

'Cammarata': Tool for insureds to extract settlement value

**Commentary by
 Brandon M. Thompson**

In *Cammarata v. State Farm Florida Insurance*, the Fourth District Court of Appeal held that, so long as coverage and the extent of damages have been determined, a plaintiff can bring a bad-faith claim even if no court has found the insurer breached the policy.



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Calling *Cammarata* groundbreaking would be too dramatic. It really just brought the Fourth District in line with Supreme Court precedent.

From a practical perspective, it's important to highlight what *Cammarata* did not change: the standard for actually proving a bad-faith claim. And as Judge Jonathan D. Gerber's stern concurrence points out, the record in *Cammarata* contains nothing to suggest State Farm acted in bad faith.

Even so, *Cammarata*'s effects could be far-reaching because a bad-faith claim comes with two obvious risks not usually associated

with a breach-of-policy claim: exposure to punitive damages and a potential for compensatory damages above the policy limits.

Risk is a powerful tool. It forces settlements and drives litigation strategy. So you can see the opportunity for misuse of *Cammarata*, leading to Gerber's "slippery slope" warning.

An insured may decide, why bring a breach-of-policy claim when you can skip straight to a bad-faith claim to put the screws to the insurer? The obvious reasons include professional ethics and Florida Statute 57.105.

Yet as attorneys know, those devices are slow police, often disregarded, however unwisely. If they come into play at all, it will usually be after a suit ended (most likely through settlement).

That means *Cammarata* has armed insureds with a new tool to extract settlement value, should



The Fourth District Court of Appeal allowed State Farm to be sued for bad faith despite no finding that the insurer breached the policy.

they choose to use it. Certainly, not all will, and some will be justified in doing so.

Counsel for insureds are not more or less ethical or competent than any other attorneys. Still, the potential for abuse is clear.

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