



Insurance Benefits – Unreasonable Delay and Denial. Supreme Court of Colorado Decides Three Cases Against Insurance Companies.

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In a trio of case opinions issued on May 29, 2018, – all written by Chief Justice Nancy Rice who will retire in June – the Colorado Supreme Court ruled against the arguments of insurance companies.

Am. Family Mut. Ins. Co. v. Barriga. 2018 CO 42, No. 15SC934. **Issues: Unreasonable Delay and Denial of Insurance Benefits; Damages.** The Supreme Court considered the operation of a statutory scheme that prohibits the unreasonable delay or denial of insurance benefits. The court considered whether an award of damages under section 10-3-1116(1), C.R.S. (2017), must be reduced by an insurance benefit unreasonably delayed but ultimately recovered by an insured outside of a lawsuit. The Supreme Court held that an award under section 10-3-1116(1) must not be reduced by an amount unreasonably delayed but eventually paid by an insurer because the plain text of the statute provides no basis for such a reduction. The court also concluded that the general rule against double recovery for a single harm does not prohibit a litigant from recovering under claims for both a violation of section 10-3-1116(1) and breach of contract. Thus, the decision of the Colorado Court of Appeals was affirmed.

Guarantee Trust Life Ins. Co. v. Estate of Casper. 2018 CO 43, No. 17SC2. **Issues: Unreasonable Delay and Denial of Insurance Benefits; Abatement; Actual Damages.** The Supreme Court considered the operation of section 13-20-101, 15 C.R.S. (2017), Colorado’s survival statute, and section 10-3-1116(1), C.R.S. (2017), a statutory cause of action for the unreasonable delay or denial of insurance benefits. In addition, the Supreme Court considered the scope of the trial court’s authority to enter a final judgment *nunc pro tunc*. Here, the original plaintiff died after receiving a favorable jury verdict, but before that verdict had been reduced to a written and signed entry of final judgment. The defendant then moved to substantially reduce the jury award, arguing that the survival statute barred certain damages. The Supreme Court concluded that the survival statute does not limit the jury’s verdict in favor of the original plaintiff. The Supreme Court held that an award of attorney fees under section 10-3-1116(1) is a component of the “actual damages” of a successful claim under that section and that, although the survival statute did not limit the damages awarded by the jury, the trial court abused its discretion by entering a final judgment *nunc pro tunc*. The Court of Appeals’ judgment was affirmed in part and reversed in part.

Rooftop Restoration, Inc. v. Am. Family Mut. Ins. Co. 2018 CO 44, No. 17SA31. **Issues: Unreasonable Delay and Denial of Insurance Benefits; Statute of Limitations; Statutory Interpretation.** The Supreme Court considered a certified question from the U.S. District Court for the District of Colorado. Specifically, the Supreme Court determined whether the one-year statute of limitations found in section 13-80-103(1)(d), C.R.S. (2017), governs actions under section 10-3-1116(1), C.R.S. (2017), which creates a cause of action to address the unreasonable delay or denial of insurance benefits. The Court concluded that the one-year statute of limitations does not apply to actions brought under section 10-3-1116(1) because the legislature did not intend section 10-3-1116(1) to operate as a penalty within the context of the statutory scheme. The certified question was answered in the negative.

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