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Pinto v. Farmers Insurance Exchange: California Appellate Court Confirms Juries Must Specifically Find Insurer Acted Unreasonably in Bad Faith Failure to Settle Cases

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On March 8, the California Court of Appeal issued an important opinion clarifying that the trier of fact in a bad faith "failure to settle" case must specifically find that the insurer acted unreasonably in order to find against the insurer on a bad faith claim. This opinion has significant implications for bad faith "failure to settle" cases, especially for jury instructions and verdict forms used in California.

In *Pinto v. Farmers Ins. Exch.*, No. B295742, __ Cal. App. 5th __, 2021 WL 857776 (Cal. Ct. App. Mar. 8, 2021), the court reversed a $10 million judgment against the insurer because the special verdict form given to the jury, based on Judicial Council of California Jury Instruction (CACI) 2334, did not include the requirement that the insurer acted unreasonably.

Pinto involved a single-vehicle accident, where the claimant was rendered quadriplegic. Farmers issued an auto insurance policy with a $50,000 limit. The claimant made a policy-limits settlement offer, which Farmers did not accept by the claimant's deadline. The claimant settled with the insureds for the equivalent of a $10 million judgment and then brought suit against Farmers for bad faith. At trial in the bad faith action, the court instructed the jury with a special verdict form patterned on CACI 2334 — the current form CACI instruction on "bad faith failure to settle" claims. CACI 2334, and therefore the verdict form in *Pinto*, asked the jury to determine whether the insurer failed to accept a reasonable settlement demand. It did not require the jury to find that the insurer acted unreasonably.

On appeal, the court stated that it "has never held that the failure to accept a reasonable settlement is per se unreasonable." Instead, the court held that, in order for the insurer to be liable for bad faith, precedent requires the trier of fact to find that the insurer acted unreasonably in rejecting a reasonable settlement offer. The court then concluded that the jury verdict form was facially insufficient because "it included no finding that Farmers acted unreasonably in failing to accept Pinto's settlement offer." Because the verdict did not include this crucial element, the jury made no finding that the insurer acted unreasonably, and therefore, Farmers could not be liable for bad faith. The court remanded the case with directions for judgment to be entered for Farmers.

Pinto resolves a longstanding conflict that often arises at trial in bad faith litigation — whether a bad faith failure to settle claim specifically requires a finding that the insurer acted unreasonably in failing to settle. *Pinto* clarifies that a finding that the claimant's offer was reasonable is not enough. The case also highlights that CACI 2334, as currently drafted, does not accurately state the elements of bad faith failure to settle because it potentially makes

any insurer liable for failing to accept a reasonable settlement demand *even if* the insurer acted reasonably. CACI instructions are regularly updated, and the Judicial Council will likely soon revise CACI 2334 to conform to the *Pinto* court's holding. In the meantime, insurers can rely on *Pinto* to insist that jury instructions and verdict forms require the jury to find that the insurer acted unreasonably for the insurer to be liable for bad faith failure to settle. In addition, *Pinto* requires that claimants plead and prove that the insurer acted unreasonably at all stages of a bad faith failure to settle case.

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