Insurance: Recovery in Excess of Policy Limits

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The bank had no defense other than the statute already cited and had to meet the demands of the plaintiff.

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The Supreme Court of Wisconsin in the late decision of Hilker v. Western Auto Insurance Company handed down recently upon rehearing, qualified the decisions of the Wisconsin Zinc Company v. Fidelity & Deposit Company of Maryland, 162 Wis. 39, by finding contra to that decision that the negligence of the insurance company in investigating and adjusting a personal injury claim is indicative of bad faith. The court said that the terms negligence and bad faith may be used interchangeably—that fraud is not the only ground of bad faith (Wisconsin Zinc Company case) but that negligence is too (Hilker case).

In the Hilker case Fred C. Hilker brought an action against the Western Auto Insurance Company to recover the excess over the coverage of an auto indemnity policy which was paid by him to satisfy a judgment for damages for injuries caused when his automobile struck a child. The defendant company issued a policy of auto indemnity insurance to the plaintiff which limited its liability for injury to one person to $5,000. The policy gave the defendant insurance company full and complete control of the handling and adjustment of all claims for liability made against the assured and provided that the insured, to quote the exact wording of the policy, "Shall not interfere in any negotiations for settlement or in any legal procedure." The defendant took full charge of the two actions brought against the plaintiff, Hilker. These actions resulted in a verdict against him for $10,500—$5,500 over his policy limits. The plaintiff paid these judgments, and brought an action to recover the $5,500 that he paid in excess of his policy limits, alleging that the defendant company acted in bad faith in conducting the defense, and in withholding from him information as to the accident and in failing to settle the actions for within $5,000, the amount of the policy limit, although they could have done so. The jury found that the defendant company could have settled the two actions against the plaintiff Hilker before they were started as well as during their trial for less than $5,000, that the defendant company acted in bad faith in failing to make such settlements and in its manner of handling the claims which were against the plaintiff Hilker and in dealing with the plaintiff Hilker.

The defendant on appeal contended that although the complaint alleged bad faith the proof was that of negligence, and so would not
sustain the finding. Negligence and bad faith were contended to be distinct since in the Wisconsin Zinc Company case the court held that fraud was evidence of bad faith but that there could be no recovery for negligence. However, the court in the Hilker case, took the view as has already been stated in the first paragraph of this comment, that bad faith and negligence are synonymous and that negligence points directly to bad faith.

To put the Hilker case succinctly, an assured may recover from his insurance company in excess of his policy limits if a judgment is rendered against him over the amount of the policy limit as the result of bad faith on the part of the insurance company which may be shown by fraud (Wisconsin Zinc Company case), or by negligence in investigating and adjusting and in failing to notify the assured of the danger of the case against him (the Hilker case).

In the decision of the court on rehearing it said, "Each case presenting the issue of liability of an insurance carrier under such circumstances as here presented must be determined upon its own peculiar state of facts." A little farther down in the decision, the court defines the antonym of bad faith, namely, good faith, in this way. "But the good faith performance of the obligation which the insurance company assumed when it took to itself the complete and exclusive control of all matters that determine the liability of the insured, require that it be held to that degree of care and diligence which a man of ordinary care and prudence would exercise in the management of his own business were he investigating and adjusting such claims." In these words lies the gist of the decision, making the proof of the negligence sufficient of itself to sustain a finding of bad faith. As the law exists, then, an insurance company may be liable for bad faith by proof of fraud or negligence on its part.

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CLYDE SHEETS.

INSURANCE—AGENT’S COMMISSION—STATE REGULATION—POLICE POWER. H. Insurance Company employed O&Y as local fire insurance agents and agreed to pay reasonable compensation. O&Y demanded 25% of the premiums collected. The Insurance Company paid 20%, and denied liability for premiums in excess of that percentage. The Insurance Company asserted a New Jersey Law: "In order that the rates of insurance against the hazards of fire shall be reasonable it shall be unlawful for any such insurer licensed in this state to directly or indirectly pay or allow any commission in excess of that offered, paid or allowed to any one of its local agents on such risks in this state." (Chap. 128, Sec. 1, Act of Mar. 28, 1828.) The evidence showed that all other agents of H. Ins. Co. received 20%. Held: that