, LPP, and Cenlar did not have rights under the Mortgage Clause of the policy, the insureds violated the concealment/fraud portion of the policy, and the insurer did not owe a duplicate payment to any mortgagee. Additionally, the insurer asked that the insureds be required to interplead the already-paid insurance proceeds.

The homeownerôs carrier and all three mortgage companies settled their differences and dismissed their respective claims against each other. The insureds never answered the homeownerôs carrierôs complaint; therefore, the insurer filed for a default against them. One of the insureds passed away during the proceeds and the insurer informed the court that it did not plan to pursue action against her estate. The remaining insured appeared for the first time at the hearing on the insurerôs motion for default judgment.

Issue: ***Whether the court should enter a default judgment against the insured, as the insured violated the terms of the policy.***

Holding: Yes. The court held that the insurer was entitled to a default judgment for its breach-of-contract claim against the insured, as the parties were subject to a valid contract; the insurer performed its obligations under the contract; the insured did not perform its obligations as he acted fraudulently by accepting the insurance proceeds without obtaining Cenlarôs endorsement or provide the balance of the mortgage to Cenlar; and the insurer sustained damages due to the breach of contract. Moreover, the court awarded the insurer a default judgment against the insured for the conversion claim, as the insured wrongfully took insurance proceeds for his own use that were owed to the mortgagee, illegally took ownership of these proceeds, and wrongfully detained these proceeds. The court also awarded the insurer $25,000, the amount the insurer requested for attorney fees involved in handling the lawsuit and $400 in court costs.

Breach of Settlement Agreement
Stone v. State Auto. Mut. Ins. Co., 2017 WL 633081 (N.D. Ala. Feb. 16, 2017).

Facts: The insured was injured in an automobile accident, and his medical insurance provider, Medicare, paid over $80,000 to cover his medical expenses. The insured filed an action for underinsured motorist (UIM) coverage against his automobile insurer and filed negligence, wantonness, and recklessness claims against the tortfeasor driver. The insured and the tortfeasor settled for the tortfeasorôs insurance limits, and the insured dismissed his claims against the tortfeasor. The insurer and insured then settled the insuredôs UIM claims for $30,000, as long as the insured provided the insurer with specific documentation regarding Medicare liens and reporting requirements.

When the insurer did not provide the $30,000 payment to the insured, the insured filed a breach-of-contract and bad-faith action against the insurer in state court. The insurer removed the action to the United States District Court for the Northern District of Alabama. Eight months after removal, the insured filed an amended complaint adding several employees of the insurer as defendants. The insurer moved to strike the amended complaint and filed a motion for summary judgment.

Issue: ***(1) Whether the insurer's motion to strike the amended complaint should be granted, as the amended complaint was not timely filed and the claims are not viable.***
(2) Whether the insurer's motion for summary judgment should be granted, as the insurer has not breached the settlement agreement.

Holding: (1) Yes. According to the Federal Rule of Civil Procedure 15(a), a plaintiff may file an amended complaint without the courtôs permission within 21 days of service of a responsive pleading. However, the insured/plaintiff here filed his amended complaint over eight months after the action was removed. Even if the court gave permission for the amended complaint to be filed, the claims the insured filed cannot be maintained. Therefore, the court granted the motion to strike.

(2) Yes. The court held that the insurer did not violate the terms of the settlement agreement. The insured had not provided the documentation the settlement agreement required the insured provide the insurer before the payment became due. Therefore, the insurer was not yet obligated to submit $30,000 to the insurer. Since there was no breach-of-contract, the insurer has also not acted in bad-faith. The court disregarded the insurerôs argument that bad-faith claims are limited to disputes involving insurance contracts and not settlement agreements.