



## NEWSLETTER ARTICLE

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## General Liability Litigation:

### Bad Faith in General Liability

*By Marshall Wall*

"That offer is ridiculous – that's bad faith!" How many times do Plaintiff's attorneys make statements like this one? When Plaintiffs or their attorneys are unhappy with a carrier's position on liability or on damages, they often seem to reach for the "bad faith card" to exert pressure to settle. Fortunately, North Carolina courts have routinely turned aside third-party bad faith claims. See *Wilson v. Wilson*, 121 N.C. App. 662, 468 S.E.2d 495 (1996). There are a few exceptions, however.

One case that is often cited by Plaintiffs is *Murray v. Nationwide Mutual Ins. Co.*, 123 N.C. App. 1, 472 S.E.2d 358 (1996). In that case, the Plaintiff was involved in an automobile accident and sued the allegedly negligent driver, as well as an underinsured motorist (UIM) insurance carrier. The case was tried to a jury, which returned a verdict for the Plaintiff. After the judgment was entered, the Plaintiff sought to collect from two liability carriers and the UIM carrier, Nationwide. Issues arose on appeal about whether the carriers were responsible for some of the interest on the judgment, and whether the UIM carrier was entitled to a credit for medical payments coverage already paid to the Plaintiff.

The Plaintiff then sued the carriers directly, seeking the amounts not paid to him. He also asked for unfair and deceptive trade practices against the carrier. The trial court tossed the case out, but the Court of Appeals reinstated it. In its opinion, the Court of Appeals said that: "The injured party in an automobile accident is an intended third-party beneficiary to the insurance contract between the insurer and the tortfeasor/insured party." Plaintiffs have seized on this sentence to claim that anyone injured by a negligent driver can bring a claim against that driver's insurance company for bad faith if it denies the claim.

Our courts have limited the *Murray* case, however, and held that it only allows a direct lawsuit against a carrier after judgment has been entered. Before judgment is entered, the injured party generally cannot sue the at-fault party's insurance carrier for bad faith or unfair and deceptive trade practices. See *Craven v. Demidovich*, 615 S.E.2d 722 (N.C. App. 2005).

It is also important to remember that the bar on direct claims does not necessarily apply to uninsured or underinsured claims, since the Plaintiff is often the insured. See *Vazquez v. Allstate Ins. Co.*, 137 N.C. App. 741, 529 S.E.2d 480 (2000). Carriers must keep in mind that, even though a UM or UIM Plaintiff's injuries were caused by some third-party, the Plaintiff is still an insured and can bring a direct claim in the right situation.

While insurers must always take care to avoid bad faith claims, in the typical general liability situation the threats of an opposing attorney to sue the carrier directly are usually empty.