

Oregon Landmark Decision Opens Door to Bad Faith Litigation

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For the first time in Oregon, claimants have a legal basis to pursue first-party bad faith claims against insurers. In late December 2023, the Oregon Supreme Court affirmed a 2022 opinion from the Oregon Court of Appeals in *Moody v Oregon Community Credit Union* and opened the door to bad faith litigation. While the Court’s 4-3 ruling expands an insurer’s potential liability when adjusting life insurance policies in Oregon and could have far-reaching implications for recovery of extra-contractual damages, the extent of the reach of this opinion is yet to be determined.

The landmark decision arises from a life insurance claim for \$3,000. The claimant-widow sought life insurance proceeds following the accidental death of her spouse, who was shot and killed while camping. The insurer denied the claim for life insurance benefits on the grounds that the deceased spouse had cannabis in their system, pointing to a policy exclusion for deaths “caused by or resulting from [decedent] being under the influence of any narcotic or other controlled substance.” The claimant sued for breach of contract, breach of the implied covenant of good faith and fair dealing and negligence, as the gunshot—and not cannabis—was the cause of death. The claimant also sought damages relating to the wrongful denial of the claim, alleging that, as a result of the insurer’s negligence, she suffered “the non-economic loss of increased emotional distress and anxiety caused by having fewer financial resources to navigate the loss.”

The negligence claim was dismissed at the trial court level, based on well-established Oregon law that precludes extra-contractual claims against insurers. However, the Oregon Court of Appeals reversed the trial court, prompting review by the Oregon Supreme Court. By a vote of four to three, the Oregon Supreme Court affirmed the appellate decision. This decision creates, for the first time in Oregon, extra-contractual tort liability for the denial of an insurance claim.

The full extent of the decision’s applicability has yet to be further yielded, through legislation or further litigation. It is not clear if this decision extends beyond first-party life insurance claims to third-party claims or other types of insurance policies. Though, in its holding, the Court expressly cautioned “that our conclusion here does not make every contracting party liable for negligent conduct that causes purely psychological damage, nor does it make every statutory violation the basis for a common-law negligence claim for emotional distress damages.” With the door open to extra-contractual claims and no defined limit to its application, this case prompts a significant change in first-party insurance litigation in Oregon. Until the limits of this law or boundaries of its application are defined by the legislature or further limited through litigation, insurers can anticipate aggressive posturing and padded demands from policyholders in Oregon.