

INSURANCE DECISIONS

From Around the State

by Gregory M. Yaffa

Not so fast! Modified golf cart capable of speeds in excess of 20MPH qualified as a “low-speed vehicle” thereby triggering insurance coverage. *Angelotta v. Security National Insurance*, So.3d , 38 FLW D1477 (Fla. 5th DCA 7-5-2013).

In early 2008, Security National’s insured was operating a modified golf cart on a public roadway (within the Villages retirement community), when he sideswiped a car and crashed into another golf cart operated by Angelotta. As a result of the incident, Angelotta suffered injuries and made a claim against Security National’s insured. Security National denied its insured both coverage and a defense, claiming that the “vehicle” was not covered under the subject insurance policy. Angelotta obtained a Final Judgment against Security National’s insured in excess of \$70,500. Security National’s insured then assigned his rights under the insurance policy to Angelotta in exchange for an agreement never to execute upon the Final Judgment. Following the Assignment, Angelotta filed suit against Security National seeking a declaration that there was coverage under the policy. In addition, the lawsuit included counts for breach of contract and bad faith (the bad faith count was appropriately abated pending a determination of coverage). In the suit, both parties moved for summary judgment. Security National argued that it was only obligated to cover bodily injury for which the insured was legally responsible if the injury was caused by a sudden, unexpected and unintended event that arose out of the ownership, maintenance, or use of an “auto.” Auto was defined under the policy as being a vehicle designated principally for use on paved public streets and highways. It was the carrier’s position that a golf cart does not qualify as a covered vehicle, as a golf cart is designated for operation

on a golf course for sporting or recreational purposes and not capable of exceeding speeds of 20mph. It was undisputed that the golf cart was available to Security National’s insured for his regular use and was not listed on the policy. Angelotta argued that as modified, the golf cart was a “low-speed vehicle” under Florida law, which qualified it as a “motor vehicle” under Florida’s Financial Responsibility Law. The trial court agreed with Security National and entered Summary Judgment against Angelotta. The Fifth District Court of Appeal reversed, holding that the undisputed facts established that the golf cart, as modified, was capable of exceeding speeds of 20mph and fell squarely within Florida’s statutory definition of “low speed vehicle.”

Improper for court to apply Florida Arbitration Code to “confirm” an appraisal award. *Citizens Property Insurance Corp. v. Mango Hill Condominium Assn.*, So.3d , 38 FLW D1507 (Fla. 3rd DCA 7-10-2013).

Citizens’ insured, Mango Hill Condominium Association, sustained property damage to multiple buildings due to Hurricane Wilma. After properly presenting a claim, Citizens paid Mango Hill approximately \$40,000. A few months later, Mango Hill presented a supplemental claim through a public adjuster in the amount of approximately \$850,000. When Citizens did not timely settle the claim, Mango Hill demanded appraisal of the supplemental claim. Citizens agreed to appoint an appraiser, despite its position that it owed no further funds to Mango Hill. Citizens forwarded a proposed joint Memorandum of Appraisal, seeking to identify the issues and procedures under which the appraisal would occur. Mango Hill did not respond to the joint

Memorandum and the appraisal went forward with Citizens assuming that the appraisal would be limited to the items identified solely in the supplemental claim. During the appraisal process (which took the course of many months), Mango Hill submitted a revised supplemental claim that with an increased amount in excess of \$1,666,850. The new estimate included exterior damages that had not been previously presented to Citizens. Despite Citizens' request for a stay of the proceedings, the umpire submitted a proposed award in the amount of \$1,058,122.52, which was later signed by the appraiser. Citizens asserted numerous defenses to enforcement of the award against it, including policy requirement violations and fraud. Mango Hill argued that the defenses presented by Citizens were subsumed within the appraisal process or waived by Citizens in that Citizens agreed to participate in the appraisal process. Agreeing with Mango Hill, the trial court "confirmed" the appraisal award. The Third District Court of Appeal reversed the trial court, relying heavily on the differences between arbitration and appraisal. The Court noted that, "While an agreement to arbitrate ordinarily encompasses the disposition of the entire controversy between the parties, an agreement for appraisal extends merely to the resolution of the specific issues of actual case value and amount of loss." Further, the court noted that the appraisal process is largely informal and that all issues other than those contractually assigned to the appraisal panel are reserved for determination in a plenary action. Arbitration, on the other hand is a quasi-judicial proceedings that is afforded the same procedural safeguards as a judicial proceeding (which are codified in the Florida Arbitration Code). Proper procedure required that Citizens' defenses be addressed, not by a motion to confirm appraisal award under the Florida Arbitration Code, but rather by motion for summary judgment or trial.

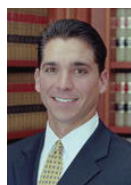
Improper for court to allow an injured claimant to file a third party action against the tortfeasor's insurer prior to settling the claim or receiving a verdict, as doing so violates Florida's nonjoinder statute. *Lantana Insurance, LTD. v. Thornton*, , So.3d , 38 FLW D1537 (Fla. 3rd DCA 7-17- 2013).

While walking a friend's dog, Lantana's insured (homeowner's policy) "clothes-lined" a motor scooter operator with the leash used to walk the dog. The injured scooter operator sued Lantana's insured for negligence. In addition to the coverage with Lantana, its insured carried another policy of insurance with Alfa Insurance. Both Lantana and Alfa denied coverage for the loss and Alfa filed a separate action seeking declaratory relief as to coverage. When Lantana failed to join the dec action or file an action of its own, the injured claimant filed a third party action against Lantana. Lantana moved to dismiss the action, arguing that the third party action was in violation of Florida's nonjoinder statute. Specifically, §627.4136(1), Fl. Stat. (2011) provides: "It shall be a condition precedent to the accrual or maintenance of a cause of action against a liability insurer by a person not an insured under the terms of the liability insurance contract that such person shall first obtain a settlement or verdict against a person who is an insured under the terms of such policy for a cause of action which is covered by such policy." The trial court denied Lantana's motion to dismiss and abated the action instead. Lantana then sought certiorari review of the interlocutory order denying its motion to dismiss. Because the pre-suit requirements of §627.4136 had not been met (no settlement or verdict against the insured), the Third District Court of Appeal granted Lantana's petition and quashed the trial court's order denying the motion to dismiss.

In action for declaratory relief, when determining subject matter jurisdiction, "amount in controversy" is determined from the insurer's perspective and shall include the pecuniary value of the obligation to defend the separate lawsuit. *Elisias v. GEICO General Insurance Co.*, So.3d , 38 FLW D1360 (Fla. 4th DCA 7-31-2013) In a Declaratory Judgment action filed by GEICO against its insured, the trial court ruled that the GEICO policy did not cover Elisias. Elisias appealed, arguing that the trial court improperly determined that coverage didn't apply and that the circuit court lacked subject matter jurisdiction because the amount in controversy was based on the policy limit of \$10,000. The Fourth District Court of Appeal affirmed the coverage determination without discussion and focused its opinion of the issue of whether or not the circuit court had subject matter jurisdiction. GEICO argued that the cost of providing its insured with a defense in the underlying personal injury suit was also at issue in the declaratory action and by including this cost, the amount in controversy exceeded the \$15,000 jurisdictional threshold. Relying on *Stonewall Ins. Co. v. Lopez*, 544 F.2d 198 (5th Cir. 1976), the Fourth District Court of Appeal affirmed the trial court's ruling. The Fifth Circuit, in *Stonewall*, noted that in a declaratory coverage action, the amount in controversy is determined from the insurer's perspective and that the pecuniary value of the obligation to defend the separate lawsuit is properly considered in determining the existence of the jurisdictional amount.

Where insured failed to provide documentation supporting loss, insurer's alleged "low ball" offer was not made in bad faith and the carrier was entitled to an award of attorneys' fees. *State Farm Florida Insurance Co. v. Laughlin-Alfonso*, So.3d , 38 FLW D1654 (Fla. 3rd DCA 7-31-2013).

Laughlin-Alfonso filed a homeowners' claim with her insured, State Farm. State Farm requested several documents from Laughlin-Alfonso, including a sworn proof of loss. Laughlin-Alfonso failed to comply with State Farm's requests for information. Once in suit, Laughlin-Alfonso continued to ignore State Farm's requests for information. Due to a lack of information, State Farm made a nominal offer to settle the case, which its insured rejected. The trial court entered Summary Judgment against State Farm's insured and State Farm promptly filed a motion for attorney's fees pursuant to section 768.79, Florida Statutes (2011). The trial court denied State Farm's motion, ruling that the nominal offer was made in bad faith. The Third District Court of Appeal reversed the trial court's denial of fees, holding that State Farm was justified in making the nominal offer based on the information (or lack thereof) that was in State Farm's possession at the time of the offer. In light of Laughlin-Alfonso's failure to assist State Farm in its investigation (in violation of the insurance policy) State Farm had a reasonable basis to believe that its exposure was nominal and State Farm did not act in bad faith when it made the offer.■



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joined Slawson Cunningham Whalen & Gaspari in 2004 and currently practices in the areas of insurance company bad faith, personal injury and wrongful death. Greg is admitted to practice law not only in the State Courts of Florida, but also in the Florida Federal Courts, including the United States District Court, Middle District Court of Florida, the United States District Court, Southern District of Florida and the United States District Court.