

Bad Faith Isn't The Only Remedy

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State laws vary considerably in the standards and remedies for bad faith by an insurance company and also on whether a policyholder can recover attorneys' fees for an insurance coverage dispute in the absence of bad faith. A recent Illinois case is a reminder that court sanctions can be another remedy for an insurer's misconduct in coverage litigation. In *American Access Cas. Co. v. Alcauter*, 2017 IL App (1st) 160775, the insurance company filed a declaratory judgment complaint against its policyholder, Alcauter, seeking to avoid coverage for a \$10,000 judgment in an auto accident case because Alcauter breached his duty of cooperation by failing to attend the hearing in the accident case against him. In Illinois, the underlying plaintiff is often considered a necessary party to a coverage dispute, and in this case, the underlying plaintiff, Kimberly Krebs, opposed the declaratory judgment, presumably because the insurance policy was her best, if not only, source of recovery on the \$10,000 judgment. Krebs introduced evidence that the reason Alcauter did not attend the hearing in the underlying case was that he was incarcerated. That evidence contradicted the insurance company's assertions that it had repeatedly notified Alcauter, by mail and telephone, of his obligation to attend the hearing. After a bench trial in the declaratory judgment action, the court rejected the insurance company's defense of a breach of cooperation and it held the insurer liable for the \$10,000 judgment. Next, Krebs filed a motion for sanctions under Illinois Supreme Court Rule 137, which provides, among other things, that an attorney's signature on a pleading constitutes a certificate that the attorney has read the pleading and believes after reasonable inquiry that it is well-grounded in fact. In support of the sanctions motion, Krebs introduced a letter from her attorney to the insurance company's coverage counsel, dated more than a month before the declaratory judgment trial, enclosing the evidence of Alcauter's incarceration. The court sanctioned the insurance company and its coverage counsel for proceeding to trial on what were apparently false allegations of non-cooperation by Alcauter. The insurance company and its coverage counsel were ordered to pay more than \$13,000 in attorneys' fees and costs, in addition to the \$10,000 judgment. The relatively small dollar amounts and the nature of the underlying case should not obscure the potentially great significance of this decision. Illinois Rule 137, Federal Rule 11 and similar rules in other states provide judges with wide discretion to enter sanctions for pleadings that are not reasonably well-founded. Discovery rules can also be a basis for sanctioning misconduct in the course of litigation. These rules are equally available in insurance coverage litigation and can stand as an important check on insurance companies' misbehavior, even if that conduct doesn't amount to bad faith under state insurance law.

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